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Strengthening Indonesia's Migrant Worker Legislation: Reality and Necessity

by

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LIST OF ABREVATION

AICHR	: ASEAN Intergovernmental Commission on Human Rights
APJATI	: Asosiasi Perusahaan Jasa Tenaga Kerja Indonesia [Assoiation of Indonesian Manpower Service Employers]
ASEAN	: Association of Southeast Asian Nations
AVROS	: Algemene Vereniging van Rubber Planters ter Ooskust van Sumatra
BEOE	: Bureau of Emigration and Overseas Employment
BMI	: Buruh Migrant Indonesia [Indonesian Migrant Labourers]
BP2MI	: Badan Perlindungan Pekerja Migran Indonesia [Indonesian Migrant Worker Protection Agency]
BPHN	: Badan Pembangunan Hukum Nasional [Indonesia's National Legal Development Agency]
BPNP2TKI	: Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia [National Agency for Placement and Protection of Indonesian Migrant Workers]
BPUPKI	: Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia [Agency for Investigation of Preparatory Efforts for Indonesian Independence]
CEACR	: Committee of Experts on the Application of Conventions and Recommendations
CMW	: Convention on Migrant Workers
COA	: Commission on Audit
D.P. V	: Deli Planters Vereniging
DOCS	: Department of Consular Support
DoFE	: Department of Foreign Employment
DPD RI	: Dewan Perwakilan Daerah [Senators]
EU	: European Union
FEWF	: Foreign Employment Worker’s Fund
GAA	: General Appropriations Act
GBHN	: Garis-Garis Besar Haluan Negara [Outlines of State Policy]
GCC	: Gulf Cooperation Council
GDP	: Gross Domestic Product
HGB	: Hak Guna Bangunan [Building Use Rights]
HGU	: Hak Guna Usaha [Land Use for Business Rights]
ICMW	: International Convention on Migrant Workers
ICT	: Information and Communication Technology
IETO	: Indonesian Economic and Trade Office
ILC	: International Labour Conference
ILO	: International Labour Organization
LAF	: Legal Assistance Fund
LTSA	: Layanan Terpadu Satu Atap [One Roof Integrated Services]

MLC	: Maritime Labour Convention
MOFA	: Ministry of Foreign Affairs
MOLES	: Ministry of Labor, Employment, and Social Security
MoU	: Memorandum of Understanding
MPR	: Majelis Permusyawaratan Rakyat [The Peoples' Consultative Assembly]
MWC	: Migrant Worker Convention
MWWF	: Migrant Workers' Welfare Fund
NGOs	: Non-Governmental Organizations
OECD	: Organization for Economic Co-operation and Development
OFW	: Overseas Filipino Worker
Perda	: Peraturan Daerah [Local Government Regulation]
Pereppu	: Peraturan Pemerintah Pengganti Undang-Undang [Government Regulation in Lieu of Law]
Permen	: Peraturan Menteri [Ministerial Regulation]
Perpres	: Peraturan Presiden [Presidential Regulation]
PLNK	: Peraturan Lembaga Negara Non Kementerian [Non-Ministerial State Institution Regulations
PMI	: Pekerja Migran Indonesia [Indonesian Migrant Workers]
POEA	: Philippine Overseas Employment Administration
PP	: Peraturan Pemerintah [Government Regulation]
PPTKIS	: Pelaksana Penempatan Tenaga Kerja Indonesia Swasta [Executor of Placement of Private Indonesian Workers]
R.R.	: Regeerings Reglementen
R2P	: Responsibility to Protect
Repelita	: Rencana Pembangunan Lima Tahun [Five-Year Development Plan]
ROC	: Republic of China
TCN	: Third-Country Nationals
TKI	: Tenaga Kerja Indonesia [Indonesian Migrant Labourers]
UDHR	: Universal Declaration of Human Rights
UN	: United Nations
UU	: Undang-Undang [Act]
UUDS	: Undang-Undang Dasar Sementara [Temporary Constitution]
V.O.C	: Vereenigde Oost-Indische Compagnie
VCLT	: Vienna Convention on the Law of Treaties
VSDTA	: Vocational and Skill Development Training Academy
WEFGCI	: World Economic Forum's Global Competitiveness Index
WNI	: Warga Negara Indonesia [Indonesian Nationals]

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CHAPTER 1

Introduction

1.1. Background

Indonesian migrant workers' remittances contribute significantly to the well-being of their remaining families[1] in Indonesia and the Indonesian economy. Remittances[2] from Indonesian migrant labourers are critical in reducing poverty[3]. Those remittances[4] minimize the livelihood of their households being impoverished by 28%. Financially, families at home benefit by covering the price of necessities such as food, shelter, education, and health. Over 80% of migrant worker households report using remittance income for "daily requirements."[5] Approximately 72.6 thousand Indonesians worked abroad in 2021, including Singapore, Malaysia, Hong Kong, Taiwan, Saudi Arabia, Japan, Italy, the United Arab Emirates, and South Korea[6], accounting for nearly 7% of the country's total labour force. Only China and the Philippines[7] have more migrant labourers working abroad. In 2018, Indonesian migrant workers sent more than USD 10,97 billion in remittances to the

[1] Muhammad Yamin, *Napak Tilas Pahlawan Devisa (Arus Mobilitas Buruh Dan Dampaknya Terhadap Keluarga*, *Pena Persada*, first (Banyumas: CV. Pena Persada, 2021).

[2] Moshe Semyonov and Anastasia Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers," *International Migration Review* 39, no. 1 (2005): 45–68, https://doi.org/10.1111/j.1747-7379.2005.tb00255.x; Azam Muhammad, "The Role of Migrant Workers Remittances in Fostering Economic Growth," *International Journal of Social Economics* 42, no. 8 (2015): 690–705; Khairah Ukhtiyani and Setyabudi Indartono, "Impacts of Indonesian Economic Growth: Remittances Migrant Workers and FDI," *Jejak* 13, no. 2 (2020): 280–91, https://doi.org/10.15294/jejak.v13i2.23543.

[3] Ukhtiyani and Indartono, "Impacts of Indonesian Economic Growth: Remittances Migrant Workers and FDI."

[4] Concerning the impact of remittance on the economic development of sending countries, numerous examples can be found in Yonas Alem and Lisa Andersson, "International Remittances and Private Inter-Household Transfers," 2016; Semyonov and Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers"; Muhammad Azam and Syed Ali Raza, "Do Workers' Remittances Boost Human Capital Development?," *The Pakistan Development Review* 55, no. 2 (2016): 123–49; Azam Muhammad, "The Role of Migrant Workers Remittances in Fostering Economic Growth."

[5] The World Bank, "Indonesia's Global Workers Juggling Opportunities & Risks," *The World Bank* (Jakarta, 2017).

[6] Statistics Indonesia. "Number of Indonesians working abroad 2021, by country of destination (in 1,000s)." Chart. February 25, 2022. Statista. Accessed April 15, 2023. https://www.statista.com/statistics/702146/number-of-indonesians-working-abroad-by-country-of-destination/.

[7] Jaratin Lily et al., "Exchange Rate Movement and Foreign Direct Investment in Asean Economies," *Economics Research International* 2014 (2014): 1–10, https://doi.org/10.1155/2014/320949; Semyonov and Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers"; Marie-Francine Moens, "Legislation and Informatics," in *Legislation in Context: Essays in Legisprudence*, ed. Tom D. Campbell and Philippe Thion (England and USA: Ashgate Publishing Limited, 2016), 170–84, https://doi.org/10.4324/9781315592138.

country. Saudi Arabia sent the most, USD 3.887 billion, followed by Malaysia, which sent USD 3.233 billion[8], demonstrating a sizable contribution to the Indonesian economy.

These employees are among the country's top foreign exchange earners in the Indonesian economy.[9] Even for their remittance services, the Indonesian government recognizes migrant Labourers as remittance heroes.[10] However, this recognition of remittance champions was not accompanied by adequate protection for their human rights, as their work is informal and unskilled. Since migrant Labourers in informal jobs are frequently stigmatized as "coolies," a term coined by the colonial government to denote the low honor and dishonorable nature of their work.[11] Remittance interest without adequate protection of migrant workers' human rights was typical of the Indonesian government's postcolonial policy of dispatching migrant workers abroad, especially during the Suharto regime (1967-1998).[12] Consequently, the contributions of migrant Labourers to the economic development of the nation are not matched by adequate legal protection for their fundamental rights. No legislation was enacted by the Suharto regime to protect the rights of migrant Labourers during all phases of migration.[13] Numerous reports and studies document various cases of abuse suffered by migrant workers, particularly those employed in the informal sector, such as domestic workers[14] or unskilled Labourers in various industries, such as oil palm plantations in Malaysia[15] or fishers in Taiwan.[16] These migrant

[8] BNP2TKI, "Remitansi Pekerja Migran Indonesia Tahun 2011-2018" (Jakarta, 2019).
[9] The World Bank, "Indonesia's Global Workers Juggling Opportunities & Risks."
[10] Ali Maksum, "Indonesian Post-Migrant Workers: A Challenging Problem for Human Security," *Social Sciences & Humanities Open* 4, no. 1 (2021): 100223, https://doi.org/10.1016/j.ssaho.2021.100223.
[11] Anis Hidayah, Wahyu Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*, First (Jakarta: Migrant Care, 2013).
[12] Ana Sabhana Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010* (Jakarta: Yayasan Pustaka Obor Indonesia, 2012).
[13] Azmy. *at* 48.
[14] Mary Austin, "Defending Indonesia's Migrant Domestic Workers," in *Citizenship and Democratization in Southeast Asia*, ed. Ward Berenschot, Henk Schulte Nordholt, and Laurens Bakker (Brill, 2016), 265; S. Diuni Prihatin, "Potret Buram Perlindungan Tenaga Keria Indonesia," *Jurnal Ilmu Sosial Dan Ilmu Politik* 10, no. 3 (2007); Ainurrofiq, "Pengaruh Dimensi Kepercayaan (Trust) Terhadap Partisipasi Pelanggan E-Commerce (Studi Pada Pelanggan E-Commerce Di Indonesia)," *Jurnal Sistem Informasi (JSI)* (Universitas Brawijaya, 2007).
[15] Prihatin, "Potret Buram Perlindungan Tenaga Keria Indonesia"; Pamungkas A. Dewanto, Virginia Mantouvalou, and Pamungkas A. Dewanto, "The Domestication of Protection: The State and Civil Society in Indonesia's Overseas Labour Migration," *Bijdragen Tot de Taal-, Land- En Volkenkunde* 176, no. 4 (2020): 504–31, https://doi.org/10.1163/22134379-bja10018.
[16] Fitri Soulina and Nadia Yovani, "Forced Labor Practices of Indonesian Migrant Fishing Vessels Crew on Taiwan-Flagged Ships? A Need for Cognitive Framework Transformation," *Journal of Social Studies (JSS)* 16, no. 2 (2020): 157–82, https://doi.org/10.21831/jss.v16i2.32260; James X. Morris, "The Dirty Secret of Taiwan's Fishing Industry," *The Diplomat*, May 18, 2018; Gezim Krasniqi, "Contested Territories, Liminal Polities, Performative Citizenship: A Comparative Analysis," *Global Governance Programme*, 2018, https://doi.org/10.2139/ssrn.3157555; Prihatin, "Potret Buram Perlindungan Tenaga Keria Indonesia."

workers endure many cases of abuse of their fundamental rights[17], including a lack of health insurance, an unsafe and pleasant working environment, adequate rest time, security guarantees, and acceptable wages. Some are even compelled to speak a foreign language. Employers have imprisoned employees on numerous charges of committing crimes, even though they defend themselves against their bosses' mistreatment. In the countries where they labour, executions are also not uncommon. Numerous examples from the domestic and international media reflect this reality.[18]

Numerous factors contributing to the various forms of bullying experienced by Indonesian migrant workers are inextricably linked. The overlapping regulations on migrant workers[19] have a detrimental effect on the governance of Indonesian migrant workers. It results in practices such as sending migrant workers solely for political-economic reasons, such as reducing unemployment and poverty in the country and earning foreign exchange, and lack of oversight of migrant worker recruitment agencies, which resulted in the practice's emergence. The complexity of the issues confronted by migrant workers stretches from the moment they depart to their placement and their return to Indonesia.[20] As a result, Indonesian migrant workers have become the subject of various poor practice violations throughout the immigration process: before departure, during employment, and upon return.[21] Additionally, the growth of a poorly managed "labour export business" coincided with the political transition phase, resulting in an unstable administration's emergence, necessitating the use of a political economy approach to migrant worker treatment. The primary objective is to reduce the country's unemployment rate.[22] As a result, practically all policies dealing with migrant workers overseas focus exclusively on simplifying the delivery of employees rather than on developing policies aimed at establishing various mechanisms to protect migrant workers' rights, which, of course, comes at a high cost.[23]

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[17] Diana Rondonuwu, "Tinjauan Yuridis Terhadap Kelemahan Perlindungan Hukum Tenaga Kerja Indonesia Di Luar Negeri," *Lex Et Societatis* VI, no. 8 (2020): 12–26.
[18] Prihatin, "Potret Buram Perlindungan Tenaga Keria Indonesia"; Hidayat Hidayat, "Perlindungan Hak Tenaga Kerja Indonesia di Taiwan Dan Malaysia Dalam Perspektif Hak Asasi Manusia," *Jurnal HAM* 8, no. 2 (2017): 105, https://doi.org/10.30641/ham.2017.8.272.
[19] Feby Novalius, "BPK Temukan Kelemahan Regulasi Dalam Perlindungan TKI," *Economy.Okezone. Com*, May 6, 2015; Dewanto, Mantouvalou, and Dewanto, "The Domestication of Protection: The State and Civil Society in Indonesia's Overseas Labour Migration."
[20] ILO, *Standar Internasional Migrasi Ketenagakerjaan Berbasis HAM*, ed. Pranoto Iskandar (Cianjur: Institute for Migrant Rights Press, 2011).
[21] Austin, "Defending Indonesia's Migrant Domestic Workers."
[22] Austin.
[23] ILO, *Standar Internasional Migrasi Ketenagakerjaan Berbasis HAM*.

The Indonesian government has repeatedly attempted to modify the migrant worker exporting system, with the Act No. 18 of 2017 Concerning the Protection of the Indonesian Migrant Worker enshrining the sharing of governance responsibilities as the most recent approach. However, this initiative lacks a clear strategy, as evidenced by the absence of bilateral agreements with various governments of migrant worker destination countries[24] and by allowing migrant workers to work in countries with which Indonesia has no diplomatic relations, such as Taiwan,[25] preventing the state from providing direct assistance when problems with migrant workers arise. This challenge stems from the fact that Indonesia does not recognise Taiwan's independence and considers it a Chinese province.[26] Indonesia has only signed Memoranda of Understanding (MoU) with Malaysia and Saudi Arabia, which handle numerous procedural obstacles linked to recruitment but have nothing to do with the rights of migrant workers. In contrast, the Indonesian government's numerous corrective initiatives tend to be ad hoc in nature, as opposed to a coherent and comprehensive plan for migrant workers' rights promotion.[27]

Despite joining the ILO in June 1950, Indonesia has ratified few international legal instruments pertaining to migrant workers, which adds to the low quality of Indonesian migrant worker legislation. Notwithstanding its shortcomings, the 1990 Convention on the Rights of the Migrant Worker (CMW) is regarded as "the first universal codification of the human rights of migrant workers and their families in a single instrument." Even though some of its provisions are found in various other international instruments, the facts that make it a unified Convention are its validity."[28] As a result, strengthening the management of Indonesian migrant workers' migration benefits migrant workers' human rights and economic development in general, specifically for the Indonesian people.[29] Migrant worker migration management requires formulating and implementing a well-considered, comprehensive, and methodical immigration policy through quality Indonesian migrant worker legislation, both in terms of substance and the legal and political process through which it is established.

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[24] ILO.
[25] Soulina and Yovani, "Forced Labor Practices of Indonesian Migrant Fishing Vessels Crew on Taiwan-Flagged Ships? A Need for Cognitive Framework Transformation."
[26] M Fahrezal Maulana, Kholis Roisah, and Peni Susetyorini, "Implikasi One China Policy Terhadap Hubungan Luar Negeri Indonesia Dan Taiwan Dalam Perspektif Hukum Internasional," *Diponegoro Law Journal* 5, no. 3 (2016).
[27] ILO, *Standar Internasional Migrasi Ketenagakerjaan Berbasis HAM*.
[28] ILO.
[29] ILO. Ibid.

According to Tímea Drinóczi,[30] the substance and procedure of drafting legislation define its quality. Given this notion of quality legislation, the Indonesian legislation on migrant workers contains certain flaws. The initial migrant worker legislation (Act No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad) contains several substantive flaws,[31] including placing a premium on the placement of Migrant Workers over their protection, the predominance of the private sector in the management of migrant workers, and the absence of a ban on sending migrant workers to countries that do not protect migrant workers.[32] In addition, there is a lack of security for migrant Labourers at work and when they return home, as well as a lack of control over the stages of migration.[33]

In response to the flaws discovered in the Act of 2004, it was revised in 2017. This new law, in which the word "placement" was eliminated, is now known as the Act for the Protection of Migrant Workers. Under the Act of 2017, it is anticipated that the previous migrant workers act's deployment objective will be modified to emphasize the protection of migrant workers. Nonetheless, the 2017 Act also contains substantial faults in its entirety. Wahyu Susilo[34], an activist of the non-governmental organization Migrant Care, observed several significant advances between Law No. 18 of 2017 and Law No. 39 of 2004. This advancement is evidenced by the inclusion of specific chapters and articles on migrant worker protection, migrant worker rights, social security, central and local government duties and responsibilities, and one-stop integrated services for the placement and protection of Indonesian migrant workers.

On the other hand, Susilo[35] noted several fundamental faults in Law Number 18 of 2017 and the procedures and processes used in its creation. *First*, the provisions of this Law relating to the protection of migrant workers' rights and the social security of migrant employees are referred to Migrant Worker Convention. However, unfortunately, not all the Convention's provisions on this subject have been implemented. Several critical aspects of the Convention, such as the protection of migrant workers' family members and the

[30] Tímea Drinóczi, "Concept of Quality in Legislation-Revisited: Matter of Perspective and a General Overview," *Statute Law Review* 36, no. 3 (2015): 211–27, https://doi.org/10.1093/slr/hmv008.
[31] Hotman Siregar, "Menteri Yohana Ungkap 7 Kelemahan UU TKI," *Beritasatu.Com*, July 7, 2015.
[32] Novalius, "BPK Temukan Kelemahan Regulasi Dalam Perlindungan TKI."
[33] Johannes, "Politik Hukum Perburuhan Suatu Hasil Observasi Terhadap Kebijakan Dan Permasalahan Buruh Migran Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 14, no. 3 (2007): 474–96, https://doi.org/10.20885/iustum.vol14.iss3.art3.
[34] Wahyu Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia," *Dw. Com*, December 18, 2017.
[35] Susilo. Ibid.

punishment of undocumented migrant workers, have yet to be included in this Law. Moreover, it is regrettable that several provisions of this Law contradict the state's commitment to Indonesian migrant workers who work independently. As a result, this provision makes it possible to prosecute migrant labour. *Second*, the shortcomings of Law Number 18 of 2017 are in the chapters and articles dealing with implementing placements, institutions, and articles that have the potential to be hijacked to produce implementing regulations detrimental to Indonesian migrant workers.

Additionally, institutional disagreements about the authority of Ministries and Institutions/Non-Ministerial Agencies to administer migrant worker protection under Law Number 18 of 2017 remain a potential. This disagreement is because the division of labour and institutional power was not thoroughly examined. The resulting papers result from a compromise reached between various interested entities. For example, the articles in this Law that control guidance and supervision may be rubber articles since they do not specify the type of guidance and oversight that should be conducted to ensure the execution of governance for the protection of Indonesian migrant workers. This provision can create institutional tensions about coaching and supervision authority and responsibility. *Third*, even though a distinct chapter governs it, this Law nonetheless allows the private sector to engage in the business of placing Indonesian migrant workers. *Fourth,* in detail, dozens of articles continue to govern the Implementers of the Placement of Indonesian Migrant Workers. *Fifth*, despite the Law's focus or legislative domain on Migrant Worker Protection, there are no specific measures for the operational implementation of migrant worker placement. *Sixth*, no specific provision in Law 18 of 2017 affirms the distinctive need for protecting Indonesian migrant workers' notable women in the domestic labour sector. This provision is crucial, as most Indonesian migrant workers labour in this industry and face a lengthy time of vulnerability.[36] Additionally because this business is primarily informal, if the procedure for transferring migrant employees into informal workgroups is not correctly carried out, the migrant workers' security and safety while working in other countries will be threatened.[37]

Meanwhile, the shortcomings of Law No. 18 of 2017 can be observed regarding the authoring process. *To begin*, the speed with which this measure is being debated indicates

[36] Susilo. Ibid.
[37] Mochamad Januar Rizki, "Perlindungan Hukum Pekerja Migran Masih Perlu Perbaikan," *Hukum Online*, August 27, 2019.

that the issue of Indonesian migrant workers has not been addressed, as there has been no political will to expedite the legislative process since 2015. This slow process has resulted in central and local governments blocking efforts to protect migrant workers under the pretext that no policy should be developed based on Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad. *Second*, the legislative process for Law No. 18 of 2017 is not yet fully inclusive and transparent, allowing for the broadest possible input of stakeholders about Indonesian migrant worker protection. The lengthy discussion period for this legislation should be maximized by soliciting input from various parties, particularly on the primary subject of Indonesian migrant workers who are evenly distributed throughout the world, particularly in Southeast Asia, East Asia and the Pacific, and the Middle East. However, it turns out that the lengthy period is consumed mainly by recurring coachman conflicts that provide little tangible outcomes.[38]

The hierarchy of implementing rules is another procedural issue in Law Number 18 of 2017. For instance, Minister of Manpower Decree No. 291 of 2018 on the Deployment of Indonesian Migrant Workers ("*Pekerja Migran Indonesia*" or PMI) regulates the placement of Indonesian Migrant Workers in Saudi Arabia via a single method. This Ministerial Decree is in direct conflict with Law No. 18 of 2017. Because the Act requires that migrant workers be transported following quality standards and that the destination country have a statute safeguarding foreign workers, in this context, Saudi Arabia lacks the safeguarding foreign worker Act, particularly for the informal worker. Additionally, the Ministerial Decree is discriminatory. It requires organizations transporting Migrant Workers to be members of the Association of Indonesian Manpower Service Employers (*'Asosiasi Perusahaan Jasa Tenaga Kerja Indonesia* or APJATI') and have at least five years of experience. This section most emphatically does not create opportunities for new firms and benefits only a select few.[39]

1.2. Research Questions

The efficacy of a country's protection of migrant Labourers is contingent on the quality of its legislation. How closely goods and services adhere to requirements or standards determines the quality of legislation. Consequently, legislative quality refers to

[38] Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia."
[39] Susilo.

conforming legislative instruments and procedures with statutory requirements.[40] Considering this idea, migrant workers legislation is deemed adequate if the protection of migrant workers is well-defined throughout their migratory phases in terms of their rights and responsibilities, as well as for all the involved parties, including government agencies and private actors. This thesis is predicated on the premise that the low quality of Indonesian migrant worker legislation, both in terms of substance and process of lawmaking, contributes to the poor governance of the country's migrant workers.

According to Nobuyuki Yasuda's[41] theory on the development of law in Southeast Asian nations, the quality of substance legislation in the Indonesian context is influenced by the legal raw material resulting from living law, state law, or import law brought by the colonial, but it now refers to international law. The first migrant worker import law was the Coolie Statute of 1880, which applied to all China and indigenous Labourers employed by colonial firms.[42] The colonial "coolie" designation in their labor legislation influenced the post-colonial government, particularly during the Suharto regime (1967-1998), to perceive migrant workers as coolies whose rights were not adequately protected by a specific law.[43] Even though there are multiple technical regulations governing the deployment of migrant workers and the handling of their remittances that are split across several ministries. This situation, which results in overlapping legislation across numerous government bodies, is to blame for the insufficient protection of the human rights of Indonesian migrant workers. In addition, there is insufficient oversight of the mobility of Indonesian migrant workers at all stages of migration, including when they leave the country, while they are working, and when they return.[44] In the post-Suharto era, Indonesia was able to effectively amend its 1945 Constitution in 2002 to include democratic elements. Nonetheless, the quality of the migrant

[40] Wim Voermans, "Concern About the Quality of EU Legislation: What Kind of Problem, By What Kind of Standards?" *Erasmus Law Review* 2, no. 1 (2009): 59–95.
[41] Nobuyuki Yasuda, "Law and Development in ASEAN Countries," *Asean Economic Bulletin* 10, no. 2 (November 1993): 144–54, https://doi.org/10.1355/AE10-2B.
[42] Nicole Lamb, "A Time of Normalcy: Javanese 'Coolies' Remember the Colonial Estate," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 170, no. 4 (January 1, 2014): 530–56, https://doi.org/10.1163/22134379-17004001.
[43] Ana Sabhana Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010* (Jakarta: Yayasan Pustaka Obor Indonesia, 2012); Anis Hidayah, Wahyu Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*, first (Jakarta: Migrant Care, 2013).
[44] Pranoto Iskandar, ed., *Standar Internasional Migrasi Ketenagakerjaan Berbasis HAM*, trans. Yudi Junadi (Cianjur: Institute for Migrant Rights (IMR), 2011).

workers legislation enacted for the first time in 2004 and substantially revised in 2017 to protect the human rights of migrant Labourers has not improved sufficiently.[45]

According to the premise of this thesis, this topic's primary concern is *'Why is Indonesian migrant worker legislation insufficient to safeguard the rights of migrant workers?'* This central issue will be expanded to include the following legal issues, which will help us identify the most effective way to improve the quality of Indonesian migrant worker legislation. These legal questions are:

1. Is the feature of colonial migrant worker legislation influencing the character of the substance of post-independence Indonesian migrant worker legislation? This question will be discussed in Chapters 2 and 3.
2. How does existing Indonesian legislation on migrant workers fall short of protecting the human rights of migrant workers? This question will be discussed in Chapter 4.
3. How might incorporating various foreign migrant worker legislation contribute to increasing the quality of Indonesian migrant worker legislation? This question will be answer in the Chapter 5.

1.3. Research Significant

This is an essential thesis for two reasons. *First*, the current level of protection for Indonesian migrant workers is inadequate, resulting in the principal empirical problem of violations of Indonesian migrant workers' rights throughout their employment, beginning with placement, continuing in the workplace, and returning home. Meanwhile, policy approaches are fragmented and reactive. There is no comprehensive answer to the 'acute' challenges Indonesian migrant workers experience. This thesis contends that enhancing Indonesian migrant worker legislation is a strategic and all-encompassing answer to migrant labour concerns.

The distinction between this thesis and previous research is that this study focuses on migrant worker legislation, which is the main reason for Indonesian migrant workers receiving inadequate protection. Prior research on migrant workers has expanded into various disciplines of study, which can be classified according to specific subjects such as

[45] Wahyu Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia," *Dw. Com*, December 18, 2017.

migration causes,[46] poverty,[47] a lack of jobs,[48] remittance,[49] human rights protection,[50] and human rights violations.[51] A few scholars, mainly in the legal field, are interested in studying migrant workers from a regulatory perspective,[52] particularly in the Indonesian context.[53] Those conducting research believe that national regulation is at the heart of migrant workers' predicament because of these numerous consequences. Numerous prior research on the issues confronting migrant workers from a global viewpoint to the Indonesian context are summarized here. The study began by examining the factors that influence migration decisions, the value of migration to economic development, and the barriers and protections experienced by migrant workers. This study has a direct connection to all previous research areas, even though another perspective will be referenced as needed if it is connected to the topic.

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[46] Simone A Wegge, "Chain Migration and Information Networks: Evidence from Nineteenth Century Hesse-Cassel," *The Journal of Economic History* 58, no. 4 (1998): 957–86; Leigh Anne Schmidt and Stephanie Buechler, "'I Risk Everything Because I Have Already Lost Everything': Central American Female Migrants Speak Out on the Migrant Trail in Oaxaca, Mexico," *Journal of Latin American Geography* 16, no. 1 (2017): 139–64, https://doi.org/10.1353/lag.2017.0012.

[47] Carunia Mulya Firdausy, "The Economic Effects of International Labour Migration on the Development," *Jurnal Ekonomi Dan Pembangunan* 1, no. 19 (2011): 19–32; Didit Purnomo, "Fenomena Migrasi Tenaga Kerja Dan Perannya Bagi Pembangunan Daerah Asal: Studi Empiris Di Kabupaten Wonogiri," *Jurnal Ekonomi Pembangunan: Kajian Masalah Ekonomi Dan Pembangunan* 10, no. 1 (2009): 84, https://doi.org/10.23917/jep.v10i1.810; Ukhtiyani and Indartono, "Impacts of Indonesian Economic Growth: Remittances Migrant Workers and FDI."

[48] Firdausy, "The Economic Effects of International Labour Migration on the Development"; Piyasiri Wickramasekara, "Globalisation, International Labour Migration and the Rights of Migrant Workers," *Third World Quarterly* 29, no. 7 (2008): 1247–64, https://doi.org/10.1080/01436590802386278.

[49] Firdausy, "The Economic Effects of International Labour Migration on the Development"; Mohd Rizal Palil, "The Effect of E-Commerce on Malaysian Tax System: An Empirical Evidence From Academicians and Malaysian Tax Practitioners," *Jurnal Akuntansi Dan Keuangan* 6, no. 1 (2004): 1–9, https://doi.org/10.9744/jak.6.1.pp.1-9; Semyonov and Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers"; Ukhtiyani and Indartono, "Impacts of Indonesian Economic Growth: Remittances Migrant Workers and FDI."

[50] Hidayat, "Perlindungan Hak Tenaga Kerja Indonesia Di Taiwan Dan Malaysia Dalam Perspektif Hak Asasi Manusia"; James A. R. Nafziger and Barry C. Bartel, "The Migrant Workers Convention: Its Place in Human Rights Law," *International Migration Review* 25, no. 4 (1991): 771–99, https://doi.org/10.2307/2546844; David Keane and Nicholas McGeehan, "Enforcing Migrant Workers' Rights in the United Arab Emirates," *International Journal on Minority and Group Rights* 15, no. 1 (2008): 81–115, https://doi.org/10.1163/138548708X272537.

[51] Nafziger and Bartel, "The Migrant Workers Convention: Its Place in Human Rights Law"; Didier Bigo and Elspeth Guild, "International Law and European Migration Policy: Where Is the Terrorism Risk?," *Laws* 8, no. 4 (2019): 30, https://doi.org/10.3390/laws8040030; Siby Tharakan, "Protecting Migrant Workers," *Economic and Political Weekly* 37, no. 51 (2002): 5; Keane and McGeehan, "Enforcing Migrant Workers' Rights in the United Arab Emirates"; Tanya Basok and Emily Carasco, "Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights," *Human Rights Quarterly* 32, no. 2 (2010): 342–66, https://doi.org/10.1353/hrq.0.0150.

[52] Ida Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*, first (Groningen: Ulrik Huber Institute for Private International Law, 2008).

[53] Hidayat, "Perlindungan Hak Tenaga Kerja Indonesia di Taiwan Dan Malaysia Dalam Perspektif Hak Asasi Manusia"; Prihatin, "Potret Buram Perlindungan Tenaga Keria Indonesia."

There have been previous studies on the factors influencing migration decisions. Nevertheless, all that research concluded that two significant determinants influence migration decisions: a lack of employment prospects and poverty in the migrants' home countries.[54] The oldest reason for working as a migrant worldwide is to combat poverty. It is in their country's interest to alleviate the societal burden caused by poverty.[55] Over the last few decades, more labour migrants have left their countries to seek better job opportunities and earnings.[56] Additionally, migration decisions consider political instability in the migrant's home country, a lack of employment opportunities, and population density.

Second, this thesis is significant because Indonesian migrant workers are frequently exploited and violated because of a lack of clarity regarding protecting their fundamental rights. However, some have developed strategies for navigating the complex legal and regulatory framework and securing their rights. Previous research referenced above have not yet addressed the issue of ineffectual laws violating the rights of Indonesian migrant workers. While some academics have agreed the broad features of the conflict, the legislation analysis presented in this thesis is novel and has not previously been the subject of scholarly debate.

1.4. Main Argument

This thesis is organized around two fundamental tenets. *First*, Indonesian migrant worker regulation has been deficient in content since the post-colonial period, especially during the Suharto regime (1967-1998). During this period, the characteristics of migrant Labourers mirrored those of colonial coolies, which helped to contextualize them within their environment. Furthermore, it reflects the government's perspective far more than migrant workers' rights. This pattern can be explained by categorizing the legislative and political approach into two periods: prior to and after Indonesia's 'reforms' or "*reformasi*" in 1998. Prior to the 'reforms in 1998,' most of the Indonesian legislation was decided by executive order, and there was no specific legislation in place to protect migrant Labourers, as the 1945 Constitution made parliament subordinate to the executive. This circumstance resulted in the absence of a representative function purportedly guided by popular desires. As a result, Indonesian migrant Labourers were created as part of the government's

[54] Firdausy, "The Economic Effects of International Labour Migration on the Development."
[55] Les Allenby, "Migrant Workers: Rights and Wrongs," *Fortnight*, 2007.
[56] Semyonov and Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers."

economic policy to alleviate poverty caused by a lack of employment prospects in the home country.[57]

Since 1945, when the Unitary State of Indonesia was established, the Indonesian constitutional system has split legislative and executive authorities. The two organizations did, however, retain a mutually beneficial connection. The Constitution, for example, clarified the relationship between the two governmental institutions when it was drafted. Between the pre-1945 and post-1945 Constitutional amendment, the relationship between the executive and legislative branches regarding the development of laws evolved considerably. The executive had the authority to make legislation under the original 1945 Constitution, which was in force from 1945 until 1998. The 1945 Constitution's Article 5 (1) underlines this authority (before the amendment). It states that "the President can draft legislation in consultation with Parliament." Since the 1945 Constitution was amended in 2002, the legislative branch has taken over the executive branch's (President's) authority to make legislation (Parliament). Parliament can enact legislation, as stated in Article 20 (1) of the 1945 Constitution (as amended).

However, the transfer of legislative authority does not mean that the two-state agencies have ceased collaborating on legislation. The two states (Legislative and Executive) agencies remain actively involved in the legislative and enactment processes. The 1945 Constitution's Article 20(2) highlights this involvement. "Every law is considered and passed by Parliament and the President," the Article states. Article 20(4) also stipulates that "the President signs into law a bill that has been agreed upon by both parties." Then, according to Article 20(5), "if the President does not ratify a bill that has received unanimous support within thirty days of its passing, the bill becomes law and must be promulgated."

Article 5(1) of the 1945 Constitution mandates that the two bodies work on legislative proposals. The statute stipulates that "the President has the authority to introduce legislation in Parliament." Additionally, in an emergency, the President can implement government laws in lieu of the Act. Parliament will only be seen at the next plenary sitting when it will vote on whether to approve the government regulations as an Act. The two-state organs' technical implementation of the proposed legislation is governed further by Act No. 12 of 2011 on the Formation of Law. This legislation establishes the state's legislative process, procedure, and administration.

[57] Johan Lindquist, "Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry," *Pacific Affairs* 83, no. 1 (2010): 115–32, https://doi.org/10.5509/2010831115.

Second, public input in formulating Indonesia's migrant labour legislation has been restricted thus far. Indeed, public participation is crucial for evoking popular demand and ensuring that legislative provisions are transparent about their consequences. Due to this, most bids for Indonesian migrant workers originate with the government. The government's monopoly on migrant worker regulation raises concerns about the arrangement's quality. Because the regulation was drafted this way, public participation in drafting the regulation was limited.

As a democratic state, it is necessary to ensure the quality of legislation through democratic means; otherwise, the previously established norm of legislative quality will decline. The 1945 Constitution profoundly transformed Indonesian Law. The first amendment restored the legislature's legislative authority. This amendment was followed by the passage of Law No. 10 of 2004 on Regulation Formation, amended by Law No. 12 of 2011, and most recently by Law No. 13 of 2022. One of the fundamental aspects of these regulations is to increase the democratic nature of the legislative process by ensuring public participation in all legislative agendas.

Citizen participation in the legislative process is essential in two ways: approach and content. In this regard, the legislative process must be transparent, allowing the people to engage by proposing solutions to problems confronting the country or state. Meanwhile, Satjipto Rahardjo[58] underlines in substance that controlled content must be directed toward the wider community's interests to develop a democratic law that is sensitive or populist. In addition, involvement, according to Uhlmann and Konrath[59], promotes the transparency of the legislative process and helps to (somewhat) prevent corruption by interest groups. Additionally, in a democratic country, involvement, transparency, and democracy in writing legislation are inexorably related. From a sociological standpoint, it is intended that the people will enthusiastically accept emerging laws by developing laws in a participative, open, and democratic manner.[60] Furthermore, civic involvement is not mandatory when presented politically. Finally, the legislative body chooses, which means that group involvement is frequently minimal.[61]

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[58] Satjipto Rahardjo, "Penyusunan Perundang-Undangan Yang Demokratis," Seminar Mencari Model Ideal Penyusunan Undang-Undang Yang Demokratis Dan Kongres Asosiasi Sosiologi Hukum Indonesia (Semarang, 1998).
[59] Christoph Uhlmann, Felix; Konrath, "Participation," in *Legislation in Europe a Comprehensive Guide for Scholars and Practioners*, ed. Helen Karpen, Ulrich; Xanthaki, first (Oregon: Hart Publishing, 2017), 73–95.
[60] Uhlmann, Felix; Konrath.
[61] Mahfud MD, *Politik Hukum Di Indonesia*, first (Jakarta: Rajawali Press, 2009).

Whether the legislative body intentionally incorporates the public in the formulation of laws or not, public engagement is critical for ensuring the legislative body's laws are consistent in substance. According to Mahfud MD's[62], public engagement influences the aspects of legislative concerns. The fundamental premise may explain this causal connection that public law is intrinsically linked to power relations. A democratic political system (one that promotes public participation) will result in responsive legislation. In comparison, an authoritarian political structure would result in establishing established rules.

Mahfud MD's[63] synthesis of the relationship between political configuration and legislative output is gaining popularity in the 1945 Constitutional Amendments. The third amendment established the Constitutional Court on August 13, 2003, under Article 24 paragraph (2), evaluating legislation that contradicts the 1945 Constitution. Public participation is becoming increasingly critical in this regard. Individuals whose interests are disregarded or even harmed by this law may file a judicial review to the court. Civic involvement, the Fundamental Court holds, is a necessary component of people's constitutional rights. Public participation in the regulatory process indicates society's position in a democratic democracy where the people are at the centre of political life, both in enacted public policy and government objectives.

In a nutshell, this theoretical framework demonstrates the critical importance of public participation in the legislative process. As a result, this research argues that public participation in drafting Indonesian migrant worker legislation is crucial for strengthening its substance and proving the legislative democracy's worth of the legislation. To obtain this goal, it examines the relevant audience involved in the law-making process consultation and what participation platform can be used.

To perceive the main argument of this thesis, the theory of legislation will be applied here. Legislation theory can explain the relationship between the substance of legislation and the public input that determines the quality of legislation. Even though Indonesian migrant worker legislation is deeply rooted in the colonial era and was continued post-colonial[64], the quality of Indonesian migrant workers still needs to be improved to meet the international migrant worker standard. To improve the quality of migrant worker legislation

[62] Mahfud MD, *Demokrasi Dan Konstitusi Di Indonesia*, first (Jakarta: Rinek Cipta, 2000).
[63] MD, *Politik Hukum Di Indonesia*.
[64] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*; Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*; Bassina Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*, first (New York: Open Society Foundation, 2013).

in this scenario, the legislation theory developed by several prominent scholars in this field will be applied and discussed in greater detail. Meanwhile, I will advocate for a broad interpretation of the legislation to avoid misunderstanding what the legislation means in this study. Additionally, the regulatory cycle will be analyzed concerning the development of the legislative process to compare the theoretical model to the Indonesian legislative cycle model.

a. The Concept of Legislation

Legislation is the primary means of expressing law in most civil law countries. However, the concept of legislation is defined differently nowadays. According to WIM JM Voermans,[65] legislation can take on a variety of meanings depending on the context and period. For example, he stated that the concept had a completely different connotation in antiquity than in modern history, and even within modern history, the concept's meaning varies widely. While the legislation was primarily viewed as a superficial instrument of codification in the nineteenth century from continental Western Europe, it is now primarily used as a tool for modification—that is, engineering society through the establishment of the new law. Thus, Voermans[66] established a clear distinction between legislation and regulation. The legislation means the authoritative and constitutionally mandated way law is crafted. Likewise, the process that leads up to its enactment (the decision). Meanwhile, regulation is a term that refers to government intervention in a market or a society. As a result, regulation is a tool of governance, not governance in and of itself. However, in many instances, the legislation and the regulation are identical. Much regulation is enacted as legislation, which requires the force of law, legitimacy, and other effects. Voermans[67], however, maintained that not all legislation is regulation.

Jeremy Waldron[68] insisted that legislation is a law; indeed, it constitutes most of the legal materials with which ordinary people must contend. However, legislation is not merely deliberate, administrative, or political; in the modern world, it is the product of an assembly - the many, the multitude, and the rabble (or their representatives). Legislation is, in part, a

[65] WIM JM Voermans, "Legislation and Regulation," in *Legislation in Europe a Comprehensive Guide for Scholars and Practioners*, ed. Ulrich Karpen and Helen Xanthaki, First (OXFORD and Portland, Oregon, 2017), 17–32.
[66] Voermans. *at* 19.
[67] Voermans. Ibid.
[68] Jeremy Waldron, *The Dignity of Legislation*, *The Dignity of Legislation*, first (New York: Cambridge University Press, 1999). *at* 11.

tribute to the accomplishment of concerted, cooperative, coordinated, or collective action in the circumstances of contemporary life. According to Fredrick A. Hayek[69], legislation is the only source of law that must be accepted in modern times. However, in legal sociology, a particular instance of legislation is typically referred to as 'symbolic' if it is enacted primarily to serve as a symbol. Symbols are a subset of connotative signs, that is, signs that express a secondary meaning in addition to their literal or conventional meaning.[70]

Harel Arnon[71] does not attempt to define what legislation entails. However, he insisted that ordinary legislation results from deliberation because the legislative context permits genuine, face-to-face deliberation, which is impossible in the initiative context. Ordinary legislation is typically conducted in the halls of government, where legislators can meet and discuss bills in person. Cristina Leston-Bandeira[72] stated that government legislation is referred to as decree-law. As a result, if the decree law does not fall within the government's exclusive legislative area, it can be called to parliament for consideration, providing parliament with significant scrutiny power. Thus, Marie-Francine Moens[73]and Tatsuo Inoue[74] asserted that legislation is inherently antagonistic. In the battles of legislative politics, there are winners and losers. This battle is actual, even in cases where a legislative process results in a compromise.

First, some political outsiders have been excluded from the coalition of political forces responsible for the legislative compromise. They are losers, and the insiders who facilitated the compromise are winners compared to them. Second, insiders frequently include winners and losers. The losing insiders are compelled to make more significant concessions than the winning insiders. Therefore, according to VCRAC Crabbe[75], legislation is the framework within which governments operate. Legislation is a tool used by politicians and administrators to carry out their economic, cultural, political, and social policies. Ivor

[69] Fredrick A. Hayek, *Law, Legislation and Liberty*, *Philosophical Studies*, 4th ed., vol. 1 (London and New York: Routledge & Kegan Paul Ltd., 1998), https://doi.org/10.5840/philstudies19742344.
[70] Bart Van Klink, Britta Van Beers, and Lonnekr Poort, *Symbolic Legislation Theory and Developments in Biolaw*, ed. Bart Van Klink, Britta Van Beers, and Lonnekr Poort (Springer, 2019), https://doi.org/10.1007/978-3-319-33365-6.
[71] Harel Arnon, *Law, and Society: A Theory of Direct Legislation*, ed. Melvin I. Urofsky (New York: LFB Scholarly Publishing LLC, 2008).
[72] Cristina Leston-Bandeira, *From Legislation to Legitimation: The Role of the Portuguese Parliament* (London and New York: Routledge Taylor & Francis Group, 2004).a
[73] Moens, "Legislation and Informatics."
[74] Tatsuo Inoue, "The Rule of Law as the Legislation," in *Legislation in Context: Essays in Legisprudence*, ed. Luc J. Wintgens (Ashgate Publishing Limited, 2007), 54–74.
[75] VCRAC Crabbe, *Legislative Drafting*, second (London: Cavendish Publishing Limited, 1994).

Gavin Drewry Burton[76] responded by stating that as an account of the enactment or non-enactment of public bill legislation, it serves as a mirror of [a country's] political life during the relevant period.

According to Marie-Francine Moens[77], there are four legislative functions. First, legislation is critical to our democracy. Law enables us to live relatively peacefully and is critical in preventing unregulated conflict from escalating. Legislation protects citizens' rights and responsibilities and upholds socially accepted standards. As such, it enhances citizens' legal security and promotes legal unity. Second, legislation is a vehicle through which the government can establish policy. Law is increasingly becoming a tool used by governments to address ad hoc issues. Additionally, the legislation establishes a framework within which the judge may resolve disputes. Fourthly, the legislation provides a standardized framework for a society's public and private legal relationships.

Luzius Mader[78] insisted that legislation be viewed as a tool of social guidance and control, as a tool of social engineering, in it is primarily based on an instrumental view of legislation. In other words, this approach is predicated on the premise that legislation is a rational activity directed toward accomplishing specific purposes or goals, toward achieving specific outcomes in social reality.

Legislation, according to VCRAC Crabbe[79], also refers to the lawmaking process. Crabbe[80], however, made a clear distinction between legislation in a narrow and broad sense. In the conventional or narrow sense, this term refers to Acts of Parliament, Orders, Regulations, Orders-in-Council, Statutory Instruments, and Rules. In the meantime, legislation encompasses, in a broader sense, various shades of nominative rules and practices, such as those of professional, social, or religious groups and societies; customary laws and modes of conduct; and departmental orders and circulars for implementing statutory regulations and rules.

Considering earlier legislation mentioned, the term "legislation" in this study refers to parliamentary acts and government regulations. To this end, this study will examine Act No. 18 of 2017 on the protection of Indonesian migrant workers and all related government

[76] Ivor: Gavin Drewry Burton, *Legislation and Public Policy*, *The Macmillan Press LTD* (The Macmillan Press LTD, 1981), https://doi.org/10.1007/978-1-349-02033-1.
[77] Moens, "Legislation and Informatics."*at* 171-172.
[78] Luzius Mader, "Evaluating the Effects: A Contribution to the Quality of Legislation," *Statute Law Review* 22, no. 2 (2001): 119–31, https://doi.org/10.1093/slr/22.2.119.
[79] Crabbe, *Legislative Drafting*, 1994. *at* 2.
[80] Crabbe. *Ibid.*

regulations, including the Government Regulation (*'Peraturan Pemerintah* or PP'), the President Regulation ('*Peraturan President* or Perpres'), and the Ministerial Regulation (*'Peraturan Menteri* or Permen). Certain aspects of this migrant worker legislation will be examined using quality concepts, ranging from their philosophical foundation to their general provisions, compared to more robust international, regional, and individual country migrant worker legislation. This context will thoroughly examine the similarities and differences between selected comparative migrant worker legislation and Indonesian legislation. After these steps have been completed, the enhancement of the Indonesian migrant worker legislation's substance and law-making context is formulated. In addition, approaches to legislation will be evaluated to determine which is most appropriate for Indonesian legislation on migrant workers considering the country's political or democratic legal system. Indonesian legislation has altered dramatically since the country's 1945 Constitution was amended in 2002, but the country's uneasy attitude toward international law endures, resulting in a slow rate of ratification of international laws protecting the interests of migrant workers.[81]

b. The Quality of Legislation

The quality of legislation has been a contentious issue among scholars specialising in legislation study. Wiem Voerman[82]says what constitutes "quality legislation" is a highly enigmatic buzzword. Indeed, the quality of legislation is determined by how closely goods and services adhere to requirements or standards. Thus, legislative quality refers to the extent to which legislative instruments and procedures conform to statutory standards. Additionally, Voermans[83] differentiates between legislative and regulatory quality. He stated that the quality of legislation is determined by the degree to which constitutional principles-derived criteria are met. On the other hand, regulatory quality refers to the extent to which legislation enacts policies that allow for and promote private sector development, fair market conditions, stable institutions, and citizen satisfaction, among other things.

Meanwhile, Jean-Claude Piris[84] stated that there are two dimensions to the issue of legislative quality: substance and form. The term "quality in the substance of the law" refers

[81] ILO, *International Labour Standards on Migrant Workers*, *Labour Standards*, 2016.
[82] Voermans, "Concern About the Quality of EU Legislation: What Kind of Problem, By What Kind of Standards?"
[83] Voermans. *at* 67-68.
[84] Cited in Helen Xanthaki, "The Problem of Quality in EU Legislation: What on Earth Is Really Wrong?," *Common Market Law Review* 38, no. 3 (2001): 1–25, https://doi.org/10.1023/A:1010673728428.

primarily to legislative policy issues. It encompasses tests of subsidiarity, proportionality, instrument selection, duration, and intensity of the intended instrument. Additionally, it is consistence with previous measures, cost/benefit analysis, and analysis of the proposed instrument's impact on other significant policy areas, such as SMEs, the environment, and fraud prevention. The quality of the law is determined by its accessibility, specifically by the decision-making process's transparency and by the law's dissemination.

Stephan Naundorf and Claudio M. Radaelli[85] conclude that high-quality law as the "product" of legislative and regulatory procedures is responsive, efficient, simple to comprehend, accessible, and socially legitimate. In the meantime, from the perspective that 'process' generates rules, high-quality regulation is based on an open and transparent decision-making process governed by the rule of law. Open means in this sense refers to extensive consultation (ex ante and ex post) and the duty of regulators to notice and inform people who will be affected by proposed regulation.

Timea Drinoczi[86] added a criterion or factor beyond technical requirements that contribute to the quality of legislation, namely the democracy of a country. She made it abundantly clear that the degree of democracy plays a critical role in determining the quality of legislation in terms of content and procedure. In this context, Drinoczi[87] emphasized that meeting the formal legislative prerequisites is insufficient to ensure its quality. To determine whether only formal processes are carried out, Drinoczi[88] proposes the concept of legislative quality, which requires compliance with formal and material requirements. The closer a national legislator comes to an 'ideal type' of legislative quality, the more likely it is that certain material elements will also be incorporated into national decision-making processes. However, if the legislative process is limited to formal requirements, democracy becomes more formal. Thus, Drinoczi[89] establishes the following concept (definition) of legislative quality: (i) an interdisciplinary approach to legislation that promotes the planned achievement of short-, medium-, and long-term social and economic goals through an open and evidence-based process of developing and adopting efficient and implementable laws, as well as assisting in their implementation; (ii) that combines the concepts of legislative

[85] Stephan Naundorf and Claudio M. Radelli, "Regulatory Evaluation Ex Ante and Ex Post: Best Practice, Gudance and Methods," in *Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners*, ed. Ulrich Karpen and Helen Xanthaki (Hart Publishing, 2017), 187–213.
[86] Drinóczi, "Concept of Quality in Legislation-Revisited: Matter of Perspective and a General Overview."
[87] Drinóczi. *at* 215-216.
[88] Drinóczi. *Ibid.*
[89] Drinóczi. *at* 226.

and regulatory quality; and (iii) that implies or even requires the quality of the legislative process. In sum, she asserts that the quality of legislation can be achieved when both the content of the law and the process through which it has been adopted is of quality. It means that the law is constitutional (human rights compliant) and efficient (capable of reaching the regulatory aim), and the process itself is democratic (ie, inclusive, transparent, evidence-based, etc).

Helen Xanthaki[90]proposes a method for determining the quality of legislation. Clarity, simplicity, precision, accuracy, and plain language are all common characteristics of high-quality legislation, regardless of whether it is drafted in the Common or Civil law styles. Accordingly, Xanthaki[91] emphasized the ability of the legislative drafter to articulate the proposed legislation's objective following the pyramidal hierarchy below, which determines the legislation's quality.

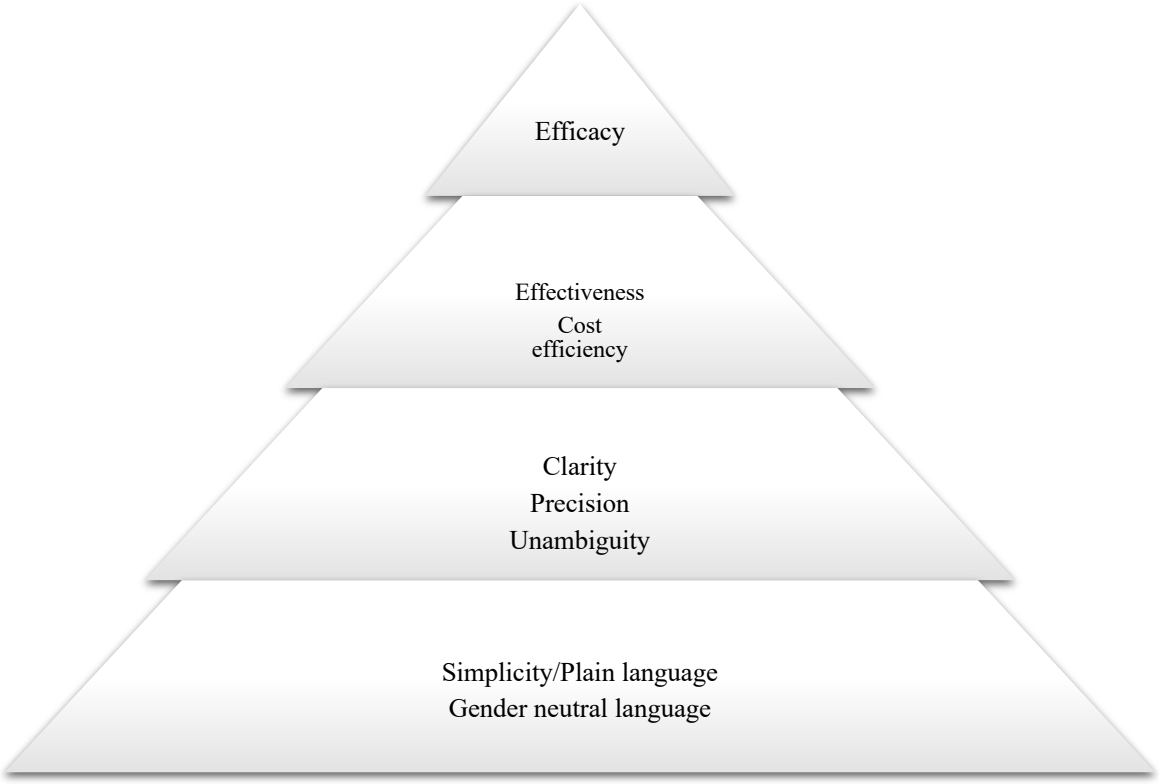

Figure 1 The Helen Xantaxi Model of Legislation Objectives

[90] Xanthaki, "The Problem of Quality in EU Legislation: What on Earth Is Really Wrong?" *at* 10.
[91] Helen Xanthaki, "European Union Legislative Quality After the Lisbon Treaty: The Challenges of Smart Regulation," *Statute Law Review* 35, no. 1 (2014): 66–80, https://doi.org/10.1093/slr/hmt005; Xanthaki, "The Problem of Quality in EU Legislation: What on Earth Is Really Wrong?"; Helen Xanthaki, "Emerging Trends in Legislation in Europe," in *Legislation in Europe A Comprehensive Guide for Scholars and Practioners*, ed. Ulrich Karpen and Helen Xanthaki (Hart Publishing, 2017), 273–96.

The goal of regulation is efficacy, which is not solely the drafter's responsibility but also the regulatory teams. In order to achieve this legislative objective, it is necessary to build workable regulations. Effectiveness implies that the regulation adequately captures the social context in its text. Effectiveness can be achieved through the application of two sets of tools: first, efficiency, defined as the use of the fewest possible resources to achieve the most significant possible benefit from the legislative action; and second, clarity, precision, and unambiguity. Efficiency refers to selecting the most economically viable solution; as such, it is a primary concern of the multidisciplinary drafting team's economists.[92] On the other hand, clarity refers to the capacity to be easily perceived or understood. Precision is the degree to which an expression or detail can be confidently expressed or described. Unambiguity refers to a meaning that is distinct or precise. It has both semantic and syntactic ambiguity. Unambiguity in syntax needs a logical sentence structure and the correct placement of words or clauses. In contrast, semantic clarity necessitates that each word has a single meaning. As a result, the law becomes more predictable due to its clarity, precision, and unambiguity. Predictability enables users of legislation, including enforcers, to comprehend the entire content of the regulation.[93]

The third level of the drafter's goal hierarchy comprises plain and gender-neutral language. Plain language is a "clear, uncomplicated expression that uses the fewest possible words." Finally, gender-neutral language is an accurate tool because it encourages gender differentiation both in writing and courtroom proceedings. To increase precision, clarity, and unambiguity, gender-specific language is combined with plain language[94].

Meanwhile, Victoria E. Eitken[95] identified the following characteristics of effective legislation: necessary, proportionate, accessible, intelligible, precise, adequate, predictable, specific, practical, legally sound, cost-effective, practically implementable, clear, simple, precise, comprehensible, based on participatory processes and impact assessment, and capable of promoting transparency, accountability, and compliance. Thus, even though there

[92] Helen Xanthaki, "Drafting Manuals and Quality in Legislation: Positive Contribution towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?" *Legisprudence* 4, no. 2 (2010): 111–28, https://doi.org/10.1080/17521467.2010.11424705; Xanthaki, "The Problem of Quality in EU Legislation: What on Earth Is Really Wrong?"; Xanthaki, "European Union Legislative Quality After the Lisbon Treaty: The Challenges of Smart Regulation."
[93] Xanthaki, "Drafting Manuals and Quality in Legislation: Positive Contribution towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?"
[94] Xanthaki. *at* 117.
[95] Victoria E Aitken, "An Exposition of Legislative Quality and Its Relevance for Effective Development," *ProLaw Student Journal* 2, no. July (2013): 1–43.

is no universal standard for legislative quality, Wim Voermans[96] believes that legislative quality will always be concerned with how legislation adheres to generally accepted standards of legislative quality. These are not universally applicable standards. They vary in nature and structure based on the legal system to which they belong. They may be constitutional, legal, political, social, or administrative provisions.

Due to Indonesia's lack of clearly defined criteria for assessing the quality of its laws, rather than the appendix to Act No. 12 of 211 on the Formulation of Law and Regulation, which establishes technical requirements for drafting Indonesian laws and regulations, this thesis will employ the legislative quality parameters proposed by the aforementioned legislation scholars, in particular Helen Xanthaki[97]. Technically, it is applicable to examine migratory legislation from the post-colonial period to the present.

1.5. Research Method

This study employed doctrinal research, defined as "research that provides a systematic exposition of the rules governing migrant worker legislation, analyzes the relationship between rules, explains areas of difficulty, and possibly predicts future developments." Given the subject of this study, a systematic legal approach[98] is the most appropriate method for conducting research. This approach entails the application of convergent approaches within the frameworks of International Labor Migration Law, Regional Labor Migration Law, and National Law. However, when considering the subjects of observation, namely comprehending the laws and regulations of the selected regions, only a comparative legal approach can result in purposeful knowledge. The outcomes of such an approach would provide valuable input for debating each pertinent issue and, ultimately, for concluding each one. Nonetheless, the comparative process and analysis of currently enacted laws and regulations should be empirically based.

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[96]Wim Voermans, "Rationality in Legislation by Employing Informatics?" in *Legisprudence: A New Theoretical Approach to Legislation*, ed. Mark Van Hoecke, Francois Ost, and Luc J Wintgens (Oxford: Hart Publishing, 2002), 127–37.

[97] Helen Xanthaki, "Drafting Manuals and Quality in Legislation: Positive Contribution towards Certainty in the Law or Impediment to the Necessity for Dynamism of Rules?" *Legisprudence* 4, no. 2 (October 2010): 111–28, https://doi.org/10.1080/17521467.2010.11424705; H. Xanthaki, "European Union Legislative Quality After the Lisbon Treaty: The Challenges of Smart Regulation," *Statute Law Review* 35, no. 1 (February 1, 2014): 66–80, https://doi.org/10.1093/slr/hmt005.

[98] John K. Hanft, "A Model for Legal Research in The Electronic Age," *Legal Reference Services Quarterly* 17, no. 3 (1999): 77–83, https://doi.org/10.1300/J113v17n03_13.

Comparative law studies the similarities and differences between the laws of two or more countries or legal systems. Comparative Law is not a body of law or a collection of rules in and of itself but rather a method or approach to legal inquiry.[99] Comparative law has two distinct roots: Comparative legislative Law is used when foreign laws are incorporated into new national laws or international conventions. Comparative legal studies may also involve the selective adoption of legal institutions or rules; Comparative Law, scientific or theoretical—when a comparison is made to improve one's legal knowledge.[100] In light of this approach, this study compares the relevant provisions of each region's legislation. It discusses the differences and similarities between the International Labor Organization, the European Union, the Association of Southeast Asian Nations, and selected countries such as Nepal, Pakistan, and the Philippines, the Asian region's comparator states safeguarding the rights of migrant workers. Regarding the interfaces between various legal orders, the comparative study's primary objective is to ascertain the similarities and differences in legislation protecting migrant workers' rights at the international, regional, and national levels. The comparative study's objective in this context is to increase Indonesia's legal substance regarding protecting migrant workers' rights by adopting selective international or regional legal institutions or rules. In this scenario, the selection process compares the similarities and differences between existing Indonesian migrant worker legislation and foreign laws.

As a reference for the sources of the doctrinal research, Table 1 outlines a variety of pertinent factors. All the legal collections' substances are identified to understand better the various discourses surrounding their application and the responsibility of the government agencies and private sectors involved in protecting the human rights of migrant workers. The focus of the examination is legal protection measures for migrant workers. It is essential to comprehend how the concept of protection is interpreted and how the government determines the rights of migrant workers. Comparing findings from international, regional, and selected country legal doctrines, statutes, and regulations facilitates a comprehensive comprehension of the migrant workers' lawful provision. This research concludes by recommending the most suitable model of legislation for potential incorporation into the Indonesian migrant Labourer law.

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[99] Marci Hoffman and Mary Rumsey, *International and Foreign Legal Research: A Coursebook*, *Martinus Nijhoff Publishers* (Leiden: Martinus Nijhoff Publishers, 2008).
[100] J. Paul Lomio, Henrik Spang-Hansen, and George D. Wilson, *Legal Research Methods in a Modern World: A Coursebook*, Third (Copenhagen: DJOF Publishing, 2011).

Table 1 The Major Conceptual Frameworks for Doctrinal Study

No.	Research Questions	Research Objective	Thematic Guidelines for Legal Collection
1	Is the feature of colonial migrant worker legislation influencing the character of the substance of post-independence Indonesian migrant worker legislation?	a) To gain an understanding of the historical setting of the Indonesian migrant labour regulatory framework b) To investigate the substance of each legal provision in the Indonesian legal hierarchy that governs migrant labour in Indonesia.	Numerous legal items from the colonial age to contemporary Indonesian legislation, ranging from Acts to Ministerial regulations relating to Indonesian migrant labour, have been passed by various government authorities.
2	How does existing Indonesian legislation on migrant workers fall short of protecting the human rights of migrant workers?	a) To analyze the provisions in each Law governing the protection of migratory workers. b) To comprehend and examine the discrepancy between the provision of protection for migrant workers and empirical practice	a) Various government authorities have passed numerous legal items, ranging from Acts to Ministerial regulations, relating to Indonesian migrant labour. b) Opinions of stakeholders regarding the discrepancy between the guarantee of protection for migrant workers and the reality
3	How should Indonesia enhance the substance of its migrant worker legislation to provide more robust safeguards for the human rights of migrant workers?	a) To gain an understanding of the many international legal instruments that protect the rights of migrant workers. b) To analyze the salient aspects incorporated into Indonesian migrant worker legislation.	ILO Conventions, ASEAN Migrant Workers protection, EU migrant worker system, and the Migrant Workers regulations in other sample countries

1.6. Structure of Dissertation

The following chapters provide a comprehensive response to the dissertation's research question.

The first chapter

This chapter establishes the framework for this thesis, which examines Indonesia's inadequate migrant worker legislation and its consequences for the development of migrant worker fundamental rights breaches.

The second chapter

This chapter examines migrant labour patterns in the context of Indonesia's legal and political institutions in the colonial era. Understanding the post-colonial migrant workers in Indonesia will be greatly aided by a historical examination of the origin migrant workers during the colonial period. To comprehend the extent of the migrant worker legislation in that era, it is essential to determine whether colonial migrant worker legislation had an impact on post-colonial migrant worker legislation.

The third chapter

This chapter examines the Old Order (Sukarno's regime from 1945 to 1967), the New Order (Suharto's regime from 1967 to 1998), and the Reform Era (1998 to 2017). This section will examine the evolution of government legislation governing migrant workers' overtime, emphasizing migrant workers' fundamental rights. Because these two regimes were the closest to the colonial era, features of migrant workers' legislation in their age are examined to determine their relationship and the effect on protecting migrant workers' rights in these two regimes.

The fourth chapter

This chapter discusses the two migrant worker laws enacted after the 1945 Constitutional amendment in 2002, which effectively incorporated the democratic features in which human rights issues, including the rights of migrant workers, are prioritized.

The fifth chapter

This chapter will analyse the topic at the international, regional, and selected national country levels in a systematic manner. The selection of these categories is based on the mandatory nature of migrant Labourers' rights. In this situation, there are international rules that have direct force of law and must be incorporated into both regional and domestic law. In addition, obligatory rules in regional law, particularly European Law, have a binding

effect on the national law applicable to the relationship on its territory. Consequently, these legal instruments establish a network of minimal protection levels at the international, regional, and national levels, in which the minimum level of protection under national law must be greater than or at least equal to the minimum level of protection under regional law. It is necessary to determine the level of protection at each level based on these minimum protection layers and to evaluate whether the adoption of these minimum protection layers for determining the applicable law for the protection of migrant workers will have a positive impact on Indonesian migrant workers.

The sixth chapter

This chapter is the conclusion, which summarizes the findings of the thesis, primarily in response to the research question, and provides recommendations for improving the quality of Indonesia's migrant worker legislation.

CHAPTER 2

Migrant Workers' Politics and Legislation Frameworks

A Colonial-Structural Approach Revisited

This chapter will examine the colonial labour coolie statutes (Coolie Ordinance 1880) as the historical ancestor of the post-colonial Indonesian migrant labourer's statutes. If the Dutch colonized Indonesia for more than 3,5 centuries, and then Japan continued the colonization, it undoubtedly influenced the post-colonial Indonesian labour legislative pattern. J.J. van Klaveren[101] stated, '*we live in an era in which colonial systems are being phased out or disguised. However, the mould created by former colonial governments cannot be quickly abolished. It will never be wholly eradicated from the course of history - partly a chain of causes and effects - that leads up to the present'*. Taking Klaveren's assertion into account, this chapter will look at the origins of colonial 'migrant workers' legislation, which will lead us to a better understanding of post-colonial migrant workers legislation and its implications for migrant workers' human rights. During colonial times, however, the term "migrant workers" was not in use. They employed Labourers for those working in all colonial enterprises domestically and abroad.

In the colonial times, Dutch employed migrant workers to assist the government's economic development, particularly in agriculture industries on their lands occupied both in the East Indies and outside the country, or to meet the labour needs of investors' agricultural companies that obtained an investment license from the Dutch government. Indigenous people in the East Indies who worked for the Dutch or investor companies were referred to as '*coolies*,' a term derived from 1880 Ordinance concerning the mobility of labour that imposed criminal penalties on violators. In practice, the police were decisive in charge, with complete authority to enforce the coolie law against Labourers.

Meanwhile, Japan, which gained control of Indonesia following its triumphant conquest of the Dutch in 1942–1945, increased its reliance on Indonesian migrant labour to build transportation infrastructure in the countries it invaded. Additionally, during Japan's colonial era, the exploitation of Indonesian migrant Labourers was dubbed '*romusha*,' or forced labour without worker rights. Both colonial empires used similar migrant labour legislation to govern the indigenous people, which amounted to indentured labour in which

[101] J.J. van Klaveren, *The Dutch Colonial System in the East Indies* (Springer, 1983), https://doi.org/10.1007/978-94-017-6848-1.

their rights were not respected fairly. They were required to carry out their responsibilities under contract law or face a fine.

The following section will define *coolie* and *romusha* legislation and explain how they were used to oppress Indonesian labour during the colonial period. Before this discussion, the history of labour legislation in the East Indies under the V.O.C. ruling will be examined, from slavery to coolie. Following this section, the legislation governing migrant workers during Japan's conquest of Indonesia will be discussed, as well as the extent to which the '*romusha*' system was imposed on Indonesian labour migrants.

2.1. Labour Legislation in The Colonial Era

2.1.1. The V.O.C.'s Role from Merchand to Sovereign

In 1596, four Dutch ships docked in Banten, a harbour in western Java. They aimed to harvest spices and return to Holland with their rich cargo from the Spice Islands. The Dutch swiftly discovered the immense value of Indonesia's exotic spices. Additional Dutch ships returned quickly to take advantage of the Spice Islands' potential. In 1602, the Dutch founded the East Indies Company (*Vereenigde Oost-Indische Compagnie* or V.O.C.)[102] to govern and monopolize trade throughout the archipelago. In record time, they assaulted and annihilated Portuguese outposts on the Banda Islands (part of the Moluccas). As the Dutch attempted to purchase the islands and transform them into a Dutch colony under the control of the V.O.C., vessels began to arrive in Indonesian waterways[103].

V.O.C. began as a small local business in the Netherlands before expanding to the East Indies. The formation of the V.O.C. bolstered the Dutch position immediately. They quickly drove the English, Spaniards, and Portuguese out and imposed exclusive delivery contracts on indigenous princes. They began their careers as merchant monopolists but were eventually compelled to assume sovereign roles. They conquered Fort Victoria in Ambon in 1605, the first of several conquests. Amboina's fort served as the V.O.C.'s first administrative centre. Contracts were concluded with the Banda Island chiefs for the exclusive supply of nutmegs and mace to the Dutch. The Banda islanders were deemed

[102] During the colonial era in Indonesia (East Indies), VOC developed into a formidable business enterprise that exerted significant control over the economics and politics of the Dutch business sector, employing principally soldiers and tailors as its workforce. To assist the VOC company, individuals were recruited from huurslauen (slaves) (literally, "hired slaves"). Slaves were relocated from Arakan (Burma) prior to enlisting local people. *See* Robert Cribb, "Legal Pluralism and Criminal Law in the Dutch Colonial Order," *Indonesia* (Cornel University Press, 2010).
[103] Douglas A. Phillips, *Indonesia*, first (Chelsea House Publishers, 2005). pp.31.

excessively burdensome and engaged in "illicit" trade with other nations such as the English, Javanese, and Makassar.[104]

On the other hand, Ambon's location was far too eccentric for a company with significant operations in India and even a presence in China. A rendezvous location closer to the Sunda Straits, the sailing ships' gateway, was desired to allow for instruction and refit of the ships following the lengthy voyage. After passing through the West wind drift to the Cape of Good Hope, the ships steered up to the Sunda Straits. It was intended to establish an organizing centre in Bantam[105] for a time. Jan Pieterszoon Coen, the president of the V.O.C. factory in Bantam at the time, arrived in Jacatra on May 28, 1619. However, Willeam Remmelink[106] asserts that in 1618, the East Indies Company relocated to Jacatra and renamed it Batavia. Coen declared the V.O.C. sovereign over the portion of Western Java lying between the rivers Tjisadane and Tjitarum in the west and the Indian Ocean in the East shortly after he arrived in Jacatra, assuming this was Jacatra, which the English had abandoned[107]. As a result, the declaration of V.O.C. sovereignty was highly arbitrary and rendered meaningless for the time being. However, as the V.O.C. transitioned from merchant to sovereign and expanded its government into the interior, this proclamation gained significance[108]. The V.O.C., which the States General had granted sovereign rights, attempted to counter Portuguese influence by seizing trade contracts, conquering trading posts, and establishing a Calvinist mission in place of the Roman Catholic mission[109].

A little more than a century later, in 1798, the Dutch government dissolved the East Indies Company and assumed direct control of the East Indies. The Dutch East Indies' Government-General was headquartered in Batavia and was divided into eight departments. While the Governor-General appoints the heads of each department, the Monarch appoints the chiefs of the army and navy. Java (which included Madura and was referred to as the inner territory) was administered separately from the outer territories, which included the remaining areas. Java was then divided into seventeen residencies, except for the principalities of Solo and Yogyakarta, and Sumatra was divided into ten residencies, among

[104] Gert Oostindie and Bert Paasman, 'Dutch Attitudes towards Colonial Empires, Indigenous Cultures, and Slaves', *Eighteenth-Century Studies* 31, no. 3 (1998): 349–55.
[105] Klaveren, *The Dutch Colonial System in the East Indies.at* 37-38.
[106] Willeam Remmelink, *The Invasion of the Dutch East Indies*, ed. Willem Remmelink, *Leiden University Press* (Leiden: Leiden University Press, 2015), https://doi.org/10.1163/24683302-03601004. *at* 13.
[107] Klaveren, *The Dutch Colonial System in the East Indies*. *at* 41.
[108] Klaveren. *at* 43.
[109] Paasman, 'Dutch Attitudes towards Colonial Empires, Indigenous Cultures, and Slaves'.

other things. Sub-residency [regencies] were created within each residency, each with its Dutch official.[110]

The Dutch government disregarded indigenous education and withheld appointments of indigenous people to colonial government positions. Indigenous independence movements arose after the Russo-Japanese War but were crushed by the Dutch Government-General. According to the 1930 national population census, the Dutch East Indies had a total population of approximately 60,730,000 people, including approximately 59,140,000 indigenous people and approximately 1,230,000 Chinese, 210,000 Dutch, 7,400 Germans, 7,200 Japanese, 2,400 British, 800 Swiss, and 600 Americans. While the overseas Chinese used their merchant skills, the Dutch, British, and Americans extensively exported agricultural and forestry products and engaged in mineral extraction. Indigenous peoples were primarily involved in feudal subsistence farming. Literate indigenous people made up only 5% of their population.[111]

2.1.2. The East Indies' Labour Legislation: A Step Towards Slavery Abolition

Slavery and servitude persisted throughout Indonesia's colonial era in the sixteenth century. As a result, Labour legislation in the East Indies (now Indonesia) gradually evolved away from slavery and servitude and toward a more humane system known as *coolie ordinance*. It took a long time for modern Western labour legislation to begin protecting the weak, such as women and children. Likewise, it defines the mutual rights and obligations of employers and employees. They were finally recognized after being inextricably linked to Labourers' health, material, and moral welfare rights. European authorities for generations considered this territory to be forbidden. When it became clear that this was a mistake, it took some time to recognize that regulations must inevitably be aided by special oversight by the authorities issuing them: labour inspection.[112]

Indeed, the Dutch lag other Western countries in terms of developing modern Labour legislation in the East Indies, particularly legislation that respects Labour rights the same way as other western countries did. For instance, the Dutch enacted a regulation in 1715 prohibiting businesses from employing debtors as indentured servants. However, it is almost certain that this prohibition was not strictly enforced; instead, it appears to have been a

[110] Remmelink, *The Invasion of the Dutch East Indies*. *at* 13.
[111] Remmelink. Ibid
[112] A. D. A. Kat De Angelino, *Colonial Policy*, vol. II (The Hague: Martinus Nijhoff, 1931). *at* 492.

suggestion rather than a mandatory regulation regarding how businesses treated their employees.[113] Meanwhile, slavery, which had existed in Southeast Asia for centuries, took a less severe form under the V.O.C. than it did in the West Indies, owing to the absence of murderous plantation slavery. While most people were enslaved illegally and dishonestly transported and sold, the nature of work was less extreme; most enslaved people worked in houses, yards, and commerce. Maltreatment, sexual offences, and cruel punishments were widespread in the Dutch East Indies. Enslaved people were typically treated similarly to servants. Slavery and the slave trade were not seriously debated in the Dutch East Indies until around 1800. During the Interim British Government, Thomas Standford Raffles founded the "*Java Benevolent Institution*" (1816), which the Dutch renamed the "*Javaansch Menslievend Genootschap*" (Java Humanitarian Society). Slave treatment improved gradually following the abolition of the slave trade, but slavery was not abolished until 1860. Around 1800, the Dutch East Indies and the Netherlands discussed plans to reform slavery, (enforced) statute Labour, taxes, land use, commerce, and government.[114]

After over half a century, the Dutch East Indies government has taken significant steps to reform its Labour laws. In 1874, the first insignificant beginnings were made, focusing on protecting children. Furthermore, the inspection of Labour law implementation began in 1890, but it was not adequately organized until much later. These actions were emphatically not taken in response to the government's desire to intervene.[115]

The colonial world imposed a completely different set of conditions and requirements. There was no doubt about the type of urban industrial development brought to the Western world by the nineteenth century. Rather than that, large-scale agriculture was frequently at the forefront of the Western impetus. However, it did not become a significant force until the late nineteenth century, particularly in the Dutch East Indies. Nonetheless, given the Indonesian population's apparent reliance on colonial authorities rather than their mother country, it was the colonial authorities' responsibility to pay close attention to Labour agreements, notably when they established obligations between Indonesian Labourers and non-Indonesian employers.[116]

The government had reason to intervene, as slavery and servitude were still regarded in Indonesian society as rational forms of debt security. As a result, poverty or debt incurred

[113] De Angelino. *at* 494.
[114] Paasman, 'Dutch Attitudes towards Colonial Empires, Indigenous Cultures, and Slaves'.
[115] De Angelino, *Colonial Policy*. *at* 492.
[116] De Angelino. *at* 493.

through mercantilism is far more prevalent than one might believe, despite the law prohibiting it. If the public's mental apathy persists, such subtle evasions of the law's spirit cannot always be avoided. After all, it is only by gradually raising people's consciousness that long-forbidden abuses can be abolished. On the other hand, legislation is critical because it establishes rules and compels people to follow them through penalties and compulsions.[117]

The East Indies' commitment to equitable social life was codified in 1816 with the abolition of slavery and servitude throughout the archipelago because of a change in labour legislation. The new law became critical in combating slavery and servitude practices within businesses' operational systems, particularly ensuring that Labourers' rights were respected. While slavery could not be abolished immediately, this Act allowed its eventual abolition by registering enslaved people and their children, particularly in Java. Indeed, both slavery and the exchange of service in exchange for debts were forbidden. Additionally, special rules were enacted to ease the lives of those who lacked significant freedom, at least until they regained it.[118]

The East Indies government continued the gradual modernization of Labour legislation with the promulgation of the Act 1854, which envisioned more than the gradual limitation and softening of slavery. Article 115 boldly declared on January 1, 1860, that slavery had been "abolished" in the Dutch East Indies, except for the Indonesian nations. Article 118 of the "*Regeerings Reglementen* (R.R.)" (the Colonial Constitution) forbade debt-serfdom in Java and instructed the Governor-General to extend this prohibition to the other islands whenever practicable. Meanwhile, efforts were made to hasten the demise of the institution that oversaw the abolition of slavery. In Java, compensation was paid to registered enslavers using the previous period's measurements. However, the decree had little effect on the other islands.[119]

Slavery and servitude were finally abolished in 1926 when the Dutch East Indies government ratified an international treaty. The Dutch East Indies assumed no new obligations when they signed the anti-slavery treaty in Geneva on September 25, 1926. (Stbl. 1928, 108). They initiated the struggle that they eventually won half a century ago. It is illogical to assert that this victory was morally significant for Indonesian society.[120] Nonetheless, prejudice based on the feudal system continued to exist after this point.

[117] De Angelino. Ibid.
[118] De Angelino. *at* 493-494.
[119] De Angelino. *at* 494.
[120] De Angelino. *at* 495.

Indigenous people were treated differently compared to the Dutch, resulting in a contradiction between white and black skin. Nevertheless, the discriminating policy was somewhat superior to the 'coolie' and 'romusha' statuses applied to Indonesians working in colonial industries under the threat of punishment.

2.1.3. Coolie Ordinance: A Gentler Servitude Law

The coolie ordinance was enacted in 1880 due to a vote in the East Indies government's Second Chamber regulating the mutual rights and obligations of employers and workers who arrived on Sumatra's East Coast from other locations. Following the decision of the Parliament, the Dutch East Indies enacted the Labour Act of 1880, which was updated in 1889 to strengthen the applicability of the 1870 Agrarian Act (*Agrarische Wet*). At the time, this Labour Act was referred to as the *Coolie Ordinance*. It was quickly followed by ordinances nearly identical to those in effect for most residents on the other islands. Because these workers were referred to as coolies throughout the East, the Dutch East Indies' special labour regulations governing contractual labour were also known as coolie ordinances.[121] However, some factors compelled the government to take a more accommodating position. In 1885, Deli contracted Javanese coolies. The island's population expansion was winding down, and the same force that created a local-regional Labour supply for Java plantations also created a migratory labour supply for Sumatra.

Additionally, Chinese Labourers had to be rehired[122] in Malaya and later in Macao, which entailed high initial costs. All expenses, including the recruiting agent, transportation, and advances, had to be paid.[123] However, the coolies had been compelled by their chiefs to enlist with the recruiting mandadors (foremans). The chiefs were compensated for their mediation. Additionally, they wielded such control over their peasants that the peasants were virtually compelled to do anything.[124]

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[121] De Angelino. *at* 504.

[122] Mary F. Somers Heidhues took a different view of the East Indies' importation of Chinese people. He argues that Men of the Dutch East India Company (*Vereenigte Oost-Indische Compagnie* or VOC) had one clear objective in the 17th century when they attempted to lure Chinese settlers to their harbor, Batavia: to expand trade. Having witnessed the Chinese people's ability and industry as traders, pepper and rice growers in the indigenous sultanate of Bantam, Batavia's rival on the western tip of Java, the Netherlanders hoped that a strong Chinese element would do as much for the newly founded Batavia, established on the site of the conquered town of Jacatra. *See* Mary F. Somers Heidhues, "Dutch Colonial and Indonesian Nationalist Policies Toward the Chinese Minority in Indonesia," *Law and Politics in Africa, Asia and Latin America* 5, no. 3 (1972): 251–61.

[123] Klaveren, *The Dutch Colonial System in the East Indies*. *at* 157.

[124] Klaveren. *at* 57.

The term coolie, first used as a labour rule by the Dutch in 1880, refers to a situation in which the worker lacks autonomy in the workplace, which the ILO refers to as forced labour.[125] Since the sixteenth century, coolie has been the most prevalent name for colonialists in India, Asia, and China to refer to indented Labourers[126] from those colonial countries.[127] The term “coolie" originates from two independent sources: the Tamil[128] term for a specific payment for menial labour and the Gujarati[129] term for a member of a lower socioeconomic class or tribe or the worst of their people. Breman and Daniel[130] assert that the English term coolie linked the concepts of person and money, creating a new “category of proto-proletarian people robbed of their personhood.” In Canton and other port cities, the lowly labourer — typically a man without a master or family, recruited on a contract with a (minimal) daily wage[131] – became the iconic figure of the coolie in China. Before colonialism, the term “coolie" referred to day Labourers in Asian port cities as critical nodes in early global commerce networks.[132] According to Matthias van Rossum[133], the phrase was vague. It encompassed a broad variety of casual and/or seasonal wage labour - frequently performed in tandem with slave labour or even by enslaved people, further confusing the distinction between forced and free labour.

On the other hand, Nicole Lamb[134] asserted that Madelon Lulofs’ 1932 novel Koelie, translated into English as Coolie in 1982, immortalizes the Javanese coolie. Ruki, a young Javanese man, is enticed away from his idyllic village and into the Sumatra rubber plantations. On Sumatra’s colonial estates, Labourers are simply referred to as ‘coolies,’ a colloquial term that obscures individual lives. In Indonesia’s history, “coolies" included

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[125] Amry Vandenbosch, ‘Colonial Labor Problems: The Labor Contract with Penal Sanction in the Dutch East Indies’, *Pacific Affairs* 4, no. 4 (1931): 318–24, https://doi.org/10.2307/2750107.
[126] Nitin Varma, ‘Coolie Acts and the Acting Coolies: Coolie, Planter and State in the Late Nineteenth and Early Twentieth Century Colonial Tea Plantations of Assam’, *Social Scientist* 33, no. 5/6 (2005): 49–72; Radica Mahase, *Why Should We Be Called ‘Coolies’? The End of Indian Indentured Labour*, *Routledge*, first (London and New York: Routledge, 2021).
[127] Lisa Yun, *The Coolie Speaks: Chinese Indentured Labourers and African Slaves in Cuba*, *Temple University Press* (Temple University Press, 2008). *at* xix.
[128] Oliver Tappe and Ulrike Lindner, “Introduction: Global Variants of Bonded Labor,” in *Bonded Labour: Global and Comparative Perspectives (18th-21st Century)*, ed. Sabine Damir-Geilsdorf et al. (The Deutsche Nationalbibliothek, 2016), 83–100. *at* 14. See also Yun, *The Coolie Speaks: Chinese Indentured Labourers and African Slaves in Cuba*. *at* xix.
[129] Vandenbosch, ‘Colonial Labor Problems: The Labor Contract with Penal Sanction in the Dutch East Indies’.
[130] *See* Tappe and Lindner, “Introduction: Global Variants of Bonded Labor.”*at* 14.
[131] Varma, “Coolie Acts and the Acting Coolies: Coolie, Planter and State in the Late Nineteenth and Early Twentieth Century Colonial Tea Plantations of Assam.” *at* 50-51.
[132] Tappe and Lindner, “Introduction: Global Variants of Bonded Labor.” *at.*87-88.
[133] Tappe and Lindner. *at* 83.
[134] Nicole Lamb, ‘A Time of Normalcy: Javanese “Coolies” Remember the Colonial Estate’, *Bijdragen Tot de Taal-, Land- En Volkenkunde* 170, no. 4 (2014): 530–56, https://doi.org/10.1163/22134379-17004001.

Chinese, Indian, and Javanese Labourers who worked on industrial projects ranging from Sumatra's tobacco, rubber, and coffee plantations to Java's sugar plantations, roads, and railways. Additionally, the term "coolie" refers to a low-skilled, untrained worker who works in various locations and at times. Peter Boomgaard[135] notes in research on 'free labour' in Java that "the term coolie" is "a good emblem for the appearance of free wage-labour." Its etymology includes unskilled labour, dacoity, and wages, mainly Javanese patrons, cut loose from their village mooring and living by their wits.

Meanwhile, other studies discovered that "coolie" originated in Chinese and Indian labour contracts. Coolie labour is often defined as indentured contract labour migration, and its history is closely associated with the coolie trade from the 1830s to the 1840s[136]. Furthermore, the term "coolie, or cooly" is used "in a special sense to designate those natives of India and China who leave their country under service contracts to work as Labourers abroad." In a slightly looser definition, the term is also "generally applied to Asiatic Labourers belonging to the unskilled class as opposed to the artisan."[137]

In China, the term coolie is used interchangeably with slavery practice or enslavement due to an individual's inability to pay a debt. Michael Zeuske[138] noted that the term "coolie" was also used to refer to slavery practices among the Chinese, such as the numerous persons seized, fled, or deported from South China, who were no longer required to be termed slaves or "*gugongren*" – they were coolies. Furthermore, the most significant social and legal group, known as coolies, outside of China, was probably also known as "*gugong*" or "*gugongren*" in China. It referred to individuals who could not sell themselves into formal slavery (by contract) due to high debts and were forced to rent their bodies and labour on an as-needed basis (also by contract).[139] Enslaved people who had been stolen, fled, or deported from South China were called coolies. As of 1857, the law was a necessary condition for the massive expansion of the Chinese coolie diaspora in Cuba, Peru, and Panama.[140]

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[135] Peter Boomgaard, "Why Work for Wages? Free Labour in Java, 1600-1900," in *Economic and History in the Netherlands*, II (The Netherlands Economic History Archieve, 2016).
[136] Michael Zeuske, "Coolies – Asiáticos and Chinos: Global Dimensions of Second Slavery," in *Bonded Labour Global and Comparative Perspective (18th-21st Century)*, ed. Sabine Damir-Geilsdorf et al. (Hart Publishing, 2016), 35–58.
[137] Matthias van Rossum, "Coolie Transformations – Uncovering the Changing Meaning and Labour Relations of Coolie Labour in the Dutch Empire (18th and 19th Century)," in *Bonded Labour Global and Comparative Perspective (18th-21st Century)*, ed. Sabine Damir-Geilsdorf et al. (Harvard University Press, 2016), 83–102.
[138] Zeuske, "Coolies – Asiáticos and Chinos: Global Dimensions of Second Slavery."
[139] Zeuske. *at* 40.
[140] Zeuske. *at* 42.

According to historical archives[141], all [Chinese] coolies were given contracts before sailing for Cuba. Cuban planters employed agents in Macao to facilitate trade. Portuguese officials in Macao oversaw and monitored the loading operation. The contract was read to the coolie in the appropriate Chinese dialect to comprehend its requirements fully and signing signified his acceptance of these terms. Coolie status can be eliminated if Chinese coolies travel to Cuba on their dime and sign a contract, at which point they will be considered 'free workers.'[142] Lisa Yun[143] argues that the contract's intended purpose in the case of Cuba's coolie history was to create mobile enslaved people. Owners, traders, and law enforcement marketed, sold, resold, rented, and lent coolies and renamed them. Coolies were relocated to plantations, prisons, depots, and railways and were simultaneously listed as dead, missing, or hired. As a result, coolie history and the narratives accompanying it become a jumble of contradictions: hypermobile yet immobile, owned by one yet owned by many, fluid yet enslaved. The Chinese coolies portray the contradictory nature of their enslaved freedom as a surreal and panoptic contract state. Hence, Oliver Tappe[144] defined coolie labour as a hybrid of forced requisition and voluntary recruitment of cheap labour from impoverished, landless Vietnamese or, less frequently, semi-nomadic uplanders.

The Dutch West Indies adopted the coolie term from the history of Indian indentured contract-labour migrants ("koelies") transported to Suriname[145] after abolishing slavery in

[141] Evelyn Hu-dehart, 'Chinese Coolie Labor in Cuba in the Nineteenth Century: Free Labor of Neoslavery', *Contributions in Black Studies: A Journal of African and Afro-American Studies* 12, no. Special Section (1994): 1–18.
[142] Zeuske, "Coolies – Asiáticos and Chinos: Global Dimensions of Second Slavery." *at* 46.
[143] Yun, *The Coolie Speaks: Chinese Indentured Labourers and African Slaves in Cuba.at* xx.
[144] Oliver Tappe, "Variants of Bonded Labour in Precolonial and Colonial Southeast Asia," in *Bonded Labour Global and Comparative Perspective (18th-21st Century)*, ed. Sabine Damir-Geilsdorf et al. (Harvard University Press, 2016), 103–32.
[145] Suriname has a unique connection to today's Javanese community because it was a key destination for Javanese Labourers during the colonial era. Between 1853 and 1933, Speckmann estimates that Suriname imported 33,299 Javanese immigrants. According to Lockard, an indentured contract granted to a plantation allowed the entry of Javanese Labourers into Suriname. The five-year indenture contract contained a provision providing for serious punishments, including imprisonment, against anyone who absconded or failed to work. Following completion, the indenture included transportation to and from Suriname. The working conditions included a six-day work week with an average of eight to ten hours per day, a daily income, free housing, and medical care. Contracts featured provisions for bringing families along, as well as provisions for employing and compensating wives and children. Lockard continues by describing the process by which the indenture contract for Javanese employees was drafted. They were almost certainly induced or coerced into signing contracts and emigrating by unscrupulous recruiters who used coercion or force. The recruiters, who were compensated for each emigrant they supplied, almost certainly exaggerated the benefits of living in Suriname. Without a doubt, the nasty reputation acquired in exchange for each emigrant delivered exaggerated the benefits of Suriname living. Other reasons for Javanese seeking labour in Suriname included the evident fear of arrest for criminal activity; many others sought to evade sanctions for breaking traditional norms. Several appear to have left Java owing to familial conflicts. Additionally, others blame the devastation caused by the 1930 Gunung Merapi catastrophe and a wish to avoid military service in Java. Javanese Labourers played an important role in Suriname's social, political, and cultural fabric, with the Javanese community ranking third

the late nineteenth century.[146] Coolies are emphasized as a novel alternative to enslaving labour in the Dutch West Indies, particularly the plantation colony Suriname, during the second half of the nineteenth century. However, '*koelie'* (coolie) was a critical but ambiguous concept throughout the Dutch East India Company's (V.O.C.) empire in Asia during the seventeenth and eighteenth centuries. While the term was initially used to refer to work or workers, it could also refer to various labour relations and people of varying social status. Not only was the term "coolie" used differently throughout the early modern Dutch empire, but it also appears to have evolved. Between the V.O.C. empire's two most important regions in the 18th century, there appears to have been a significant regional divide, ranging from temporary wage labour (Southeast Asia) to tributary labour relations (South Asia). The term coolie evolved during the nineteenth century, particularly in the Dutch empire, to refer to contract labour that was both formally and informally bonded.[147] Khal Torabully[148], in his coolitude, prefers to view coolies through the lens of their economic and legal circumstances as contract Labourers who migrated not only from India and China but also from Europe and Africa to various archipelagic regions such as the Caribbean[149], the Indian Ocean, and the Pacific. Torabully's mosaic model of combined identities incorporates an essential theoretical component of creolization: social status. Consequently, it is evident that coolie in all their conditions is the lowest social status of Labourer that is near to slavery, where they are treated as "property" by their employer and have no adequate labor's rights.

among the Surinamese population. As a result, it's surprising that the Javanese language is now recognized as one of Suriname's official languages. *See* John D. Speckmann, "Ethnicity and Ethnic Group Relations in Surinam," *Carribean Studies* 15, no. 3 (1975): 5–15; Craig A Lockard, "The Javanese as Emigrant : Observations on the Development of Javanese Settlements Overseas," *Indonesia* 11, no. 11 (1971): 41–62; Craig A Lockard, "Repatriation Movements among the Javanese in Surinam : A Comparative Analysis," *Carribean Studies* 18, no. 1 (1978): 85–113; Peter Meel, "Jakarta and Paramaribo Calling: Return Migration Challenges for the Surinamese Javanese Diaspora?," *NWIG New West Indian Guide* 91, no. 3–4 (2017): 223–59, https://doi.org/10.1163/22134360-09103064.

[146] Slavery was mostly practiced on cane plantations throughout the Dutch Colonial era. In terms of labour relations, Java and Cuba both took a harsh approach to labour mobilization and control. While Cuban plantation owners acquired 780,000 slaves between 1790 and 1868, the cultivation system controlled 700,000 to 800,000 households (about 35 to 40 per cent of the households in Java under direct government rule). *See* Ulbe Bosma, "The Global Detour of Cane Sugar from Plantation Island to Sugarlandia," in *Colonialism, Institutional Change and Shifts in Global Labour Relations*, ed. Karin Hofmeester and Pim de Zwart, First (Amsterdam University Press, 2018), 374, https://doi.org/10.5117/9789462984363/CH04.

[147] Rossum, "Coolie Transformations – Uncovering the Changing Meaning and Labour Relations of Coolie Labour in the Dutch Empire (18th and 19th Century)."*at* 84.

[148] Gesine Müller and Johanna Abel, "Cultural Forms of Representation of 'Coolies': Khal Torabully and His Concept of Coolitude," in *Bonded Labour Global and Comparative Perspective (18th-21st Century)*, ed. Sabine Damir-Geilsdorf et al. (Harvard University Press, 2016), 219–28.

[149] The following article thoroughly examines the history of coolie migrants to the Caribbean and the conditions they encountered. *See* Liliana Gómez-Popescu, "Re-Presenting and Narrating Labour: Coolie Migration in the Caribbean," in *Bonded Labour Global and Comparative Perspective (18th-21st Century)*, ed. Sabine Damir-Geilsdorf et al. (Harvard University Press, 2016), 191–218.

2.1.4. Penal Sanctions for Labour Contracts

In the seventeenth century, V.O.C., the Dutch East Indies Company, utilized fierce force to expand its trade empire. The most egregious and well-known example is the near-total elimination of the Banda Islands' people in 1621, a genocidal crime undertaken to enforce the Dutch spice trade monopoly.[150] In the Dutch West Indies, Slavery was abolished in 1863, although 'freed' enslaved people were obliged to work until 1873. In addition, this is the history of Chinese and Javanese contract labour under 'penal law' in colonial Sumatra in the nineteenth century, increasingly utilized in mining, plantations, and other businesses. The Dutch colonial state and enterprises in the West and East Indies based their coolie-labour methods on the (earlier) British experience. The British experience, in turn, can be traced back to the early nineteenth-century employment of Indian indentured contract Labourers.[151]

According to the Coolie-Ordinance 1880, coolies could leave the plantation only with their employer's permission. Employers were entitled to a plantation police force with arrest authority to supplement the dwindling government police force. The "*land-rechter*" (judge) sentenced deserters who were apprehended and those convicted of sabotage, strike agitation, and poor workmanship.[152] For several years, this type of work contract with penal consequences, which exists in some regions of the Dutch East Indies, has been a source of contention in Dutch public opinion and politics. Amry Vandenbosch[153] stated that the Dutch Coolie Ordinance of 1880 gained the attention of the International Labour Organization (ILO) due to its exploitative contract. The subject of the punitive labour contract has garnered significant global attention. It was on the agenda of the International Labour Conference's 1929 meeting and was reinstated on the agenda in either 1931 or 1932 when the International Labour Conference completed the Convention's text. M. Albert Thomas, director of the International Labour Office, visited Southeast Asia and the Dutch East Indies in 1929. Meanwhile, Mr Harold Grimshaw, head of the International Labour Office's

[150] Bart Luttikhuis and A. Dirk Moses, "Mass Violence and the End of the Dutch Colonial Empire in Indonesia," *Journal of Genocide Research* 14, no. 3–4 (2012): 257–76, https://doi.org/10.1080/14623528.2012.719362.
[151] Tappe and Lindner, "Introduction: Global Variants of Bonded Labor"; David W Galenson, "The Rise and Fall of Indentured Servitude in the Americas : An Economic Analysis," *The Journal of Economic History* 44, no. 1 (1984): 1–26. Parbattie Ramsarran, "The Indentured Contract and Its Impact on Labor Relationship and Community Reconstruction in British Guiana," *International Journal of Criminology and Sociological Theory* 1, no. 2 (2008): 177–88.
[152] Klaveren, *The Dutch Colonial System in the East Indies*.
[153] Vandenbosch, 'Colonial Labor Problems: The Labor Contract with Penal Sanction in the Dutch East Indies'. *at* 320.

Division of Native Labour, visited the East Indies around the same time to ascertain how the system operated. After the meeting, the system's opponents won a contentious discussion, with the Dutch and East Indian governments agreeing to its complete, albeit gradual, abolition.

Various investigations[154] indicate that the coolie labour arrangement was incorporated into the indenture contract. Although the indenture mode of a labour contract is a civil job contract, penal punishments are imposed on Labourers who violate the contract by refusing to work, disregarding rules, or disobeying the employer. Labourers who violate the contract may face jail, a fine, or work beyond the contract's specified work-hour limit. According to Hoefte,[155] this indentured labour system is essentially a continuation of slavery, as most employees on colonialist plantations were enslaved people before the abolition of slavery in 1807.

Numerous characteristics are linked with indentured Labourers, including the wages mandated by the indenture contract were low compared to the salaries of un-indentured employees, primarily blacks. Indeed, indentured servants were paid much less than ordinary Labourers for comparable tasks. Labourers have limited freedom since the indenture contract, used to govern Labourers' mobility away from and on plantations, required Labourers to get a particular pass.[156] Additionally, Labourers are forced to work excessive hours and are not supplied with necessary breaks as required by law,[157] in addition to poor working conditions and physical aggressiveness[158]. Seeing the worst-case scenario for Labourers' rights under the indenture system has rendered the legal distinction between indenture and slavery completely meaningless.[159]

According to Amry Vandenbosch,[160] the coolie rule is fundamentally just for all parties, requiring all responsibilities and rights to conform to the coolie regulations and be codified in a void contract until registered with the government. Employers must pay salaries

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[154] Sunanda Sen, "Indentured Labour from India in the Age of Empire," *Social Scientist* 44, no. 1 (2016): 35–74; Rosemarijn Hoefte, "Control and Resistance: Indentured Labor in Suriname," *New West Indian Guide* 61, no. 1 (1987): 1–22.
[155] Hoefte, "Control and Resistance: Indentured Labor in Suriname." *at* 17.
[156] Ramsarran, "The Indentured Contract and Its Impact on Labor Relationship and Community Reconstruction in British Guiana." *at* 177-178.
[157] Nicholas Cooper, "City of Gold, City of Slaves: Slavery and Indentured Servitude in Dubai," *Journal of Strategic Security* 6, no. 3Suppl (2013): 65–71, https://doi.org/10.5038/1944-0472.6.3s.7.
[158] Boris Marañón-Pimental, "Forced Labor and Coloniality of Power in Chiapas, Mexico, in the Nineteenth and Twentieth Centuries," *Review (United States)* 35, no. 3–4 (2012): 211–38.
[159] Hu-dehart, "Chinese Coolie Labor in Cuba in the Nineteenth Century: Free Labor of Neoslavery." *at* 46.
[160] Vandenbosch, "Colonial Labor Problems: The Labor Contract with Penal Sanction in the Dutch East Indies." *at* 320.

on time and provide adequate housing and food, hospitals and free medical care, safe drinking water, and complimentary transportation after the contract period. Both parties are penalized for violating commitments, including jail or fines. However, the coolie is typically imprisoned due to his lack of funds. Additionally, the contract coolie is obligated to return to the plantation he defected to complete his contract, typically three years in duration. The contract's most heinous element is, without a doubt, the use of government machinery to compel a coolie to return to work against his choice. It has been suggested that it is preferable to severely punish a deserter and then release him entirely from the contract. Numerous violations of the Ordinance 1879's implementation was reported to the government, as the Ordinance established some rules governing how employers should treat coolies. Any rule violation resulted in a penalty. Additionally, the Ordinance established a penalty for Labourers who refused to work as contracted and those who deserted. Both offences were to be brought before a judge competent in these matters by the police.[161]

The penal sanctions under the coolie contract, based on separate coolie ordinances[162] passed in fifteen regions outside Java between 1880 and 1930, were finally updated in 1931 with more humane provisions. While the Ordinance governing this infamous penalty has been amended, the preceding provisions governing employers' and employees' liability for fines and imprisonment have remained unchanged since 1950[163]. However, coolies have been guaranteed more humane treatment since the introduction of regular official labour inspections under the new Ordinance in 1931.

The new Ordinance (Stbl. 1931,94) supersedes previous coolie ordinances, which resulted in significant changes to workers' rights.[164] Article 3 states that re-engagement contracts will be limited to one year, except for one very exceptional case, and that all days of illness will now be counted toward the Agreement's duration. Additionally, working hours are reduced[165], and additional hours of service or labour are compensated more generously at rates at least 50% higher than the average hourly wage. Additionally, the administration has the authority to impose a sufficient minimum wage and to increase it by a specified percentage in the case of work that the administration believes places greater

[161] M.W.F. Treub, "Dutch Rule in the East Indies," *Foreign Affairs* 8, no. 2 (1930): 248–59.
[162] The coolie ordinance for the East Coast of Sumatra was first issued in Stbl. 1915,421, and was amended in Stbl. 1917,497; 1920,535; 1921,39; 1924,513; 1925,201 and 311; 1926,62; 1927,142 and 413; 1928,535. *See* De Angelino, *Colonial Policy*; Martine Julia Van Ittersum, *Profit and Principle Hugo Grotius, Natural Rights Theories and The Rise of Dutch Power in The East Indies (1595-1615)* (Leiden: Brill, 2006). *at* 592.
[163] Treub, "Dutch Rule in the East Indies." Ibid.
[164] De Angelino, *Colonial Policy*. *at* 606-607.
[165] Article 4

demands on the labourer than is customary. Fines imposed by employers are now expressly prohibited.[166] When a patient becomes ill, he or she is only required to submit to hospitalization if the doctor determines that there is a risk of contagion.[167]

The terms "breach of contract" and "desertion" have been removed from Articles 19, 20, and 23 lists of punishments. A worker absents from work for more than twenty-four hours without a good reason or permission from his employer or agent may be imprisoned for up to three months or fined up to 300 guilders under the new Article 34. In addition, if he persistently refuses to perform the contractual task. Employers face the same penalty if they fail to meet their obligations to their employees under the new Ordinance's Article 13-25. The worker may be detained for up to twelve days or fined up to fifty guilders if he fails to report to the enterprise at the time specified in his labour agreement. In addition, a punishment or fine is also imposed if he fails to obey orders issued under the regulation or his agreement regarding the contractual task. The proviso is that refusal to perform the contractual task is only punishable in the specific case.[168]

Article 36 stipulates that if the acts listed below are not punishable under the penal code, a maximum of one month in prison or a fine of up to 100 guilders may be imposed for resistance, insults, or threats directed at the employer or his staff, as well as disturbance of the peace, fighting, or drunkenness. The essential modification is the addition of Article 41. It requires businesses established before 1922 to impose a penalty on labour agreements to increase the proportion of free Labourers to 50% of total staff by January 1, 1936. According to the strategy outlined in this article, newer businesses will replicate the strategy to achieve the same percentage of revenue a few years later. To further restrict or eliminate the penalty, the new Article 45, which replaces the previous Article 24a, requires a five-year review of the "Coolie Ordinance 1931" beginning in 1936.[169]

Medan and other cities will also establish labour commissions to improve labour conditions[170]. These commissions must make recommendations to the government regarding these revisions. Finally, it should be noted that the Labour Office and the Labour Inspection have been entrusted with most of the supervision and other responsibilities previously delegated to the administration or other authorities. The new Ordinance represents a

[166] Article 12
[167] Article II
[168] De Angelino, *Colonial Policy*. Ibid.
[169] De Angelino. Ibid.
[170] *See* the new article 44.

significant improvement in draftsmanship over the previous Ordinance. The Ordinance in Stbl. 1931, 95 is a commendable attempt to address one of the significant difficulties inherent in the transformation of contractual labour to free labour, namely the risk of dishonest employers engaging free Labourers imported at great effort and expense by others addressed similarly in the Straits Settlements in 1920. This law requires the establishment of a Chamber of Registration in Medan. It will be responsible for registering foreign workers and managing a fund to which employers must contribute annually. If an employee is hired by an employer who does not pay for the costs incurred, the employee must pay a one-time fee and then make monthly payments.[171] To be sure, Labourers have become the unfortunate beneficiaries of this regulatory scenario.

2.1.5. Principal Players in the Coolie Ordinance's Implementation

The agricultural industries that flourished during the colonial era were organized around a system of organized labour. A few key actors[172] are involved in every stage of the labour industry, including recruitment, placement, supervision, and law enforcement. Several vital actors are involved at various stages of the labour industry, including village heads or '*lurahs*' in recruitment, intermediary labour companies in placement, and '*mandurs* or *mandadorers*' (Foreman) who supervise Labourers. At the same time, they work as police who enforce the law. The coolie ordinance legitimized or regulated the labour industries' principal actors. On the other hand, their presence in labour industries benefits enterprises at the expense of labour rights. Besides, the labour industrial appears to have been the primary beneficiary of the coolie ordinance's implementation, particularly in enslaving Labourers. In this scenario, the Coolie Ordinance benefited private enterprise by enabling it to maximize profits by establishing a systematic labour bureaucracy designed to deceive workers into believing they were enslaved. Unfortunately, the East Indies government either supported or simply ignored the labour bureaucracy's operation. All these essential parties are involved in the migration phases of coolies, from recruitment to departure.

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[171] De Angelino, *Colonial Policy*. Ibid.

[172] In China, the intermediary parties that connect the foreign company with migrant workers are known as compradores. *See* Yen-P'Ing Hao, "A 'New Class' in China's Treaty Ports: The Rise of the Comprador-Merchants," *The Business History Review of Harvard College* 44, no. 4 (1970): 446–59; Jason Oliver Chang, "Four Centuries of Imperial Succession in the Comprador Pacific," *Pacific Historical Review* 86, no. 2 (May 1, 2017): 193–227, https://doi.org/10.1525/phr.2017.86.2.193; Kuang Yuang Pao, "The Compradore: His Position in the Foreign Trade of China," *The Economic Journal* 21, no. 84 (1911): 636–41; Jung-Fang Tsai, "The Predicament of the Comprador Ideologists: He Qi (Ho Kai, 1859-1914) and Hu Liyuan (1847-1916)," *Modern China* 7, no. 2 (April 1981): 191–225, https://doi.org/10.1177/009770048100700203.

a. Lurah or Village-Chief

Implementing the coolie ordinance's success is inextricably linked to the roles of several key actors. Colonial enterprises employed village heads, or '*Lurahs*', to recruit villagers to work as coolies in agricultural industries. At this juncture, *Lurah* acts as a job broker and legitimizer for the Labourers' candidate administration and will be rewarded by the businesses. In modern Indonesia's migrant workers' industry, this brokerage practice evolved into individual brokerage. According to Klaveren[173], the *Lurah's* assistance was frequently purchased on a percentage basis, a piece rate per coolie, or simply through bribes. The *Lurahs* possessed enormous power, particularly in communal *Desa* (villages), where land was redistributed regularly. Since 1863, the redistributions had been adjusted to the sugar-culture cycle: they divided a third of the harvested cane each year. The *Lurahs*, who adopted the fixed-share system, had less clout, as did the individualistic constitution. The *Lurahs* frequently contracted for labour and paid the wages for the entire *Desa* (village).

In addition, *Lurahs* supervised Labourers and were compensated between 5 and 20 guldens per *bouw.*[174] *Lurahs* act as both a broker and a supervisor in the labour industry, which gives them enormous power in the eyes of the Labourers. The government intensified its efforts to combat the *Lurahs*' dubious dealings in 1890. The government then took a patriarchal and benevolent stance toward the indigenous people, protecting them from entrepreneurs and *Lurahs.*[175]

b. Labour Agency Intermediary

In 1915, in response to the rapid expansion of plantation companies during the colonial period, which necessitated a large workforce, the East Indies government amended the coolie ordinance to improve the governance of plantation workers or coolies. The 1915 revision to the Coolie Ordinance aimed to make two fundamental changes: (1) it aimed to avoid the growth of harsh legal sanctions against firm employees, and (2) it aimed to increase the minimum age of criminal liability. In addition, the change to the coolie regulation permitted two East Sumatra plantation firm associations, the *Algemene Vereniging van Rubber Planters ter Ooskust van Sumatra* (AVROS) and the *Deli Planters Vereniging* (D.P.V.), to import contract employees, or coolies, from Java. The rules, or coolie ordinance,

[173] Klaveren, *The Dutch Colonial System in the East Indies*. *at* 154.
[174] an Indonesian unit of land area equal to 1.75 acres. *See* https://www.merriam-webster.com/dictionary/bouw
[175] Klaveren. *at* 155.

are constantly evolving and dynamically adapting to the workforce's needs and the state of the economy at the time, resulting in ongoing rule changes. The East Indies Government amended and repealed the 1887 and 1917 *Wervings Ordinances* in 1936.[176] The establishment of a labour delivery service provider company, facilitated by the state, marked a watershed moment in the history of the post-colonial Indonesian government's private sector involvement in labour governance.

The Dutch government strictly regulates these agency firms. Coolies recruited through agencies are in good repair, as evidenced by recruiters' candour about their costs, placement, and contract termination with their employers. For example, during the hiring process, coolies were made aware of the associated costs, as the company's regulations required that recruiting and transportation costs be amortized throughout the contract. Men and women are recruited equally, with an emphasis on maintaining an approximately two-thirds male-to-one-third female labour ratio on the estate. Men's initial employment wages are approximately 19 cents gold, while women's initial employment wages are approximately 17 cents gold and are almost entirely dependent on rice prices.[177] When the company's contract with the coolies expires, they can re-engage for two years at increased wages, remaining on the estate as free labour and occupying company quarters at their leisure, or being returned to their native homes in Java at the company's expense. Coolie is always physically better off at the end of his contract due to the personal care he receives from both his business and the government.[178]

The evidence demonstrates that coolies recruited through a formal agency company that the government supervises are treated better and have their rights respected than coolies recruited through the *Mandador*. The legislation may have established clear guidelines for each stage of the employment process that the agency company must follow. This labour agency intermediary company is believed to have been replicated later in modern Indonesian history, most notably during Suharto's regime (1967–1998), when the development of labour intermediary companies accelerated significantly with government support. However, the lack of oversight of intermediary businesses has a negative impact on the human rights of 'migrant workers' at all phases of their migration. The extent to which private enterprises participate in the migration sector will be examined in detail later.

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[176] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 8-9.
[177] By H Stuart Hotchkiss, "Operations of an American Rubber Company in Sumatra and the Malay Peninsula," *The Annals of the American Academy of Political and Social Science* 112, no. (1924): 154–62.
[178] Hotchkiss. *at* 158.

c. Mandur or Mandador

In the 18th century, coolies from Java who worked for plantation companies had to travel between two and three hundred kilometres, for example, from Cirebon. A leader known as the *Mandur* or *Mandador*, or Foreman organizes some plantation coolie groups consisting of approximately 30-50 Labourers. The *Mandador* recruited his gang members from various settlements, brought them to the new garden site, and stayed with them for the duration of the work of clearing the land.[179] In this context, the *Mandador* serves multiple roles, including recruiter of coolies for a plantation company, leader of coolie groups, and intermediary agent with the company. The *Mandador's* position is so vital to the company that he is given broad authority to regulate all aspects of the coolie under his control.[180] The company compensates the *Mandador* financially for performing these duties.[181] *Mandador* is a liaison between Javanese and Sundanese coolies and white tea pickers in certain circumstances. This policy was imposed because different ethnic groups have varying temperaments, and those with a fiery disposition are not permitted to interact directly with white tea pickers. As a result, the *Mandadors* acted as ethnic mediators in this context, allowing them to continue their work as tea pickers in the mountains. Coolies employed as tea pickers have a slightly different 'social status of workers' than coolies employed on Sumatra plantations, as these coolies are sometimes referred to as gardeners, and their rights are more respected by their employers.[182]

d. Police

During the colonial era, the police played a critical role in agricultural industries. However, the term "police" must be broadly construed in this context to include all administrative and legislative actions necessary to maintain order and peace, or that may be imposed in the interest of the regular and ordered government. Separating powers was not considered necessary but insufficient for carrying out the government task at the time.[183] In some instances, police officers served as board administrators when residents were referred

[179] Jan Breman, "Unfree Labour as a Condition for Progress," in *Mobilizing Labour for the Global Coffee Market* (Amsterdam University Press, 2018), 169–210, https://doi.org/10.1515/9789048527144-006.
[180] Paul E. Baak, "About Enslaved Ex-Slaves, Uncaptured Contract Coolies and Unfreed Freedmen: Some Notes about 'free' and 'Unfree' Labour in the Context of Plantation Development in Southwest India, Early Sixteenth Century-Mid 1990s," *Modern Asian Studies* 33, no. 1 (1999): 121–57, https://doi.org/10.1017/S0026749X99003108.
[181] Klaveren, *The Dutch Colonial System in the East Indies*. *at* 57.
[182] Klaveren. *at* 153.
[183] De Angelino, *Colonial Policy*. *at* 9.

to as representatives attached to the courts of Java's rulers. Typically, these local administrators were assisted by a so-called police board, whose members doubled as a board of justice when additional members were added. These boards were presided over by the highest local administrator and comprised the area's most senior officials.[184] In exceptional circumstances, at the discretion of the head of the local administration, the police may act in place of the administrator at the administrator's expense.[185]

Meanwhile, police officers provide security in other instances. For example, when entrepreneurs eliminated purchasing competition in 1912, the government funded the establishment of a tobacco police force to prevent tobacco grown on leased lands from being sold by the native landlord.[186] Additionally, police have the authority to arrest the plantation's coolie. When they attempted to flee, they were apprehended by police and handed over to the entrepreneur. Indeed, this police regulation constituted a punitive measure for breach of a civil contract.[187] Additionally, beginning in 1872, the police could compel an enlisted native (coolie) to work out his contract. Seeing the negative impact on coolies' rights under the contract with penal sanctions, the Dutch government thoroughly examined the East Indies government's coolie legislation. This regulation was then repealed in 1879 on the recommendation of the Parliament. Other methods were then intensified, particularly considering the requirement for field coolies in 1878.[188] According to Article 1, workers who leave an infirmary referred to in the Ordinance of September 6, 1910 (Stbl. 469) without the written authorization of the medical director may be brought back at the doctor's request, by the police or, in the employer's name and at the employer's expense, by members of the employer's staff.

2.2. Imposition of Coolie Legislation on Migrant Workers

The history of labour migrant legislation in the colonial era began with the Dutch East Indies government's massive investment policy in the plantation sector in 1880. The government of the Dutch East Indies opened investment opportunities for the international community to invest in plantations in the various countries it controlled. Initially, it originated within the East Indies, specifically local migration from Java to Sumatra.

[184] De Angelino. *at* 11.
[185] De Angelino. *at* 600.
[186] Klaveren, *The Dutch Colonial System in the East Indies*. *at* 156.
[187] Klaveren. *at* 157.
[188] Klaveren. *at* 154.

However, investors' desire to establish plantation industries in Dutch colonized countries such as Suriname necessitated a large amount of labour. Java, which has a substantial population, was sent as coolies to work on these investors' plantations, which were exploitative until the practice was finally prohibited. Given the long history of migrant workers in colonial times, the characteristics of migrant workers' provisions tended toward slavery. Modern legislation drafters should understand to ensure those slavery characteristics are eliminated.

2.2.1. The Policy of Migrant Labour Origins

The Dutch's original migrant labour policy increased economic production, particularly in the agricultural sector. In 1870, the Dutch government adopted an open policy toward foreign industry, primarily to exploit newly gained land. The Dutch government implemented this concept in the *Agrarische Wet 1870* (Stb. 1870 No. 155)27, with the *Agrarische Besluit 1870* as an implementing law. Article 1 of *Agrarisch Besluit* includes a well-known critical statement, *Domain Verklaring*, which states that "*all land that has not been established to have absolute property rights ('eigendom') is the state domain or state property*." The *Agrarische Besluit* of 1870 marked a watershed moment in the Dutch East Indies' privatization of plantations.[189]

The Dutch government provides flexibility to foreign investors who work on vacant lands they possess via a lease contract system for up to 75 years under the *Agrarische Wet* 1870. This program successfully attracted international investors[190] to compete for the opportunity to create plantation enterprises in various colonized countries at the time. Between 1864 and 1879, agricultural enterprises rose considerably from seven to 102. This industry's growth requires the employment of a considerable number of individuals. As a result, it takes a significant amount of people to support the operations of these businesses. The Dutch government responded to this situation by sending many employees from the Island of Java, which was relatively densely inhabited then, to meet the demand for labour from foreign entrepreneurs establishing businesses in Dutch-controlled countries[191].

[189] Masyrullahushomad and Sudrajat, 'Penerapan Agrarische Wet (Undang-Undang Agraria) 1870: Periode Awal Swastanisasi Perkebunan Di Pulau Jawa', *Historia: Jurnal Program Studi Pendidikan Sejarah* 7, no. 2 (2019): 159–74.
[190] Max L Tamon et al., "The Dutch East Indies Policy for The Plantation in Java," in *Advance in Social Science, Education and Humanities Research*, vol. 226 (Atlantis Press, 2018), 756–59.
[191] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 8.

Unfortunately, according to Adnan Hamid[192], the form policy was embraced by the current Indonesian migrant policy in the local context by relocating the society from Java to numerous other islands, such as Sumatra, Kalimantan, and West Papua, via the transmigrant program. In some locations, migrants were granted land to cultivate as their primary source of income. However, their presence in the transmigration area was recruited to assist plantation corporations such as oil palm that obtained government licenses. Thus, the presence of these migrants are inextricably linked to the government's economic interest. This trend is comparable to the Dutch government's when it adopted an open policy for foreign investment in the plantation sector, employing cheap labour from Java based on population density.[193]

The indigenous people first lauded the establishment of *Agrarische Wet* in 1870, believing that the Dutch government's agrarian policy would guarantee them *eigendom* privileges or absolute rights to land. *Agrarische Wet 1870*, on the other hand, was only an excuse for foreign businesspeople to invest in Indonesia and other Dutch colonies worldwide. While foreign businesspeople earn handsomely[194], indigenous peoples' livelihoods deteriorate[195]. Since the advent of *Agrarische Wet* in 1870, plantation entrepreneurs from the Netherlands and other European countries have amassed extraordinary fortunes based on colonial super-profits. This term refers to a situation in which extraordinary capital accumulation develops because of foreign capital investment, leading to overworked labour with low wages. Additionally, investors are not obligated to shoulder the cost of developing infrastructures, such as transportation and communication systems. Everything is paid for by the government, which is financed through residents' taxes.[196]

In 1880, the Dutch government passed a Labour Act, updated in 1889, to strengthen the applicability of the 1870 Agrarian Act (*Agrarische Wet*). At the time, this Labour Act

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[192] Adnan Hamid, *Kebijakan Ketenagakerjaan Bagi Pekerja Migran: Tinjauan Undang-Undang No. 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia* (Jakarta: Fakultas Hukum Universitas Pancasila, 2019). pp.93.
[193] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 8.
[194] This motto "How to Manage the Colony for Money" was dubbed the "character of colonialism" to describe the situation in which the colonial government's primary goal in enforcing its labour laws on indigenous people was exploitative behaviour. *See* Marwati Djoened Pusponegoro and Nugroho Notosusanto, *Sejarah Nasional Indonesia* (Jakarta: Balai Pustaka, 2008). *See* also Andi Suwirta, "Buruh Perkebunan Di Sumatera Timur: Sebuah Tinjauan Sejarah," *Historia: Jurnal Pendidikan Sejarah* 5, no. 3 (2002): 19–36.
[195] Masyrullahushomad and Sudrajat, "Penerapan Agrarische Wet (Undang-Undang Agraria) 1870 : Periode Awal Swastanisasi Perkebunan Di Pulau Jawa." *at* 160.
[196] Masyrullahushomad and Sudrajat. *Ibid*.

was referred to as the Coolie Ordinance. This Ordinance imposed criminal penalties on people who violated the law when employed by the government as local Labourers in private agricultural firms. Workers who refuse to comply with orders to labour in the plantation business violate the 1880 Coolie Ordinance. Later throughout history, this clause became known as forced Labour.[197]

Additionally, if a worker escapes or violates the criteria, he is deemed to have violated the Coolie Ordinance. Individuals who violate the Coolie Law face three possible penalties, depending on the severity of the offence as judged by the Dutch government: jail, payment of a fine, or forced work that exceeds the terms of their employment contract.[198] According to the I.L.O.[199], the Dutch continued to utilize the coolie ordinance from 1880 until 1941.[200] In addition, the purpose of relocating the migrant workers from Java Island to other Dutch colonial states such as Suriname, New Caledonia, and Vietnam was to decrease the Labourers' alliance's strength to limit their fighting capacity against colonial policy.[201] The Dutch program sought to bolster their ability to acquire Indonesian territory by relocating all indigenous people who resisted their policy for migratory reasons. Migration was used as a tool of colonial power in various circumstances, and it was afterwards experienced by all Indonesian revolutionaries fighting for independence. Such political labour was typical when authoritarian governments went to great lengths to keep organized labour under check. They believe workers are a potent force capable of undermining political stability and, ultimately, their control. As a result, the Colonialist Dutch curtailed

[197] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 9.
[198] Ann Laura Stoler, *Kapitalisme Dan Konfrontasi Di Sabuk Perkebunan Sumatera: 1870-1979* (Yogyakarta: KARSA, 2005). M.R. Anand's classic work "Coolie" vividly depicted the life of a Coolie man in an Indian classic household, which was later incorporated by the Colonial Coolie Law. Meanwhile, Lisa Yun's book "The Coolie Speaks," which is based on Coolie people's narratives, has an in-depth examination of 'Coolie' life in Cuba that can be used to acquire a better understanding of the political Coolie in Asia, particularly in the Indonesian Colonial background. *See* M.R. Anand, *Coolie* (Moscom: Prosveschenive, 1984); Yun, *The Coolie Speaks: Chinese Indentured Labourers and African Slaves in Cuba*.
[199] The ILO sought, in a 2013 report, to deconstruct legal definitions of unfree labour [a term equivalent to coolie] into 'operational indicators,' which can be classified in three dimensions: 1) "Unfree recruiting," defined by the ILO as coercive as well as fraudulent recruitment; 2) "Life and work under duress," defined by indications such as restricted freedom, wage withholding, forced overtime or job, and detention of identity documents; and 3) "Impossibility of quitting the employer."*See* Tappe and Lindner, "Introduction: Global Variants of Bonded Labor."
[200] Julia Martinez, 'The End of Indenture? Asian Workers in the Australian Pearling Industry, 1901-1972', *International Labor and Working-Class History* 67, no. Spring (2005): 125–47.
[201] Riwanto Tirtosudarmo, *Mencari Indonesia: Demografi Politik Pasca Soeharto* (Jakarta: Lembaga Ilmu Pengetahuan Indonesia, 2007).

agricultural labour development in this situation to avoid becoming a danger to Dutch political stability.[202]

Sex slavery was another motivation for the colonial era's migrant worker policy. In this case, the colonial authorities dispatched women to offer sex to agricultural merchants who lived nearby. In 1932, the Indonesian Woman Alliance petitioned colonial authorities to abolish women and child trafficking.[203] Thus, the Dutch colonialists exploited Indonesia's natural resource wealth to their advantage and suppressed indigenous people's human values by using them as forced labour for low rates and threatening those who violated them with criminal prosecution. Additionally, sexual servitude of indigenous women was employed to ensure the continuation of plantation business collaboration contracts with foreign investors.

The Coolie Ordonantie 1880 provides justifications for colonial-era migrant labour laws that were exploitative and harsh. It is unsurprising considering the massive magnitude of colonization occurring in several places. Slavery is also growing in popularity in parts of Africa and Asia. As a result, just as colonialists routinely abused the countries they invaded, the Dutch colonists massively exploited the Indonesian people for their natural resources and their people. Dutch Labour migration strategy toward the Indonesian population on Java was mainly to advance Dutch economic interests. They shared with foreign investors the usage of the plantation estates they held in Indonesia, Suriname, New Caledonia, and Vietnam. Around 300.000 migrant Labourers were moved from Java to Suriname under the Dutch and British Agreement.

In 1872, the Dutch Parliament passed a pact between Great Britain and the Netherlands, allowing British Indians and some Javanese to emigrate to Suriname. Among the several restrictions surrounding recruitment and contract terms was that each shipment of emigrants must contain a proportion of women equal to at least one-half of the men. Indeed, this was one of the few treaties articles the Governor-General of India may amend. Husbands and wives, or parents and their minor children, were not to be separated but were to contract as a family (Articles XVI, XX, XXV, the Agreement between the United Kingdom and the Netherlands on the emigration of British Indians to Suriname, 1870-1871, *Verslag en Handelingen der Staten-Generaal*).[204]

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[202] Michael Neureiter, "Organized Labor and Democratization in Southeast Asia," *Asian Survey* 53, no. 6 (2013): 1063–86.
[203] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*.
[204] Rosemarijn Hoefte, "Female Indentured Labor in Suriname: For Better or for Worse?" *Boletin de Estudios Latinoamericanos y Del Caribe*, June 1987, https://doi.org/10.1007/978-981-10-5166-1_4.

This event illustrates that the law was enacted to advance the Dutch government's power and interests while also serving as a weapon for oppressing indigenous people through the Coolie Ordonantie 1880's forced Labour system. This statute lacked any provision for indigenous peoples' justice. On the other hand, the law relating to the weight of obligations accompanied by criminal penalties predominates. It was utilized as a totalitarian statute to repress the indigenous population. Accordingly, it is unsurprising that the rights of migrant Labourers engaged in various plantation industries during the Dutch partnership were not respected, let alone protected.

2.2.2. The Ethical Policy (Ethische Politiek)

The political upheavals that enabled the Calvinist Catholic Coalition to seize power in the Netherlands in 1901 significantly impacted Indonesian migration law policy. The policy outcome of this new coalition was notable for its formal repudiation of economic exploitation and the initiation of direct economic involvement to better the indigenous population's condition. The straightforward exploitation in the early twentieth century, when the cultural system (1830–70) weakened and was replaced by concern for the welfare, Dutch colonial policy took on a new aim. A critical component of the new policy was establishing a native welfare program, exemplified by the slogan of notable colonial reformer van Deventer: irrigation, emigration, and education. This slogan is referred to as the Ethical Policy.[205]

The Ethical Policy marked the end of a centuries-long relationship between the Netherlands and the East Indies, which began in 1603 with the United East India Company (V.O.C., founded in 1602). The historical context for the ethical policy was that the Dutch government, which assumed control following the V.O.C.'s bankruptcy in 1795, successfully transformed the territory into a profitable colony by institutionalizing a unique agricultural tax system known as the "crops tax" (*cultuurstelsel*).[206] This crop tax required

[205] Riwanto Tirtosudarmo, "The Indonesian State's Response to Migration," *Journal of Social Issues in Southeast Asia* 14, no. 1 (1999): 212–28.

[206] The introduction of the cultuurstelsel by Johannes van den Bosch was intended to ensure the colony's financial independence, maximum expansion of plantations on Java, and export of colonial products to the European market. The system of compulsory cultivation gradually came to an end beginning in the mid-nineteenth century. Three factors contributed to the demise of the Cultuurstelsel. In addition to lowering coffee and sugar prices (which accounted for 97 percent of cultuurstelsel yields) and increasing private business interests in the archipelago, the liberal spirit of 1848 had an impact on the centrally organized system of forced cultivation. Catastrophes caused by monoculture cash crops prompted liberal Dutch minds to advocate for a more liberal economic course in the colony. *See* Robert Weber, Werner Kreisel, and Heiko Faust, "Colonial Interventions on the Cultural Landscape of Central Sulawesi by 'Ethical Policy': The Impact of the Dutch Rule

East-Indies farmers to devote 20% of their land to crop cultivation for the European market. The system resulted in poverty and starvation, eliciting increasingly strident criticism in the Netherlands, eventually leading to its abolition in 1870 and its replacement by the Ethical Policy in 1901, following the extensive debate in the Dutch Parliament and elsewhere.[207]

The Dutch East Indies enacted this new legislation to safeguard the rights of Indonesian Labourers and raise the standard of living for the Indonesian people in general. On the other hand, the three strategic policies outlined in the ethical policy appear to be a form of restitution for the debt owed to the Indonesian people for wealth taken from them. However, to accomplish this goal, three preliminary steps are required: (a) increasing the local population's material living standards, (b) educating the "natives," and (c) facilitating limited forms of political participation. Additionally, the Ethical Policy sought to prepare the East Indies for eventual independence by establishing a federal association with the Netherlands when they were deemed "ready" by Dutch standards. While the Ethical Policy was intended to foster independence, it also resulted in a territorial expansion in the Indies archipelago and increased interference in the daily lives of "indigenous" people, increasing the number of overseas officials required.[208] According to Scholten[209], however, ethical or welfare policies in the Indies, a variant of the social policies introduced in European states around the turn of the century, necessitated a strong government. Similarly, to economic motivation, ethical motivation has been "politicized."

In 1915, as part of the Ethical Policy, the amended *Coolie Ordonantie* 1880 authorized private enterprises to recruit and transport Labourers to the Outer Islands, mainly from Java. *The Algemene Vereniging van Rubber Plantiers ter Ooskust van Sumatra* (AVROS) and *the Deli Planters Vereniging* (D.P.V.) were the first two private agricultural firms created during the Dutch colonial era that was granted permission to hire Labourers. These two enterprises established the precedent for private companies to recruit and export migrants under Indonesia's current government-backed migration system. To support this recruitment system, the Dutch enacted legislation, such as *the Wervings Ordonantie 1936*, a reform of the preceding legislation, and the *Wervings Ordonantie 1887.*[210] Since then, coolie

in Palu and Kulawi Valley, 1905-1942," *Asian Journal of Social Science* 31, no. 3 (2003): 398–434, https://doi.org/10.1163/156853103322895324.

[207] Elisabeth Wesseling and Jacques Dane, "Are 'The Natives' Educable?" *Journal of Educational Media, Memory, and Society* 10, no. 1 (2018): 28–43, https://doi.org/10.3167/jemms.2018.100103.

[208] Wesseling and Dane. *at* 29.

[209] Elsbeth Locher-scholten, "Dutch Expansion in the Indonesian Archipelago around 1900 and the Imperialism Debate," *Journal of Southeast Asian Studies* 25, no. 1 (1994): 91–111.

[210] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 9.

rights have gradually increased, and labour management has also increased under regular government supervision.

2.3. The Coolie Ordinance's Impact on Indonesian Culture

The Dutch-influenced Indonesian life from the moment they landed in the country, conquering all the native kingdoms and replacing them with the Dutch form of rule. The Dutch determined and controlled everything that happened, including economics, law, and politics. Agriculture was the Dutch's primary source of income. As a result, Indonesian migrant Labourers' origins cannot be divorced from the imperialist agenda. According to historical accounts, the Dutch government's policy toward migrant workers was motivated by three goals: to support agricultural industry production and weaken the peasants' solidarity[211] to be less capable of organizing campaigns against the Dutch government's aggressive policies of facilitating sexual slavery.[212]

The term "coolie" was finally assimilated into the Indonesian language as "*Kuli*" in modern Indonesia, which, according to the Big Indonesian Dictionary ("*Kamus Besar Bahasa Indonesia*")[213], refers to a physical Labourer. "Kuli" is frequently used in contemporary Indonesia to denote low-paid informal, physical, and casual workers. Meanwhile, Labour, or "buruh"[214] in Indonesian, refers to someone who works for another and is reimbursed at the local government's minimum wage requirement. In contrast, an employee, or "*Karyawan*," is someone who works in a specific office and is compensated monthly. *Kuli* (Coolie)[215] has the lowest job and wage of the three sorts of Labourers ("*Kuli, Buruh,* and *Karyawan*").

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[211] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. pp.42.
[212] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. pp. 8-9.
[213] M. Moeliono, *Kamus Besar Bahasa Indonesia (KBBI)* (Jakarta: Kementerian Pendidikan dan Kebudayaan, 1988). There is no evidence that the *kuli* phrase was included in the Indonesian Big Dictionary (KBBI) since it portrayed a bad image of Indonesian workers subjected to near-slavelike Labour conditions under the coolie system during the colonial era. It is building a stereotype for low-skilled, uneducated workers, most notably for Javanese Labourers employed by Dutch enterprises both locally and internationally. See L Khairani, "Dinamika Kontestatif Dalam Reproduksi Identitas Budaya Jawa Deli," in *Seminar of Social Sciences Engineering and Humaniora*, 2020, 194–203.
[214] *Buruh* was coined in the late nineteenth century, following the decline of the coolie system. It is only applicable to wage earners who work in urban social settings as well as the industrial and manufacturing sectors, such as railroad workers, port workers, mining workers, factory workers, pedicab drivers, and domestic helpers. *See* Yenni Eria Ningsih, "Perubahan Posisi Indonesia Dalam Perburuhan: Studi Perbandingan Buruh Migran Masa Kolonial Dan Masa Reformasi," *Sejarah Dan Budaya* 12, no. 2 (2018): 194–99.
[215] The term coolie refers to a portrayal that emphasizes masculine rather than feminine characteristics. This is due to the fact that a coolie is not a job that is typically performed by women, as this employment promotes

No precise source explains why the term "kuli" remains in the Indonesian Big Dictionary, even though its historical context refers to the worse working conditions endured by Indonesian Labourers during colonial times. While anti-coolie and moralist campaigns, as well as anti-coolie writings by abolitionists, all contributed to the term's negative connotation.[216] Sukarno, Indonesia's first President, vehemently opposed Indonesian Labourers working as coolies. He stated that to become a respected nation, Indonesians must overcome the coolie mentality ("bangsa kuli"). This Sukarno narrative is now being replicated in today's character education material for young Indonesians for them to pay close attention to Sukarno's speech on the "bangsa kuli."[217]

Indeed, the term "coolie" is widely used in Indonesian society and various occupations. Examples include construction coolies, porters (coolies) in markets and terminals, and plantation coolies; the term coolie is also used colloquially to refer to journalists as "ink coolies." In some contexts, migrant workers who work abroad are referred to as "go *nguli*," or "going to work abroad as a coolie," in the village community's "perception." This reason may have contributed to the exclusion of plantation coolies and migrant workers from the Indonesian Labour legislation system during the New Order (1967–1998) and early reform (1998–2004) eras. Migrant workers' status is not recognized under Indonesian labour law due to their informality, lack of skills, low education, and a variety of other "negative" characteristics. In other words, coolie characteristics inherited from colonial-era coolie legislation continue to exert a significant influence on the character of Indonesian labour law. Indeed, coolie is legally recognized in the Coolie Ordinance of 1880. However, their rights as workers are not adequately respected in practice, and they are even treated as "slaves" in the new version.

Apart from the 'coolie legacy,' Vandenbosch[218] argues that, although the Netherlands Indies has been under Dutch rule for over three hundred years, the indigenous society has remained relatively unaffected by Western influences because of the nature of Dutch colonial policy and administration. The Dutch have a zero-assimilation policy. They worked

physical strength above mental intelligence. *See* Ahmad Khadafi, "Terminologi Budak, Kuli, Dan Babu," tirto.id, 2017, https://tirto.id/terminologi-budak-kuli-dan-babu-chF1.

[216] Yun, *The Coolie Speaks: Chinese Indentured Labourers and African Slaves in Cuba*. *at* xix.

[217] Maryono, Hendra Budiono, and Resty Okha, "Implementasi Pendidikan Karakter Mandiri Di Sekolah Dasar," *Jurnal Gentala Pendidikan Dasar* 3, no. 1 (2018): 20–28, https://doi.org/10.22437/gentala.v3i1.6750; Tahar Rachman, "Analisis Kebijakan Manajemen Pondok Pesantren Dalam Pembentukan Karakter Siswa," *Jurnal Ilmiah Mahasiswa Pascasarjana Administrasi Pendidika* 2, no. 2 (2014): 10–27.

[218] A. Vandenbosch, "The Effect of Dutch Rule on the Civilization of the East Indies," *American Journal of Sociology* 48, no. 4 (1943): 498–502.

to safeguard and strengthen indigenous institutions and cultures. The primary and secondary levels of education have been kept as indigenous as possible. Higher education did not develop until relatively recently, and the maintained standards were so stringent that enrollment was kept to a minimum.

2.4. Japan's Romusha or Forced Labour Law

The other colonial origin of the Indonesian migrant worker laws was the romusha law of 1942, enacted under Japanese rule. In 1942, Japan successfully expelled the Dutch from Indonesia and assumed control. Under the guise of a mission, Japan arrived in the East Indies (Indonesia[219]) in 1941, exploiting native psychological desires for independence from Dutch colonial rule and promising to establish a new state. The Japanese presented themselves as their older brother to gain the indigenous people's confidence in their mission. As a result, when they arrived in the East Indies, they were greeted with tombs-up ('*jempol*') from the natives, signifying their warm welcome, support, and respect.[220] This strategy successfully attracted indigenous peoples to the Japanese cause against the Dutch, resulting in Japan's victory. However, Japan's primary objective in conquering the East Indies was acquiring oil, rubber, and tin, among the most strategically important resources that attracted the attention of western nations, including the United States of America.[221] In addition, the Japanese mission in Indonesia was to bolster their regional military presence.[222] This situation led to competition between the United States and Japan for priority access to oil imports, which eventually escalated into a military conflict. Japan successfully fought and won wars against the United States in Hawaii, the Philippines, Malaya, and the East Indies. Among these victories was the native inhabitants' support, which was critical to Japan's successful invasion of the East Indies. Prior to the outbreak of hostilities, it was estimated that 300,000 tons of oil would be acquired from the Dutch East Indies, but this estimate was later increased to 1.7 million tons.[223] Japan shifted its focus from the indigenous people's natural resources to human resources after exploiting them successfully. Workers and

[219] Indonesia will be used instead of East Indies due to the fact that in 1928, Indonesia was used by young Indonesians who were determined to form Indonesia during a historical moment known as "sumpah pemuda" or Youth Pledge.
[220] Ethan Mark, "Japan's Occupation of Java in the Second World War: A Transnational History," *The Journal of Asian Studies* 79, no. 2 (2020): 540–42, https://doi.org/10.1017/s0021911820000649.
[221] Shigeru Sato, "Indonesia 1939-1942: Prelude to the Japanese Occupation," *Journal of Southeast Asian Studies* 37, no. 2 (2006): 225–48, https://doi.org/10.1017/S0022463406000531.
[222] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 10.
[223] Remmelink, *The Invasion of the Dutch East Indies*.

military reserve personnel constituted a scarce resource for the Japanese at the time. Therefore, Japan recruited many Javanese Labourers (known as 'romusha') and dispatched them to work on the Japanese transportation infrastructure project and the military reserve across the occupied Pacific Islands territory.[224]

Romusha is a term commonly applied to Labourers in Asia-Pacific countries occupied by the Japanese. Nonetheless, romusha was primarily identical to the term for forced Labour, which was recruited and sent to a Japanese project or military reserve. In other words, romusha did not mean Labourer in the modern sense. It tends toward enslavement by "unwritten law." Therefore, it was interpreted in a variety of ways by various scholars. Due to the limited number of sources discussing 'the romusha law,' law scholars paid little attention to the romusha issue in this context. This section examines how and to what extent Japanese colonial authorities enforced the romusha law against Javanese Labourers between 1942 and 1944.

2.4.1. Romusha

There is insufficient information about the romusha law. Therefore, almost no legal scholars paid attention to this issue. Multiple traditional sources, such as diaries, interviews with surviving romusha[225], and sources from third countries' perspectives on romusha, such as Thailand, Burma, and Malaysia, were utilized by scholars from other disciplines to obtain romusha sources. The subsequent description is part of the minimal sources discussing the historical context of the romusha. Romusha, the Japanese term for Labour, has two distinct political connotations in Southeast Asian countries. Takuma Melber[226] asserts, citing two scholars, Sato and Kurasawa, that the term 'romusha' refers to a common Labourer in certain Southeast Asian countries.

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[224] Shigeru Sato, "Indonesia 1939-1942: Prelude to the Japanese Occupation," *Journal of Southeast Asian Studies* 37, no. 2 (2006): 225–48, https://doi.org/10.1017/S0022463406000531.*at* 229.

[225] Malaysia began collecting romusha history in 2013 through a symposium called the Death Railway Interest Group (The DRIG symposium) to commemorate the railway's 70th anniversary of completion. The goal of this DRIG symposium was to collect romusha memories retrieved from a child survivor whose father was recruited from Malaya to work on the infamous 415km Siam-Burma Railway built by the Imperial Japanese Army during World War II between October 1942 and October 16, 1943. *See* Pillay Suzanna, "Remembering the `Romusha' Who Built Death Railway," *New Straits Times*, December 18, 2016.

[226] Takuma Melber, 'The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia', *International Review of Social History* 61, no. 24 (2016): 165–85, https://doi.org/10.1017/S0020859016000390.

In contrast, it previously referred to a forced Labourer in Indonesia. According to Shigeru Sato[227], "romusha" refers to an unskilled Labourer who performs temporary construction work. Typically, such a labourer is a single male who lives in Labourers' quarters during his employment. When he finished, then sought another job". Meanwhile, Kurasawa emphasized that the term "romusha" does not simply mean "Labourer" in Indonesia. Romusha were "forced Labourers recruited by the Japanese to perform difficult physical labour" during the Japanese occupation.[228] According to Lizzie Oliver[229], the literal translation of romusha from the Dutch coolie in 1880 was native Labourers recruited by the Japanese to work on a railway project or for military service. All these interpretations of romusha concur with its translation as an indigenous labourer recruited through two distinct methods: voluntarily and forcibly. Although some scholars consider romusha comparable to coolie under the Dutch labour legislation of 1880, the recruitment and treatment practices of the two bonded labour laws distinguish them. Coolie continued to respect workers' rights and was recruited voluntarily. In contrast, under romusha law, Labourers were hired and treated inhumanely. In this context, romusha legislation was extremely inhumane towards the Labourers. The romushas who work on the Japanese railway construction project[230] endure inhumane conditions, including malnutrition, illness, overwork, lack of sanitation and medical care, and inhospitable surroundings.[231]

The severe condition of the romusha was exacerbated by the fact that they were assembled haphazardly from the poor, largely uneducated segments of their respective populations, were wholly disorganized and were incapable of communicating in each other's languages, let alone Japanese or English.[232] Consequently, the romusha lacked their disciplinary structure, essential for morale under adverse conditions, physicians, nurses,

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[227] Sato, "Indonesia 1939-1942: Prelude to the Japanese Occupation," 2006.
[228] Arjen P Taselaar, "War, Nationalism and Peasants: Java Under the Japanese Occupation, 1942-45," *The Journal of Military History* 61, no. 1 (1997): 192, https://doi.org/10.4324/9781315698274.
[229] Lizzie Oliver, "'Like Pebbles Stuck in a Sieve': Reading Romushas in the Second-Generation Photography of Southeast Asian Captivity," *Journal of War and Culture Studies* 10, no. 4 (2017): 272–86, https://doi.org/10.1080/17526272.2017.1385265.
[230] Murai Yoshinori insisted that the Japanese government's massive recruitment of civilians for departure to occupied Japanese territory also served a military purpose. *See* Janet Goff, "The Burma-Thailand Railway : Memory and History," *Japan Quarterly* 42, no. 3 (1995): 352.
[231] Paul H. Kratoska, "Labor Mobilization in Japan and the Japanese Empire," in *Asian Labor in the Wartime Japanese Empire*, ed. Paul H. Kratoska (New York: Routledge Taylor & Francis Group, 2005), 3–21.
[232] Pillay Suzanna, "Remembering the `Romusha' Who Built Death Railway," *New Straits Times*, December 18, 2016, https://www.proquest.com/newspapers/remembering-romusha-who-built-death-railway/docview/1849975017/se-2?accountid=16746.

other medical personnel, and, most importantly, language interpreters.[233] The Japanese took advantage of these romushas' disadvantages to advance their economic and development goals, regardless of their human rights.

2.4.2. Romusha Recruiting Technique

It was unclear whether Indonesian romusha were recruited voluntarily or under duress. According to a primary source, Indonesian recruitment of forced migrant workers (romusha) appears comparable to what the Japanese did to Malaysian romusha. Suzanna Pillay[234], a survivor of the Imperial Japanese Army's Death Railway (Siam-Burma Railway) constructed in 1942, stated at the DRIG 2013 symposium in Kuala Lumpur that each family was compelled to send one man to work on the Death Railway. However, according to Takuma Melber[235], the romusha was initially hired voluntarily, with the Japanese promising them a living wage. It indicates that the Japanese used this recruitment strategy to attract Labourers to join voluntarily in job recruitment. However, the Japanese strategy shifted to forcibly recruiting Indonesian romusha like the Malaysian romusha recruitment model used in 1942. In the meantime, according to Paul H. Kratoska[236], most workers were nominally hired as paid contract Labourers, while many were recruited under duress, and forced Labour was utilized. The procedure resulted in many deaths and a massive displacement of people.

The Japanese army and navy coordinated the transport of romusha from the Japanese army-controlled island of Java to the Japanese navy-controlled territories on July 10, 1942. Following that, the Southern Army's directors responsible for romusha declared Java a critical source of romusha during a subsequent conference.[237] Finally, in September 1944, the provisional House of Councillors in Tokyo ordered an increase in their supply. It should be noted that systematic large-scale recruitment of romusha in Java did not begin until July 1942 and October 1943, when the Burma-Siam Railway was completed.[238]

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[233] David Boggett, 'Notes on the Thai-Burma Railway Part II: Asian Romusha; the Silenced Voices of History' (silo. tips, 1986).
[234] Suzanna, "Remembering the `Romusha' Who Built Death Railway," December 18, 2016.*at* 1.
[235] Takuma Melber, 'The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia', *International Review of Social History* 61 (2016): 165–85, https://doi.org/10.1017/S0020859016000390.
[236] Kratoska, "Labor Mobilization in Japan and the Japanese Empire."
[237] Melber, 'The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia', 2016. Ibid.
[238] Melber, 'The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia', 2016.

There was no precise data regarding the number of Javanese "romusha" employed by Japanese companies. There was, however, an estimate that less than 200,000 Javanese "romusha" were shipped overseas, less than one-fifth of the total number mobilized for domestic employment. They were assigned to Burma, contributing minimally to the railroad project. Between 25,000 and 50,000 Javanese were employed as civilian Labour on various construction projects by Japanese troops in Asia and the Pacific. Javanese Labourers, whether deployed overseas or assigned to domestic projects, were motivated by a combination of incentives, fraud, and coercion, with coercion gaining prominence.[239]

L. de Jong's[240] citation of classical sources reveals disparate data regarding the number of Javanese romusha recruited during the Japanese conquest of the East Indies. In November 1944, there were approximately 2.6 million romushas on Java, of whom nearly one million were employed temporarily, according to Japanese statistics that were preserved. Since these temporary workers would have had to be replaced at some point, the total number of Javanese "work soldiers" deployed during the Japanese occupation was likely significantly higher than 2,6 million. In 1951, the Indonesian government estimated the total number of romushas to be 4.1 million, the majority of whom had been deployed for only a brief period and had not been deported from the islands on which they lived.

Shigeru Sato[241] discovered that by mobilizing migrant workers from Java, particularly Banyumas, the majority of whom were farmers, to work on Japanese railroad and agricultural projects, the area under cultivation dropped due to a personnel crisis caused by increased death rates.[242] Japan desired to use the densely populated island as its "main supply base in the Southwestern Pacific" and "achieve self-sufficiency in rice, cotton, jute, castor oil, coal, and a variety of other commodities."

Since most romushas were illiterate and lived in village communities, the romusha's original recruitment method was word of mouth via the community's social elites, which included the village chief, Foreman of the plantation, or Mandador, Labour bureau civil servants, and Japanese military. The romusha applied in droves after learning about the job opportunity in rail construction.[243] However, the Japanese government's treatment of

[239] Donald Smith, "Beyond " The Bridge on the River Kwai ": Labor Mobilization in the Greater East Asia Co- Prosperity Sphere," *International Labor and Working-Class History* Fall, no. 58 (2000): 219–38.
[240] L. de Jong, *Hiroshima in History and Memory*, ed. Michael J. Hogan, Third (California: Cambridge University Press, 1999). *at* 125.
[241] Sato, "Indonesia 1939-1942: Prelude to the Japanese Occupation," 2006.*at* 246.
[242] David Jenkins, "Soeharto and the Japanese Occupation," *Indonesia* 88, no. October (2009): 1–103. *at* 88.
[243] Melber, 'The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia', 2016.*at* 170-172.

destitute East Indies Labourers remained comparable to that of the Dutch East Indies authorities.[244] The Japanese exploitation of Javanese migrant Labourers (romusha) was inhumane because it separated male employees from their wives and children. Since the romusha was not accompanied by a wife or children, some survivors may have married non-Javanese women and therefore lost a significant portion of their identity as Javanese.[245]

2.4.3. Penal Sanctions Imposition

The Japanese recruitment strategy for romusha adhered to the Dutch model, which employed colonial bureaucrats, such as the village chief (‘lurah) and the labourer chief (‘mandatory), with punitive measures. However, some conditions distinguished the two colonialists’ treatment of the natives' rights as forced migrant Labourers. When the romusha arrived at their work destination, they felt as if they were being thrown into a Japanese trap. They were compelled to work continuously without adequate rest breaks and under the strict supervision of the Japanese army in Burma’s rail construction.[246]

The romusha are treated as enslaved people, with their rights violated. Undoubtedly, many romusha suffered bodily and mental agony to the point of disease, and others perished from fatigue. When the first deserters from the labour force returned to their homes and informed the villagers of the working conditions on the Burma-Siam Railway, the Japanese military authority in Malaya began recruiting new Labourers by deceit or compulsion. This strategy was accepted or even encouraged by Malayan village chieftains, known as “penghulu”. Numerous documents detail residents who were abruptly snatched from their daily lives, pressed into submission on the street by Japanese soldiers, loaded onto trucks, and effectively kidnapped. Coercive recruitments frequently occurred in public places such as street cafes, cinemas, and after Friday prayers for Muslims.[247]

The Japanese romusha Labour system appears harsher than the Dutch Coolie system, as Labourers were malnourished, severely assaulted, and forced to work until they died. Pneumonia, tuberculosis, malaria, diarrhoea, and yaws killed tens of thousands of people. Many thousands more appear to have died of exhaustion.[248] After the Japanese invasion,

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[244] Sato, “Indonesia 1939-1942: Prelude to the Japanese Occupation,” 2006. Ibid.
[245] Lockard, ‘The Javanese as Emigrant: Observations on the Development of Javanese Settlements Overseas’. *at* 43.
[246] Melber, ‘The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia’, 2016. *at* 173.
[247] Melber. *Ibid*.
[248] Jenkins, “Soeharto and the Japanese Occupation.” *at* 74.

only 10,000 of the nearly 300,000 Javanese migrant Labourers recruited by Japan were repatriated; the fate of the remaining workers is unknown.[249]

The presented fact demonstrates that during Japan's conquest of the East Indies, migrant workers were not subject to written law, in contrast to the Dutch colonial government's coolie ordinance. Romushas, on the other hand, are employed strictly under military 'law' and subjected to harsher 'penal sanctions' that endanger their physical health and force them to work on the rail project until they die. This case demonstrates that 'romusha' was a form of slavery used by the Japanese Emperor against Indonesian Labourers.

2.5. Concluding Remark

This chapter has demonstrated how harmful the Coolie Ordinance of 1880 was to the indigenous people (Indonesian Labourers) during the Dutch Colonial time. The main features of the "coolie ordinance" that are detrimental to the human rights of "migrant workers" are forced labor, poor working conditions, penal sanctions, and all the worst treatment of the Labourers, ultimately leading to the creation of the International Labour Convention. Similarly, the Japanese colonial labour system's practice turned worse than the Dutch colonial labour system. Labour was especially essential in the Japanese era's practice of slavery, which was carried out via a system known as romusha or forced Labour[250]. The migrant [labourer] system became a symbol of ancient Indonesia's worst Labour legislation, which enslaved Labourers to advance the political-economic interests of Colonialists, the Dutch, and Japan. They did not regard the Labourers' very existence as human beings, let alone their fundamental rights.

The forced labour statute was implemented in both colonialism regimes to supplement the enslavement system used by the two colonialists to gain political and economic control over the Indonesian people. As a result of the worst period of labour practice in history, international communities may consider that such 'slavery' labour law should not exist in any form in the future of the global labour legal system. Consequently, fundamental workers' human rights must be recognized, protected, and upheld regardless of

[249] Lockard, 'The Javanese as Emigrant: Observations on the Development of Javanese Settlements Overseas'; Lockard, 'Repatriation Movements among the Javanese in Surinam: A Comparative Analysis'.
[250] Lockard, 'The Javanese as Emigrant: Observations on the Development of Javanese Settlements Overseas'. At.43. See also E. Spaan, "Taikongs and Calos: The Role of Middlemen and Brokers in Javanese International Migration," *International Migration Review* 28, no. 1 (1994): 93–113, https://doi.org/10.2307/2547027.

their employment status, particularly if the government receives economic benefits, such as remittances from migrant workers, and aids in poverty reduction. As a result, it is unsurprising that the Indonesian 1945 Constitution's preamble stated: "that colonialization in the world must be abolished due to its inhumane and unjust nature." This statement has also become one of the justifications for not amending the 1945 Constitution's preamble in 1999, which was intended to serve as a historical account of Indonesia's struggle against colonialists for the advancement of the future nation's development.

Additionally, when the Indonesian legislator drafts any similar legal policy regulating labour management, the characteristics of slavery and support for indenture work in the colonial coolie ordinance or romusha should be fully understood. Simply put, it is critical to study legal history to improve the quality of legislation, particularly when it comes to labour in general and migrant labour. Is the postcolonial government in Indonesia conscious of the colonial "coolie" feature of their migrant Labourer's legislation? That will be the topic of the following discussion.

CHAPTER 3

Indonesian Post-Colonial Migrant Worker Legislation

A Recurring Historical-Structural Approach

This chapter will look at Indonesia's migrant worker legislation, enacted following the country's independence from the colonial empire in 1945. The historical-structural approach[251] will be used to examine how and to what extent migrant worker legislation was established over the regime's three decades, from Sukarno's Old Order (1945–1967) to Suharto's New Order (1967–1998) to the Reform Era's early years (1998–2004). Sukarno's regime opposed migrant worker policies to advance his revolution agenda of eradicating all Western influence on the new Indonesian state, most notably colonial legacies. As a result, Sukarno took no action to regulate migrant workers. In comparison to Sukarno, Suharto made extensive use of "technical laws" governing the management of migrant workers, with the dual goal of increasing migrant remittances and alleviating poverty. Suharto sent many migrant workers to Saudi Arabia and the ASEAN region, specifically Singapore, Malaysia, and Brunei Darussalam. The pattern of migrant worker recruitment was like that of colonial governments, with the objectives slightly modified, as mentioned previously. Suharto's

[251]Economic theories of migration are another approach to migration theory. Economic migration theories emphasize people's proclivity to migrate from densely populated to sparsely populated areas, or from low-income to high-income areas, or they link migration to business cycle fluctuations. These approaches are frequently referred to as 'push-pull' theories, as they attribute migration to a combination of 'push factors' that attract migrants to particular receiving countries. 'Push factors' include population growth, low living standards, a lack of opportunities, and political repression, whereas 'pull factors' include labor demand, land availability, economic opportunities, and political freedom. Following that is migration system theory, which aspires to encompass a broad range of disciplines and to encompass all facets of the migration experience. Two or more countries that exchange migrants constitute a migration system. Additionally, the migration system theory suggests that migratory movements are generally the result of prior connections between sending and receiving countries through colonization, political influence, trade, investment, or cultural ties. Numerous examples of this type of migration strategy include the migration from Mexico to the United States, which began with the United States' southwestward expansion in the nineteenth century, and the deliberate recruitment of Mexican workers by US employers in the twentieth century. The Dominican Republic's migration to the United States of America began during the 1960s US military occupation. Similarly, the migration of both Koreans and Vietnamese to America was a long-term result of the US military involvement. The migration of Indians, Pakistanis, and Bangladeshis to the United Kingdom is connected to the British colonial presence on the Indian subcontinent. Similarly, Caribbean migrants have tended to migrate to their former colonial power: for example, the migration of Jamaicans to the United Kingdom and Martinique to France (but not to Germany) is explained by the French colonial presence in Algeria, whereas the Turkish presence in Germany is explained by Germany's direct labor recruitment in the 1960s and early 1970s. The other school of thought is transnational migration theory. This characteristic of migration is the result of rapid advancements in transportation and communication technologies, which make it easier for migrants to maintain close ties to their home countries. These developments also contribute to the growth of circulatory or repeated mobility, in which individuals migrate frequently between locations with which they have economic, social, or cultural ties. *See* Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World* (New York: Palgrave Macmillan, 2003).

attitude toward migrant workers remained unchanged throughout Indonesia's early stages of migrant law reform. Similarly, at the dawn of the reform era, the character of migrant worker legislation remained consistent with Suharto's model, even though massive legislative reforms were implemented following the 1945 Constitution's amendment.

Through a historical examination of migrant worker political legislation issues in post-independence Indonesia from 1945 to 2004, this chapter demonstrates that, despite a shift in emphasis, the pattern of migrant worker legislation has remained strongly influenced by the colonial era's historical-structural approach. This strategy put the government's objective ahead of the interests of migrant workers. In this instance, political legislation demonstrates its critical role in ensuring the management of migrant workers. The quality of migrant worker legislation reflects the quality of Indonesian democracy. In this case, more than a half-century of Indonesian politics developed along an 'undemocratic' government path, where the government mind determined all matters of public interest. The following section will examine how each regime's legislation on migrant workers adheres to the historical-structural approach. In 2002, the Indonesian People's Consultative Assembly (*'Majelis Permusyawaratan Rakyat* or MPR') successfully amended the 1945 Constitution, resulting in civil liberty and legislative democracy. Five years later, in 2004, the Act on Migrant Worker Placement and Protection was promulgated for the first time since Indonesia gained independence in 1945.

3.1. Indonesia's Independence Transition: A Migrant Worker's Perspective

Sukarno declared Indonesian independence on August 17, 1945, just moments after the United States defeated Japan in World War II. Japan immediately withdrew from Indonesia after the United States bombed Nagasaki and Hiroshima, causing widespread devastation. Young Indonesian independence fighters urged Sukarno to immediately proclaim Indonesia's independence to the international community and seize the vacuum of colonial power in the country. Sukarno, who was a prominent figure in the fight for Indonesian independence, was sent into exile to Rengasdengklok, a small village located in East Jakarta. Sukarno rushed to prepare a brief and direct proclamation of independence speech regarding the mission to be delivered to the world community at the urging of the freedom fighters. Sukarno stressed in his opening remarks before reading the proclamation's text that Indonesian independence had been the ideal of the Indonesian people's struggle for more than 3.5 centuries until the Japanese occupation. Hence, the golden opportunity

presented during the Second World War must be used to declare Indonesia's independence to the world. Indeed, prior to the American attack on Japan, it promised Indonesian independence by establishing the "*Dokuritsu Junbi Cosakai*" ("*Badan Penyelidik Usaha-Usaha Persiapan Kemerdekaan Indonesia* or BPUPKI"), a special committee tasked with preparing for Indonesian independence on April 25, 1945.[252] This committee was disbanded after Sukarno and other Indonesian freedom fighters took the initiative to declare Indonesian independence amid an Indonesian colonial power vacuum. As a result, the 1945 Constitution's preamble refers to Indonesia's independence as a divine blessing, implying that it was not a gift from any colonial power. The following is the complete text of Sukarno's speech prior to and following the proclamation of Indonesian independence, as translated by Kahin:[253]

"Brothers and Sisters All!
I have asked you to attend to witness an event of utmost importance in our history. For decades we, the People of Indonesia, have struggled for the freedom of our country-even for hundreds of years! Our attempts to achieve independence have been crests and troughs, but our spirit has remained steadfastly oriented toward our objectives. Also, our efforts to achieve national independence during the Japanese period never ceased. In this Japanese period, it merely appeared that we leant upon them. However, we continued to build up our powers and still believed in our strengths.
Now is when we must assume full responsibility for our actions and the future of our nation. Only a nation bold enough to take its fate into its own hands will be able to stand in strength. Therefore, last night, we deliberated with prominent Indonesians from all over Indonesia. That deliberative gathering was unanimous in the opinion that NOW has come the time to declare our independence.

Herewith we declare the solidarity of that determination.
Listen to our proclamation:

PROCLAMATION
WE, THE PEOPLE OF INDONESIA, WITH THIS DECLARE OUR INDEPENDENCE OF INDONESIA. MATTERS WHICH CONCERN THE TRANSFER OF POWER AND OTHER THINGS WILL BE EXECUTED BY CAREFUL MEANS AND IN THE SHORTEST POSSIBLE TIME.
DJAKARTA, AUGUST 17, 1945
IN THE NAME OF THE PEOPLE OF INDONESIA
SUKARNO-HATTA

Sukarno then concluded:
So it is, Brothers and Sisters! We are now already free!

[252] Frances Gouda and Thijs Brocades Zaalberg, "The Politics of Independence in the Republik Indonesia and International Reactions, 1945-1949," in *American Visions of the Netherlands East Indies* (Amsterdam University Press, 1949).
[253] George McT. Kahin, "Sukarno's Proclamation of Indonesian Independence," *Indonesia* 69 (April 2000): 1, https://doi.org/10.2307/3351273.

There is not another single tie binding our country and our people! From this moment, we build our state—a free state, the State of the Republic of Indonesia-evermore and eternally independent. Allah willing, God blesses and makes safe this independence of ours!

The transitional authority and other matters related to the state's independence will be organized smoothly and expeditiously, as stated in the proclamation text, implying the direct transfer of power from Japan to Indonesia and the legal system, rights, and obligations of third parties. Thus, the 1945 Constitution was promulgated a day after independence, defining the state structure, legal system, national language, government form, legal institutions, and citizen rights. However, Indonesia faces many domestic and international challenges following the power transition. Similarly, the Indonesian government drew attention to Indonesian migrant coolies or romushas working abroad in colonial agricultural industries in Suriname or railway projects throughout Asia. However, the migrant issue was not unique to Indonesia but was shared by nearly all colonized countries during the United Nations post-decolonization campaign. Following World War II, a process of decolonization[254] began that has not been completed to this day. Due to shifting socio-political conditions, millions abandoned their country of origin or residency and migrated to their previous colonizer. It was the case for Indonesian migrant workers in Suriname[255] and other Asia-Pacific countries. Similarly, the Dutch people born in Indonesia were forced to leave their homeland following the country's independence in 1945.[256]

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[254] The United Nations' decolonization efforts are motivated by the principle of "equal rights and self-determination for all peoples" enshrined in Article 1(2) of the United Nations Charter, as well as by three specific chapters devoted to the interests of dependent peoples in the Charter. In Chapter XI of the Charter, the Charter established the principles that continue to guide the United Nations' decolonization efforts ("Declaration Regarding Non-Self-Governing Territories," Articles 73 and 74). The Charter's Chapters XII (Articles 75-85) and XIII (Articles 86-91) established the International Trusteeship System and the Trusteeship Council to supervise the Trust Territories. In 1960, the United Nations General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)), colloquially referred to as the Decolonization Declaration. The General Assembly, mindful of the UN's critical role in assisting the movement for independence in Trust and Non-Self-Governing Territories, stated in this resolution that it was critical to end colonialism in all of its forms and manifestations as soon as possible and unconditionally. Additionally, it stated that everyone has the right to self-determination. The declaration of decolonization galvanized the countries that remained colonized, galvanizing them to achieve independence as quickly as possible. On the other hand, decolonization weakened the White Powers in their colonized territories. As a result, numerous new countries emerged across the globe prior to and following the declaration of decolonization. *See* Edward McWhinney, "Declaration on the Granting of Independence to Colonial Countries and Peoples," https://legal.un.org, 2008, https://legal.un.org/avl/ha/dicc/dicc.html; A. G. Hopkins, "Rethinking Decolonization," *Past and Present* 200, no. 1 (2008): 211–47, https://doi.org/10.1093/pastj/gtn015.

[255] Meel, "Jakarta and Paramaribo Calling: Return Migration Challenges for the Surinamese Javanese Diaspora?"

[256] Wim Willems, "No Sheltering Sky: Migrant Identities of Dutch Nationals from Indonesia," in *Europe's Invisible Migrants*, ed. Andrea L. Smith (Amsterdam University Press, 2003), 33–59.

There is no precise figure for the total number of Indonesian coolies and romushas who returned to Indonesia after independence. Benedict Anderson[257] slightly predicted that only about 10% of the hundred coolies would be repatriated. The remainder is unknown; they are either deceased, have continued to work in their destination countries, or have concealed their nationality, as with Indonesian coolies in Suriname[258]. According to [Janaese] document No.2750, the Japanese officially estimated the number of romushas to be 270,000 men following their capitulation, of which only 70,000 could be recovered after the war. As a result, Azis[259], a romusha researcher, stated that the exact numbers of Romushas transported outside Java are unknown. On the other hand, following Indonesia's independence, Dutch people born in Indonesia fled the country in droves to reclaim their ancestral lands in the Netherlands.[260]

This fact demonstrates that following Indonesia's independence, migrant workers employed as coolies or romusha's primary concern was repatriation to their Indonesian families. However, who was responsible for repatriation was unknown: the Indonesian government, colonialists, or migrant workers. The case of Javanese migrant workers (coolies) in Suriname during the Dutch East Indies' final years before being defeated by Japan is a clear example of repatriation. Javanese coolies were repatriated using a selection method, but no clear criteria were established. According to Lockard[261], only 7,684 Javanese chose repatriation to Java between 1897 and 1938, accounting for roughly one-quarter of all immigrants. The vast majority remained in Surinam to work as free or renewed contract Labourers on the plantations or to engage in small-scale agriculture, primarily rice or vegetable cultivation. For a variety of reasons, the Javanese remained in Surinam. Following 1895, the government agreed to provide a small plot of land and a 100-guilder premium to all former indentured workers who waived their right to paid repatriation. Most Javanese accepted this offer after their hopes of returning to Java wealthy were dashed; Surinam's financial boon had not materialized. The wages were insufficient to save, partly because the cost of living in Surinam was significantly higher than in Java. The desire of many, if not

[257] Benedict R O G Anderson, "Old State, New Society: Indonesia's New Order in Comparative Historical Perspective," *The Journal of Asian Studies* 42, no. 3 (1983): 477–96.
[258] Allison Blakely, "Historical Ties among Suriname, the Netherlands Antilles, Aruba, and the Netherlands," *Callaloo* 21, no. 3 (1998): 472–78.
[259] M. A. Aziz, *Japan's Colonialism and Indonesia*, *Martinus Nijhoff* (The Hugue: Martinus Nijhoff, 1955). *at* 242.
[260] Willems, "No Sheltering Sky: Migrant Identities of Dutch Nationals from Indonesia."
[261] Lockard, "Repatriation Movements among the Javanese in Surinam: A Comparative Analysis."

the majority, of Surinam Javanese to return to Java constituted a profound case of nostalgia and homesickness, most notably among Java-born individuals.[262]

Revert to British colonial law in 1879 as a comparative method of repatriating their coolies. British enacted Law No. 12 of 1879, Section I, requiring male returnees to contribute one-fourth of the passage money and female returnees to contribute one-sixth. This law was amended in 1889 by Law No.2, which increased the proportion of passage money payable by immigrants to half for males and one-third for females. Dependants of destitute or disabled migrants were entitled to a free return passage. Roopnarine[263] noted that the amendment to the law came about because of the businessman's prolonged lobbying of the government to avoid returning the coolie too soon after their contract expired. However, the primary reason for not returning ex-indentured Labourers was to avoid financial responsibility. It was evidenced when landowners successfully petitioned the colonial authorities to alter the laws to fit their needs.[264]

The two preceding cases demonstrate that the companies were responsible for repatriating migrant workers employed by colonialist enterprises. On the other hand, the colonial government enacted legislation guaranteeing the right of migrant workers (coolies) to be repatriated to their families once their employment contract with the companies expired. In the case of Indonesia, as a newly formed state in 1945, the government had no policy for repatriating coolies from colonialist lands abroad, owing to the difficulties associated with maintaining the new state at home and abroad. In that case, the government appears to completely defer to the individual migrant worker's decision whether, or not to return home. As a result, there is no doubt that a sizable portion of the Indonesian diaspora still resides in European countries, most notably the Netherlands.[265] The remainder of Surinam's diasporas remain.[266]

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[262] Lockard. *at* 89.
[263] Lomarsh Roopnarine, "The Repatriation, Readjustment, and Secondterm Migration of Ex-Indentured Indian Labourers from British Guiana and Trinidad to India, 1838-1955," *NWIG: New West Indian Guide* 83, no. May 2021 (2009). *at* 75.
[264] Lockard, "Repatriation Movements among the Javanese in Surinam: A Comparative Analysis."
[265] LIPI, *The Mobility of Unskilled and Undocumented Migrants: Indonesian Migrant Workers in the Netherlands*, ed. Amin Mudzakkir (Jakarta: LIPI Press, 2014).
[266] Meel, "Jakarta and Paramaribo Calling: Return Migration Challenges for the Surinamese Javanese Diaspora?"; Lockard, "Repatriation Movements among the Javanese in Surinam: A Comparative Analysis."

3.2. Migrant Worker Legislation Under Sukarno (the Old Order, 1945-1967)

This section will examine the legislation governing migrant workers in Indonesia, which was enacted following the country's independence from the colonial empire in 1945. *The historical-structural approach* will be used to examine how and to what extent migrant worker legislation was established over the regime's three decades, from Sukarno's Old Order (1945–1967) to Suharto's New Order (1967–1998) and the early years of the Reform Era (1998–2004). According to Tirtosudarmo[267], [the Coolie Ordinance 1880] affected subsequent centuries' discourse on Indonesia's development. One of the endurance qualities is the migration system policy, which emphasizes sponsored people's mobility from the interior, especially Java, to the outlying islands. Surprisingly, this issue has remained on the state's agenda for nearly a century. The colonial state's division of the island into inner, i.e., Java, and outer islands has also endured. This discrepancy derives from perceiving remote islands as untapped economic opportunities and Java as the core of a population surplus.

This study demonstrates that the pattern of migrant worker legislation politics has remained strongly influenced by the colonial era's *historical-structural approach*, albeit with a shift in focus. Sukarno's regime opposed the policy of migrant workers to advance his revolution agenda of eradicating all Western influence on the new Indonesian state, mainly colonial legacies. As a result, Sukarno promulgated no legislation regulating migrant workers. He even campaigned openly to rebuild the national mentality to remove the "Bangsa kuli" or coolie nation mentality from the minds of Indonesians. However, Sukarno's revolution appears to be ambiguous, as, on the one hand. He wanted his people to stop working abroad or being coolies. However, on the other hand, he did nothing to create the jobs that were sorely needed due to the economic crisis that existed during his presidency.

Compared to Sukarno, Suharto extensively used "technical laws" governing migrant worker management, with the dual objective of increasing migrant remittances and alleviating poverty. Suharto dispatched many migrant workers to Saudi Arabia and the ASEAN region, including Singapore, Malaysia, and Brunei Darussalam. The pattern of migrant worker recruitment followed the colonial government model, with the previously mentioned slight modification to the objectives. Suharto's attitude toward migrant workers remained unchanged during the initial stages of Indonesian migrant law reform. Regrettably, certain aspects of Suharto's migrant worker policy were adopted with modifications by

[267] Tirtosudarmo, "The Indonesian State's Response to Migration." *at* 215.

certain governments during the early stages of reform (1998–2004). However, the legal policies governing migrant workers at the time were inadequate in protecting migrant workers' human rights, necessitating a trial-and-error approach to migrant worker management. These points will be discussed in greater detail in the following section.

3.2.1. The Anti-Colonialism Movement

Sukarno was chosen as the first President of the Republic of Indonesia following Indonesia's independence on August 17, 1945[268]. Sukarno's administration's policy on foreign labour migration is sketchy in history. However, the population flow pattern within Indonesia has been preserved in a manner analogous to the colonial migration policy. For example, the publication of Provisional People's Consultative Assembly Decree No. II/MPRS/1960 on the Outlines of the First Stage of General National Development Patterns 1961-1969 proves this. However, according to Migrant Care Indonesia[269], this migrant legislation is more likely to be used as recompense for war veterans seeking land for survival. Sukarno recruited military veterans outside of Java, considered to have a large amount of undeveloped land, to carry out the migration plan.

Meanwhile, the only historical record of international labour migration is the collaboration of the Indonesian Islamic Labour Union and the Eastern Islamic Labour Union in the 1950s, which dispatched Indonesian personnel to work on Middle Eastern construction projects. For the most part, the labour movement is deeply committed to political efforts fighting all forms of imperialism and colonialism[270]. This effort is closely related to Sukarno's stated objective of provoking a revolution. Sukarno's magnum opus "*Dibawah Bendera Revolusi*[271]" or 'Under the Revolutionary Flag' was released.

Sukarno's lack of interest in migrant labour concerns stemmed from Indonesia's status as a newly independent state confronted with multiple political challenges from both internal and external countries.[272] Furthermore, World War II was still ongoing in many parts of the world. As a result, Sukarno focused on strengthening the nation's foundations, even

[268] T. Zaalberg and Gouda's article describes how the 1945 Indonesian independence proclamation occurred and how the situation evolved. *See* Gouda and Zaalberg, "The Politics of Independence in the Republik Indonesia and International Reactions , 1945-1949."
[269] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 12.
[270] Hidayah, Susilo, and Mulyadi. *at* 13-14.
[271] Soekarno, *Dibawah Bendera Revolusi*, first (Jakarta: Banana Books, 2016).
[272] Peter Romijn, "'Beyond the Horizon': Disconnections in Indonesian War of Independence," *Historical Social Research* 45, no. 4 (2020): 130–50.

though the country's economy was in shambles[273]. Due to the new Indonesian state's insecurity, Sukarno paid scant attention to the remaining migrant workers in the ASEAN region, particularly in Singapore and Malaysia. Indeed, diplomatic relations between Indonesia and Malaysia were terminated when Sukarno declared confrontation ("Konfrontasi") in Malaysia (1963-1966), referring to the country as the British idol. Sukarno's determination to increase his power spurred Malaysia's response to Sukarno's political aggression. As a result of the "Konfrontasi" with Malaysia, the two ancestral nations formed a love-hate relationship[274], which eventually manifested in Malaysia's handling of Indonesian migrant labour.

Sukarno had a particular anti-colonialist objective and thus considered Malaysia as an extension of Western colonialism. As a result, all goods related to the colonial authority, such as Dutch properties and British-affiliated corporations[275], were dissolved in the spirit of anti-colonialism. Sukarno's anti-colonial stance is also notable for his aversion to foreign capitalists. Even if Indonesia's economic position is grave, he believes that a nation's growth should be measured not in terms of economic prosperity but in terms of political independence from external influences.[276] In this sense, politics has supplanted economic progress as the principal vehicle.[277] Accordingly, Sukarno's aversion to migrant labour policy was unsurprising. He continues to be convinced of the country's potential to sustain economic growth. As a result, it was clear that Sukarno's primary objective was to strengthen his nation's independence mindset by eradicating all colonial and foreign influences.

At Indonesia's Independence Day reception, Sukarno's revolutionary spirit was reaffirmed on August 17, 1959. Sukarno addressed the nation with a speech titled "The Rediscovery of Our Revolution." One month later, on September 23, the Supreme Advisory Council publicly designated the speech "the broad outline of state policy." Since then, a

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[273] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 11.
[274] Budiawan, "How Do Indonesians Remember Konfrontasi? Indonesia–Malaysia Relations and the Popular Memory of 'Confrontation' after the Fall of Suharto," *Inter-Asia Cultural Studies* 18, no. 3 (2017): 364–75, https://doi.org/10.1080/14649373.2017.1345349; Andre Bagus Irshanto, "DARI KONFRONTASI KE PERDAMAIAN (Hubungan Indonesia – Malaysia 1963-1966)," *Criksetra: Jurnal Pendidikan Sejarah* 8, no. 2 (2019): 84–97.
[275] In 1967, with the emergence of Suharto power to depose Sukarno, all British properties that had been nationalized by Sukarno with his anti-colonialist zeal were restored. *See* Nicholas J. White, "Surviving Sukarno: British Business in Post-Colonial Indonesia, 1950-1967," *Modern Asian Studies* 46, no. 5 (2012): 1277–1315, https://doi.org/10.1017/S0026749X11000709.
[276] Denis Warner, "Sukarno'sS Grand Design," *Challenge*, November 1963.
[277] Martin Rudner, "The Indonesian Military and Economic Policy the Goals and Performance of the First Five-Year Development Plan, 1969-1974," *Modern Asian Studies* 10, no. 2 (1976): 249–84, https://doi.org/10.1017/S0026749X00005953.

slightly modified version of the speech has been termed the "*Manifesto Politik Republik Indonesia*", "Political Manifesto," or simply "*Manipol.*" The term "Political Manifesto" appears to have been invented by then-Information Minister Maladi, who had previously stated that Sukarno's speech would serve as a "political manifesto" to direct the government's activities.[278]

Manipol lauds the country's reinstatement to the 1945 Constitution (mandated by Sukarno's proclamation on July 5, 1959), highlights the country's achievements since 1945, and specifies the country's "near" and "long-term" aims. Short-term objectives include providing "basic human necessities, ensuring security, and combating imperialism," as well as retaining the Indonesian personality "amidst rightward and leftward thrusts." Long-term objectives include establishing "an equitable and prosperous society, the abolition of imperialism across the world, and laying the groundwork for a lasting and eternal world peace."[279] Sukarno's anti-imperialism is bolstered in this Manifesto speech, yet the national spirit and ideas are preserved.

In the 1960s, under Guided Democracy[280], Indonesian foreign policy adopted a more militant position of resistance or confrontation against imperialism, colonialism, and neocolonialism, especially the following independence from Dutch colonialism (or nekolim). Although this program originated during Indonesia's complicated separation from Dutch colonialism, it was established mainly by President Sukarno during the Guided Democracy era[281]. Sukarno's anti-colonial mentality, on the other hand, was consistent with the Preamble to the 1945 Constitution, which stated, "That in truth, independence is the right of all nations, and as a result, colonialism in the world must be eradicated, as it is incompatible with humanity and justice." According to Sukarno, two goals of the Indonesian revolution—the foundation of a unified state and the building of an equitable and affluent society—could never be realized until the opponents of these goals were exterminated. Sukarno saw foreign imperialism, colonialism, and capitalism as the principal antagonists

[278] Justus M. van der Kroef, "An Indonesian Ideological Lexicon," *Asian Survey* 2, no. 5 (1962): 24–30.
[279] Kroef. *Ibid*.
[280] This Guided Democracy drew scholars' attention to the question of whether such a democracy reflected Sukarno's conservative or radical agenda. Hauswedell conducted a thorough examination in order to comprehend this analysis. *See* Peter Christian Hauswedell, "Sukarno : Radical or Conservative? Indonesian Politics 1964-5," *Indonesia* 15, no. April (1973): 109–43.
[281] Frederick P Bunnell, "Guided Democracy Foreign Policy: 1960-1965 President Sukarno Moves from Non-Alignment to Confrontation," *Indonesia* 2, no. 2 (1966): 37–76.

in this regard.[282] As a result, Sukarno's aggressive foreign policy, which included the abolition of colonial features and everything he felt was associated with them, made no sense in eradicating poverty in Indonesia.

Similarly, migratory workers seeking jobs outside the country received little assistance or attention, even though there were no job opportunities in their home country. Sukarno's only statement about the coolie was in his 1963 Proclamation Day Commemoration speech. He remarked that this nation should begin to generate creators rather than employees who rely solely on hard work (physically). He chastised migrant Labourers who want to work in low-wage jobs overseas and are not respected for their human rights as a coolie[283]. Sukarno, on the other hand, never articulated a clear strategy for creating jobs for the Indonesian people, owing to the state economy's dire state. As a result, Sukarno maintains a position on the migrant workers, neither strictly restricting nor endorsing it.

3.2.2. The Impact of Anti-Colonialism on Migration Policy

Despite the lack of official legislation governing migrant Labour, Sukarno established fundamental rights for migrant workers. For example, Article 10 of the Temporary Constitution of 1950 ("UUDS 1950") guarantees the right to mobility for all persons based on their interests and any reason, including finding work outside the country. Previously, under Government Regulation No. 3 of 1947, Sukarno established the Ministry of Labour, which oversaw all labour affairs.[284] President Sukarno promulgated a series of labour laws to strengthen Labourers' rights, including Act No. 33 of 1947 on Work Accidents, Act No. 12 of 1948 on Work Protection, and Act No. 23 of 1948 on Labour Supervision. All these parts of labour legislation provide general worker protection. Sukarno also issued President Notice No. 1 of 1947, which increased labour's political clout by selecting 40 Labour Union Leaders as Temporary Parliament members.[285] Sukarno's final contribution to labour legislation ratified the ILO Convention Concerning Weekly Rest in Commerce and Offices No. 106 of 1957 by Act No. 3 of February 25, 1961. This ratification

[282] Rizal Sukma, "The Evolution of Indonesia's Foreign Policy: An Indonesian View," *Asian Survey* 35, no. 3 (1995): 304–15.
[283] Khadafi, "Terminologi Budak, Kuli, Dan Babu." *Id*.
[284] Departemen Tenaga Kerja, *Sejarah Departemen Tenaga Kerja Republik Indonesia* (Jakarta: Departemen Tenaga Kerja, 1992); Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*; Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*.
[285] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 11.

was made possible since Indonesia has been a member of the ILO since July 12, 1950, and most ILO members accepted this Convention at the Geneva meeting in 1957.

Sukarno's revolutionary stance was reflected in his labour protectionism. Act No. 3 of 1958 on Foreign Worker Placement [in Indonesia] demonstrates this. According to article 2 of Act No. 3 of 1958, an employer who desires to hire a foreign worker must acquire consent from the ministry or face a three-month prison sentence or a fine. It shows that Sukarno exerted considerable control to guarantee that all enterprises implemented his idea of protectionism. Article 3(3) also explains why the Minister's authorization is essential to ensure Indonesian workers are hired first, followed by international workers. This provision illustrates that, besides safeguarding local employees from the constricting environment of employment opportunity rivalry, it reflects the nationalism mentality prevalent throughout Sukarno's revolution campaign.

Sukarno had individuated himself in defiance of the law in the context of directed democracy. As a result, Sukarno, who served as Indonesia's President for two decades, placed a low premium on legal change, as indicated by his 1961 statement to a group of lawyers that "one cannot undertake a revolution through legislation." This speech indicates that legislative reform and the Indonesian growth vision depend entirely on his sole authority[286]. Consequently, despite the absence of legislative democracy during Sukarno's revolution, the passage of Law No. 3 of 1958 exemplifies the spirit of legal nationalism aimed at defending Indonesian interests concerning foreign labour. Additionally, Sukarno preserved the national economy by nationalizing colonial assets and open engagement with China.[287]

Meanwhile, he made no mention of migrant workers on his to-do list. He has maintained his campaign for international political support for national integrity in the face of domestic and external threats to state unity. As a result, Indonesia's economy entered its worst period in history, with inflation topping 635 per cent.[288] Sukarno, in general, prioritized politics over economic development. As a result, his people were required to maintain their economic base in any way possible. Sukarno defined a country's greatness as not in

[286] June S Katz and Ronald S Katz, "Law Reform in Post-Sukarno Indonesia," *The International Lawyer* 10, no. 2 (1976): 335–42.
[287] Dewi Fortuna Anwar, "Indonesia-China Relations: Coming Full Circle?" Southeast Asian Affairs 2019, 2019, https://doi.org/10.1355/9789814843164-011.
[288] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 15.

economic development but as possession of the trappings of power.[289] Sukarno issued no legislation on migrant Labourers, despite the existence of Indonesian migrant workers in numerous foreign nations, primarily in the Middle East, such as Saudi Arabia. During his government from 1945 to 1967, politics dominated his development program, whereas economic development was of no consequence. Part of Sukarno's political objective regarding Labourers in general was to improve their morale so that they would be a nation that the international community could have confidence in by avoiding becoming a "coolie" society and having inadequate human rights respected by their employers.

3.3. The Migrant Workers' Legislation in the Suharto's New Order (1967-1998)

Suharto established his migrant worker legislation through a systematic development strategy based on the slogan "green revolution." This slogan is essentially a replica of the Dutch East Indies' open investment policy of 1880, which was followed by the enactment of the coolie ordinance in 1880. Suharto's economic strategy of the green revolution was also intended to encourage foreign enterprises to invest in Indonesia to absorb as much Labour as possible. However, when he realized that this strategy would take a long to bear fruit, he turned to migrant worker remittances as another promising state economic source. Since then, he has prioritized migrant worker development as a critical component of his five-year development plan ("*Rencana Pembangunan Lima Tahun* or *Repelita*"). He first enacted migrant worker mobilization legislation to realize this scenario in 1970. This legislation was designed to facilitate the mobilization of migrant workers to work abroad, and its operational mechanism was based on collaboration with private social enterprises. This strategy then significantly aided the development of migrant worker industries. However, migrant workers were treated as an economic pawn of the government, with no protection for their human rights.

3.3.1. The Green Revolution

Suharto assumed the presidency in 1967, succeeding Sukarno's 20-year era (1945-1967). The new approach to international relations, coined as "*bebas aktif*," or independent and active, emphasizes that Indonesia does not take sides with any world power but actively maintains the peace order. Suharto's economic recovery was heavily influenced by the

[289] Warner, "Sukarno'sS Grand Design"; Leslie H Palmier, "Sukarno, the Nationalist," *Pacific Affairs* 30, no. 2 (1957): 101–19; Justus M. van der Kroef, "Sukarno's Indonesia," *Pacific Affairs* 46, no. 2 (1973): 269–88.

legacy of Sukarno's worst economy, notably during his early administration, when he sought alternative remedies to the state's economic depression, in some cases copying colonial strategies while simultaneously soliciting international assistance. Unlike Sukarno, who employed revolutionary and anti-colonialist rhetoric to oppose all cooperation with Western countries, Suharto began to engage in global economic networks. According to Rizal Sukma[290], this vision includes the third aspect of pragmatism, which means that Suharto sought economic gain from whatever international relations he established to grow the weakest Indonesian economy that Sukarno inherited. However, Suharto enlarged Sukarno's "revolution" idea for domestic economic development by adding the adjective "green," resulting in the "green revolution" or "*revolusi Hijau*." In this 'renew' phrase, Suharto's objective was to achieve economic progress by shifting from an agrarian to an industrialized economy.[291]

To put his vision of the green revolution into action, Suharto deregulated the economic environment in 1970, making it easier for foreign companies to invest in Indonesia, anticipating that it could absorb many Labourers. Furthermore, he equipped his vision with two strategies: supporting low-wage labour and exporting workers. Along with these two initiatives, Suharto actively seeks funding from Chinese firms through facilitating business. He began developing a discrimination policy against indigenous firms (dubbed "*pribumi*" enterprises). Dunning[292] asserts that Suharto developed close ties with a relatively small number of Sino-Indonesian entrepreneurs (dubbed "*cukong*"), who received tariff protection, preferential access to monopoly licenses and contracts, subsidized credit, and other benefits. Suharto's networks of these Chinese enterprises provide an essential supply of money and an expanded local tax base.

Suharto's use of the green revolution jargon to protect the state economy was comparable to the *Agrarische* economic program of the Dutch colonial era circa 1870. Both regimes marketed agricultural products to persuade foreign investors to convert agricultural land and plantations into labour-intensive companies. The distinction between the two is in their treatment of their employees. The Dutch Colonial Government paid investors for their readiness to invest in Dutch-controlled plantation areas by supplying employees from Java

[290] Sukma, "The Evolution of Indonesia's Foreign Policy: An Indonesian View." *at* 309.
[291] Gary E Hansen, "Indonesia's Green Revolution: The Abandonment of a Non-Market Strategy toward Change," *Asian Survey* 12, no. 11 (1972): 932–46.
[292] Thad Dunning, "Resource Dependence, Economic Performance, and Political Stability," *Journal of Conflict Resolution* 49, no. 4 (2005): 451–82, https://doi.org/10.1177/0022002705277521.

to work for plantation enterprises that were subject to criminal consequences for violating labour restrictions outlined by the Coolie Ordonantie 1880.[293] On the other hand, Suharto rewarded foreign investors by simplifying business and providing inexpensive labour. To reaffirm his dedication to his economic policies, he enacted a raft of regulations targeted at luring international investors, such as Act No. 1 of 1967 on Foreign Investment, which premium on two critical natural resources: forest and mining. Suharto marketed natural resources to foreign investors through Act No. 5 of 1967 on Basic Forest Provisions and Act No. 11 of 1967 on Basic Mining Provisions.[294]

Additionally, Suharto enacted Act No. 14 of 1969 on the Basic Provisions of Labour to persuade foreign investors of investment opportunities. This Act controls the labour system and ensures that workers support the government's foreign investment agenda. Such a labour policy was rarely approved by Labourers who needed work. Meanwhile, rural jobless women increased because of the Green Revolution. Due to the meagre wages, working on the farm was not a viable option. This scenario pushed them to seek employment in cities for the first time in the 1970s as a coolie in low-wage enterprises with insufficient worker rights. Urbanization occurred in Indonesia's major cities until the 1980s, when domestic workers were hired from migrant Labourers, primarily women.[295] From here, the story of the Indonesian migrant worker's feminism began. Women migrant workers are being transferred to Middle Eastern countries to work as domestic servants.[296]

Suharto's approach to seizing control of the political economy included deploying female employees to the Middle East with the dual objective of reducing unemployment and poverty, which he viewed as dangers to national security. At the time, being the only female Labourers in high demand from Middle Eastern countries made it simpler to provide, without regard for their protection rights or security, eventually revealing the practice of Slavery against Indonesian female maids.[297]

Even though there is a similar thread running through these two dramatically opposite approaches: both regimes employ Indonesian employees as low-level Labourers or coolies without regard for their fundamental human rights or Labourers' rights.

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[293] Tappe and Lindner, "Introduction: Global Variants of Bonded Labor." *at* 103.
[294] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 15.
[295] Rusdi Tagaroa and Encop Sofia, *Buruh Migran Indonesia Mencari Keadilan* (Bekasi: Solidaritas Perempuan Lembaga Advokasi Buruh Migran Indonesia, 1998).
[296] Dinar Wahyuni, "Migrasi Internasionat Dan Pembangunan International Migration and Development," *Kajian* 18, no. 4 (2013): 305–21.
[297] Tagaroa and Sofia, *Buruh Migran Indonesia Mencari Keadilan*. *at* 77.

Unfortunately, the coolie perspective left a strong imprint on the Indonesian labour legislation that followed Suharto's labour regime, with no exception for migrant workers, even though he paid little attention to migrant labour during his first two periods in office. During his early presidency, he relied on the country's economic resources, primarily foreign investment in natural resources, lumber, and mining, particularly oil, with a relatively simple investment procedure for international investors to establish a business in Indonesia.[298]

Suharto, however, issued Government Regulation No. 4 of 1970 on Labour Exportation to demonstrate that he altered Indonesia's orientation toward Western countries, which had previously been limited to Sukarno's tenure, even though this regulation was not critical to his political and economic policy. This Government Regulation was eventually outlined in Ministry of Labour Regulation No. 4 of 1970 on Labour Mobilization, which established a collaboration with an entity known as "*Angkatan Kerja Antarnegara*," or international workforce, to recruit and export Migrant Labour. On the other hand, this Ministry Regulation contains no specific reference to private enterprises recruiting and exporting Migrant Labour. This regulation empowers private businesses to recruit and send migrant workers to destination nations. Before 1979, the government's engagement in the migrant labour market was accomplished using so-called Government to Government agreements, such as those between Indonesia, Japan, and Korea. According to Azmy[299], the G-to-G plan's protection of migrant workers is more secure than that given by private companies. Following that, in his third National Development Plan (*Rencana Pembangunan Nasional, "Repelita"*), the Government Regulation 1970 played a significant role in establishing Suharto's Remittance Regime allowing him to diversify his economic base in the aftermath of the downturn in oil mining investment[300]. Suharto was compelled to use the wealth of migrant workers as a new economic engine to achieve two objectives: poverty eradication and the collection of remittances that could bolster the state's economic base. His '*revolution hijau*' was not a vow to use it as a source of revenue in the face of the country's oil crisis.

[298] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 15.
[299] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 44.
[300] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 30.

3.3.2. Migrant Workers' Objectives as Defined by the Title of the Legislation

Apart from studying his practical policies, one can understand Suharto's migrant worker policy by examining the structure of his migrant worker legislation. For example, by analyzing the legislation titles used during Suharto's regime, we could deduce Suharto's attitude toward migrant workers. Additionally, we recognize the critical role migrant workers play in Suharto's remittance and poverty-reduction agendas, as evidenced by the large number of Indonesian migrant workers deployed abroad.

Suharto's legislation from 1970 to 1994 used the term mobilization ('*pengerahan*') rather than sending ("*pengiriman*") or placement ("*penempatan*") migrant workers. The term "mobilization" originates with Dutch East Indies legislation, which was first published in Staatsblad No. 8 of 1887, Concerning the Mobilization of Indonesians to Work Abroad ("*Pengerahan Orang Indonesia Untuk Melakukan Pekerjaan di Luar Indonesia*"), and its implementing law, "*Vervingsordonantie*," Stb. 1936, No. 650 jo. Stb. 1938 No. 358. The terms "mobilization" and "to work" are used extensively in this legislation to refer to the Indonesian migrant worker as the target of government legal policy to achieve the state's economic objectives. Migrant workers' obligations take precedence over their rights in this scenario. "*Pengerahan*" translates as "mobilization" or "recruitment" in the Indonesian dictionary.[301] However, it has two additional meanings associated with war and the military. In both instances, "*pengerahan*" translates as "military mobilization." From this linguistic standpoint, it appears clear that the term "pengerahan" in Suharto's migrant worker legislation encompasses both meanings: mass recruitment of migrant workers similarly to mobilizing soldiers for military action.

Suharto first used the term "mobilization" in his migrant worker legislation, in Ministry of Workforce Regulation No. 4 of 1970 Concerning the Mobilization of Labor. This legislation primarily requires private companies that recruit (mobilize) Indonesian migrant workers to adhere to certain conditions, including housing, deployment costs, transportation, wage, working hours, protection, job termination, and responsibility for migrant mobilization. Since then, numerous labour ministry regulations and decrees on migrant worker deployment have continued to use the term mobilization ("*pengerahan*") of Indonesian migrant workers. For example, the Ministry of Labor and Transmigration issued a regulation in 1983 addressing private enterprise supervision, obligations, company

[301] Kemendikbud, "Pengerahan," tesaurus.kemdikbud.go.id, 2022, http://tesaurus.kemdikbud.go.id/tematis/lema/pengerahan.

permits, and restrictions on collecting costs associated with migrant worker recruitment. In 1984, the Ministry of Labour launched a recruitment campaign for migrant workers in Malaysia.

Additionally, the Ministry of Labor issued a decree in 1985 requiring private businesses to recruit (mobilize) Indonesian migrant workers. Additionally, the Ministry of labor issued a special decree in 1988 on the technical mobilization of Indonesian migrant workers to Saudi Arabia, which was updated in 1991. For the first time in this ministry decree, the term "mobilization" or "pengerahan" of Indonesian migrant workers was used (1991). Suharto's 1994 legislation on migrant workers renamed mobilization ("*pengerahan*") to placement ("*penempatan*") for Indonesian workers both at home and abroad.

In practice, the "*pengerahan*" or mobilization of Indonesian migrant workers under Suharto's "*Repelitas*" totalled 5.624 migrants in his first "*Repelita*" (1969-1974), then soared to 1,461,236 migrants in his final "*Repelita VI*" (1994-1999).[302] These were comparable to the mobilization of the coolies[303] or "r*omusha*"[304] during colonial times when thousands of them were transported abroad to work in agriculture and railway construction. However, their policies on migrant workers differ in terms of their objectives. The colonialists purposefully mobilized Indonesian workers abroad for forced labour. In contrast, Suharto's goal was to collect migrant remittances[305], although some Indonesian migrant workers were forced to work indentured or enslaved by their employers.

3.3.3. Migrant Workers' Remittances Regime with Minimal Protection

The Suharto regime's five-year development plan systematically organized remittance and poverty policies ("*Rencana Pembangunan Lima Tahunan* or Repelita"). The People's Consultative Assembly ("Majelis Permusyawaratan Rakyat or MPR"), the country's highest state institution structure, endorsed the Repelita operation. MPR endorsed President Repelita's Policy by issuing a legal instrument, the decision ("TAP MPR RI"), concerning the State Pathway's Great Lines ("*Garis-Garis Besar Haluan Negara* or GBHN"). Everything about migrant workers was meticulously managed to send as many

[302] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 47.
[303] Lamb, "A Time of Normalcy: Javanese 'Coolies' Remember the Colonial Estate."
[304] Melber, "The Labour Recruitment of Local Inhabitants as Rōmusha in Japanese-Occupied Southeast Asia," 2016.
[305] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 30.

migrant workers abroad as possible and remit funds to the country. To facilitate the government's remittance and poverty policies, Suharto's government agencies collaborated with private enterprises by allowing them to open migrant worker placement businesses. Unfortunately, no policies were in place to protect the rights of migrant workers, particularly in receiving countries. As a result, their employers violated many migrant workers' human rights. Typical human rights violations suffered by migrant Labourers included torture by their employers, insufficient working conditions, unpaid wages, and restricted communication with their families.

a. Repelita's Systemic Remittance Program

When poverty was lessened, Suharto extended his migrant workers program into a more substantial economic source, remittances. This approach was used to obtain new funds from a foreign country via migratory Labourers. Suharto broadened his policies to fulfil his remittance aim by enabling commercial businesses to recruit and deploy migrant Labourers in their destination nations. If Suharto could collect the remittances, migrant workers would be deployed continuously, regardless of their credentials or protection. Additionally, due to the Suharto administration's liberalization of migrant worker legislation, the number of migrant worker brokers expanded rapidly, recruiting migrant workers from Indonesian communities. Numerous studies demonstrate the importance of migrant labour to a country's economy, particularly in developing countries.[306] Raza[307] argued that various factors affect the national economic development system and individual living standards. One of the most critical components is worker remittances to developing nations, which occur when workers who live abroad send money home. Each state attempts to enhance society's well-being using various means and resources. Migrant remittances substantially contribute to economic growth and development, most notably to migrant households' income. The

[306] I. Hidayati, "Migration and Rural Development: The Impact of Remittance," *IOP Conference Series: Earth and Environmental Science* 561, no. 1 (2020), https://doi.org/10.1088/1755-1315/561/1/012018; Siti Mas'udah, "Remittances and Lifestyle Changes Among Indonesian Overseas Migrant Workers' Families in Their Hometowns," *Journal of International Migration and Integration* 21, no. 2 (2020): 649–65, https://doi.org/10.1007/s12134-019-00676-x; Faiza Husnayeni Nahar and Mohd Nahar Mohd Arshad, "Effects of Remittances on Poverty Reduction in Asia," *Journal of Indonesian Economy and Business* 32, no. 3 (2016): 101–17, https://doi.org/10.1142/9789814713405_0006; Md Mizanur Rahman and Lian Kwen Fee, "Gender and the Remittance Process," *Asian Population Studies* 5, no. 2 (2009): 103–25, https://doi.org/10.1080/17441730902992059; Shah Zaman et al., "Exploring the Relationship between Remittances Received, Education Expenditures, Energy Use, Income, Poverty, and Economic Growth: Fresh Empirical Evidence in the Context of Selected Remittances Receiving Countries," *Environmental Science and Pollution Research* 28, no. 14 (2021): 17865–77, https://doi.org/10.1007/s11356-020-11943-1.
[307] Raza, "Do Workers' Remittances Boost Human Capital Development?"

Semyonov[308] study, on the other hand, exposes the income disparity between men and women through the lens of Filipino migrant Labourers. Males earn more and contribute more to household income through remittances sent home than females. Economic inequality among households in the local economy is exacerbated in this scenario by gender discrepancy in the global economy.

Nevertheless, according to Carunia Mulya Firdausy[309], the obvious inference from this data is that migrant workers contribute significantly to the country's economy and household income and that Indonesian migrant workers contribute significantly to household income and poverty reduction. However, because most migrants are low-skilled, they make a small contribution to the state per capita GDP. It is suggested that more capable migrant workers travel to other countries to optimize their remittances' influence on state per capita revenue. Arjan De Haan and Ben Rogaly[310] emphasized some consensus at the macroeconomic level that migrants help boost welfare: they frequently contribute significantly to the host society's economy and have high labour force participation rates. However, there is scant evidence that migration helps diminish economic disparities between origin and destination areas. This fact showed that remittances were critical for emerging economies, such as Indonesia, during Suharto's early presidency; yet, while migrant workers' remittances significantly reduced poverty in rural areas, the effect was temporary. Because over time, when migrant workers returned to Indonesia, their family's economic status deteriorated, as the benefits they earned from working as migrant workers dwindled as they became incapable of managing their finances.

Suharto's attitude toward migrant labour evolved from personal interest to state concern for poverty alleviation and achieving state economic advantages. He frequently included a recurring agenda item in his annual state economic development program. The Suharto regime's national development concept was the Five-Year National Development Plan (*Rencana Pembangunan Nasional, here and after is "Repelita"*). The number of migrant Labourers sent overseas was 5.624 during his first *Repelita* (1969-1974) but climbed substantially to 17.042 during the second *Repelita* (1974-1979). Most migrant workers are shipped to Saudi Arabia, where the government is desperate for low-wage labour,

[308] Semyonov and Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers."
[309] Firdausy, "The Economic Effects of International Labour Migration on the Development."
[310] Arjan De Haan and Ben Rogaly, "Introduction: Migrant Workers and Their Role in Rural Change," *Journal of Development Studies* 38, no. 5 (2002): 1–14, https://doi.org/10.1080/00220380412331322481.

particularly women, to work as housemaids, cleaning service employees, and other menial jobs. Suharto had no legal basis for governing migrant workers, let alone protecting them, until 1988, when the Ministry of Manpower issued Ministry regulation No. 5 concerning the export of migrant workers.[311] However, no Act protecting migrant workers' rights was enacted until Suharto's regime fell in 1998 because of a popular uprising.

Regrettably, most migrant Labourers sent to the destination country are unskilled. Consequently, the stereotype of a coolie with low wages and a lack of security and protection for migrant workers' rights is powerful against them. As a result, the Ministry of Manpower periodically strives to minimize the number of untrained and low-skilled workers[312]. However, Suharto changed the prohibition on sending migrant labour overseas as the unemployment rate increased. In his Outlines of State Policy ('*Rencana Pembangunan Lima Tahun or Repelitia'*), which he issued every five years during his presidency, he stated the two primary objectives of sending migrant workers abroad: to reduce unemployment in the home country, which jeopardizes national stability, and to increase state remittances[313], which benefits the state economic situation.[314] In addition to sending migrant workers overseas, Suharto continued the colonial policy development model by relocating people from Java Island's most densely populated areas to outer islands through the transmigration program. This strategy was designed to achieve two goals: even population distribution and the efficient use of labour.[315]

The third *Repelita* (1979-1984) began the political-economic migrant workers' interest. The third *Repelita* was dubbed the "period of remittances," Suharto prioritized moving migrant labour overseas during each of his *Repelitas*. For instance, in this third *Repelita*, he sought to send up to 100,000 Labourers abroad, mainly Middle Eastern countries, with just 17% of this goal going to Malaysia and Singapore.[316] Regrettably,

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[311] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 45.
[312] Azmy. *at* 48-49.
[313] Suharto's regime hailed Indonesian migrant Labourers as heroes for bringing money home. Sudomo, who served as Indonesia's Minister of Manpower from 1983 to 1988, referred to migrant workers as "*Pahlawan Devisa*," or "Foreign Exchange Heroes." It indicates the huge contribution of remittances from Indonesian migrant workers to the state's economic development and poverty reduction initiatives, meaning that Suharto's economic progress was supported particularly during his early presidency's economic crisis. *See* Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 30-32.
[314] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 48.
[315] Departemen Tenaga Kerja, *Sejarah Departemen Tenaga Kerja Republik Indonesia*. *at* 79.
[316] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 47.

massive deployments of housemaids and unskilled Labourers continued under Suharto's five-year national development plan (*Repelita*) until the conclusion of his government in 1998. This policy changed the practice of sending migrant workers overseas from ad hoc to regular.[317] According to Sumanto Alqurtuby[318], due to this strategy, the Middle Eastern Arabs' assumptions of Indonesians continue to be that they are unskilled Labourers, housemaids, illiterate, and eager to be paid little for hard work and long hours.

In contrast to Malaysians, regarded highly by Arabs, many Middle Eastern students are currently enrolled on Malaysian campuses, while some Malaysian academics teach at Middle Eastern universities. On the other hand, they rarely send less qualified students to Indonesian universities. It demonstrates that Suharto sent many "coolies" to work in Saudi Arabia to earn foreign exchange. As a result of Suharto's policies in the past, Saudi Arabia has become less appreciative of the Indonesians living in the country. Additionally, this condition will significantly impact the diplomatic ability to advocate for the rights of migrant workers in Saudi Arabia.

b. Migrant Worker Brokerage and Agency Company

Suharto intended, first and foremost, to improve the quality of migrant workers sent abroad by reorganizing migrant worker management under the Ministry of Manpower. The Ministry of Manpower and Transmigration issued Ministry Regulation No. 129/Men/1983 Concerning the Overseas Manpower Sending Company, followed by another Ministry Decree on the obligation to create migrant worker identity cards and the procedure for sending migrant workers, particularly to Saudi Arabia. In 1983, 74 registered Overseas Manpower Sending Companies expanded to 160 companies in 1985, mainly assisting migrant workers to Saudi Arabia. This occurrence illustrates that migrant Labourers were heavily industrialized during Suharto's reign.[319] According to various surveys, migrant workers prefer Saudi Arabia over other destinations for labour because they have a twin goal: finding a job and undertaking the pilgrimage to Mecca. In this scenario, migrant workers established Mecca as the "Land of Hope," but they lacked appropriate expertise and information about Saudi Arabia's social and cultural aspects. As a result, they were shocked

[317] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 17.
[318] Sumanto Alqurtuby, "Malaysia Dan Indonesia Di Mata Masyarakat Arab Timur Tengah," *Kompas*, November 13, 2021.
[319] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 19.

when they found their professions difficult, with extended hours but not enough relaxation time.[320]

The rise of the overseas workforce-sending company indicates how the incentive for sending migrant workers has shifted away from employment creation and poverty reduction toward industrialization. In the 1980s, the firm only had to pay the government the registration fee of IDR 100,000, but by 1994, they were required to maintain a corporate investment fund of IDR 450 billion. Similarly, candidates for migrant workers who were previously recruited for free were suddenly required to pay a significant quantity of money to be recruited, notably during the 1980s, when demand for migrant workers, particularly women, from Saudi Arabia was considerable.[321] Two factors precipitated Saudi Arabia's policy change requiring a substantial number of female Labourers: Philippines employees demanded a greater wage, increased legal protection, and a clearly defined job description. Saudi Arabia responded to the Philippines employees by refusing to hire them.[322]

Additionally, due to their reputation for obedience, discipline, hard work, and low pay, Indonesian Labourers have "comparative competitiveness" compared to other international migrant workers, such as Egypt, Sri Lanka, and Bangladesh. Regrettably, the Indonesian government's objective is to maintain Indonesian migrant workers marketable, even when there is no need to raise their wage standard or other migrant worker rights normatively. Worse, Saudi Arabia prefers those Indonesian workers be placed through a Private (*P to P*) method, which means that the government lacks precise control over the total recruitment, placement, and repatriation of these migrant workers. In instances like this, violence, slavery, and exploitation of Indonesian employees in Saudi Arabia are too prevalent. Ministerial Decree No. 420/1985, which prohibits Indonesian migrant workers from speaking with third parties, notably the media, about bullying incidents in Saudi Arabia, demonstrates the Indonesian government's weakness in the face of Saudi Arabia.[323]

However, because migrant Labourers contribute to the state economy, the Suharto administration enacted ministerial regulations between 1983 and 1995, most of which dealt with managing migrant workers deployed overseas but provided little protection. The decade exemplified the industrialization of Indonesian migrant Labourers, with the private sending migrant worker company raking in over six billion dollars in 1983 and more than

[320] Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*. *at* 36.
[321] Tagaroa and Sofia, *Buruh Migran Indonesia Mencari Keadilan*. *at* 83.
[322] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 20.
[323] Hidayah, Susilo, and Mulyadi. *at* 19-21.

thirty-one billion dollars in 1995. Regrettably, most of this Act regulates the procedure primarily for shipping migrant workers and their cost, with only a tiny percentage addressing migrant workers' protection.[324] Apart from the sending migrant workers industry, which generates economic benefits, this sector of migrant workers is populated by other businesses such as Indonesian airlines, banks, insurance firms, and migrant workers' terminals, all of which have business ties.[325]

The industrialized migrant worker contributed to the broker's or calos's rise to prominence as a partner of the official recruited enterprise. Additionally, as the documented labour recruitment market decentralized and fragmented during the Suharto decade and the early years of the reformation era, informal sponsors emerged as critical interstitial brokers. The brokers act as the interfaces between traditional recruitment agencies, bureaucracies, and villages, where the trust, power, and debt relations that organize migrant workers are considered.[326] Large banners caution migrants against utilizing *calos*, or brokers, a little disparaging term for sponsors, in government offices involved in international migration. Indeed, because of extensive bureaucratic procedures and many instances of small-scale corruption that can impede or speed up the process, it is practically impossible for a migrant to avoid using a sponsor.[327] The broker practice in the industrialized migrant worker is like that of the colonial age. The brokers came to communities mostly on Java Island to recruit possible migrant workers sent abroad. However, the villages' scope has expanded to include villages outside Java, such as Lombok. In this scenario, the brokers have a significant impact on driving the migration of migrant labour overseas.[328]

According to Sudjana[329], the broker's function in the migrant workers' business process spans from providing information about job opportunities in the destination country to assisting with placement, visa administration, and any other administrative tasks necessary during the pre-departure period. Candidates for migrant workers who lack information and education entrust all aspects of recruitment and pre-departure to brokers. Suppose the candidate lacks sufficient funds to cover all recruitment and pre-departure

[324] Hidayah, Susilo, and Mulyadi. *at* 70-79.
[325] Hidayah, Susilo, and Mulyadi. *at* 89-94.
[326] Lindquist, "Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry."
[327] Lindquist. *at* 132.
[328] Spaan, "Taikongs and Calos: The Role of Middlemen and Brokers in Javanese International Migration," 1994. *at* 98.
[329] Eggi Sudjana, *Melepas Ranjau TKI: Strategi Pemberdayaan Buruh Migran*, first (Jakarta: PT. Wahana Semesta Intermedia, 2009). *at* 69-70.

administration fees. In that case, the broker will lend the candidate the money, which will be reimbursed once they obtain employment. Additionally, the brokers are compensated for their services as a result.

To summarize, Suharto's migrant labour policy fulfilled two critical goals: poverty eradication and remittance collection. Suharto employed these two goals as a powerful economic development method, primarily in rural areas where the farm has no economic promise to raise the residents' well-being. Unfortunately, Suharto, on the other hand, ignored legislation protecting migrant rights during his administration.[330] Additionally, the broker is critical in administrating migrant labour, beginning with recruitment, placement, and repatriation. Suharto's administration had minimal impact on how brokers operate in the migrant worker market, which explains why brokers are so self-sufficient in the migrant worker business. As a result, the rights of migrant Labourers are insufficiently protected during the migratory process, which lasts until the reformation era. However, several governments in the early stages of the reform era adopted Suharto's approach to migrant labour legislation. There was no act regulating migrant labour until 2004. During the early stages of reform, technical laws were used, promulgated by the President in the form of Regulations, President decrees, Government Regulations, or Ministerial regulations, whose provisions primarily reflected the government's objectives for migrant worker management.

3.4. The Reformation Era's Legislation Approach to Migrant Workers

In May 1998, a public movement erupted, with workers and students participating in the dramatic demonstration that ended Suharto's 32-year tyranny. Employees were too fragile and unorganized to oppose their deteriorating economic situations, compounded by widespread layoffs, rising commodity prices, and a state-imposed wage freeze.[331] Suharto's demise ushered in the 'Reformasi,' or Reformation, with one of its primary objectives to the amendment of the 1945 Constitution. The amended 1945 Constitution bolsters civil rights. In addition, the governmental system advances away from centralization toward decentralization.

Additionally, Parliament's authority to propose legislation is restored, paving the way for the passage of Act Number 10 of 2004 Concerning the Law Arrangement. This Act

[330] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 48.
[331] Vedi R. Hadiz, "Reformasi Total? Labor after Suharto," *Indonesia* 66, no. October (1998): 109–25.

laid the groundwork for establishing a democratic legislative structure. Furthermore, Act No. 10 of 2004 establishes a mechanism for public participation in the legislative process.

3.4.1. Establishing the Migrant Worker Protection Foundation

Safeguarding civil liberties is the hallmark of the new democratic age in Indonesian politics. The freedom to associate is one of the civil rights guaranteed by the 1945 constitutional amendment. Citizens, particularly Labourers, have an opportunity to fight for their rights through legislation within this framework. In addition, Labourers acquired their first freedom of association due to the 'reform program' (*agenda reformasi*). They saw the '*reformasi*' as a tremendous opportunity to unite and fight for their rights to be respected, defended, and realized by the state after being silenced for so long under Suharto's tyranny.

President Abdurrahman Wahid (Known as GusDur), the country's first democratically elected President in 1999, showed his dedication to safeguarding the security of Indonesian migrant workers fleeing the country in significant numbers during the 1997 economic crisis, as well as Labourers' rights in general. President Wahid initially repealed Law No. 25 of 1997 on Manpower, deemed exploitative of worker rights. Additionally, President Wahid issued Presidential Decree No. 109 of 2011, followed by Minister of Foreign Affairs Decree No. 053 of 2001, Establishing an Indonesian Legal Authority and the Directorate of Indonesian Citizen Protection [Abroad] (*Direktorat Perlindungan WNI dan Badan Hukum Indonesia*). The primary objectives of this Directorate are to develop, coordinate, and implement technical policies aimed at ensuring the safety of Indonesian residents living abroad. Additionally, the Directorate was entrusted with resolving all Indonesian people's problems and devising a system for their repatriation to Indonesia in collaboration with the appropriate domestic agency.[332]

Nonetheless, President Wahid's administrative policy has maintained Indonesian migrant labour flow to Saudi Arabia, despite numerous campaigns' pleas. Suspending migrant worker dispatches to Saudi Arabia, according to Alhilal Hamdi, Minister of Manpower and Transmigration might have a significant impact on state remittances and the growth in joblessness in Indonesia. Despite the strategy's continuity with Suharto's approach, the government's efforts to protect migrant labour deployment to Saudi Arabia

[332] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*. *at* 52-53.

demonstrate that it remained the government's principal policy despite economic and political hurdles.[333]

Under the Fifth President, Megawati Soekarnoputri, who successfully passed Act No. 39 of 2004 on the Placement and Protection of Migrant Workers, the effort to increase the protection of Indonesian migrant workers through legislation becomes more hopeful. It was the first Act to regulate the placement and protection of migrant workers, who were previously overseen by the Third President's Ministerial Decree No. 109 of 1999. (1998-1999). Regrettably, Azmy[334] notes that Act No. 39 of 2004 primarily governs placement, with only a few clauses addressing migrant worker protection. As a result, there has been no progress in protecting migrant workers throughout the Megawati Presidency. Ana Sabhana Azmy[335] argues that the essential protection clauses created in Act No. 39 of 2004 are insufficient because the law was developed without substantial research and with little input from migrant associations or the public.

The right to a living wage is one example of a gap in protecting the rights of migratory workers. Each migrant worker is entitled to a living wage commensurate with the norms in his or her destination country under Chapter III, Article 9 of Act No. 39 of 2004. However, how and to what extent this item can be performed is unknown. However, it was difficult to answer because each country has its wage standard. Malaysia, Azmy[336] asserts, lacks an informal wage standard. Each family employer is now accountable for the wages of their housemaid. This fact has ramifications for another issue with the protection of Indonesian migrant workers, namely the state agreement with the migrant destination country about pay issues and other migrant rights protection requirements. In this instance, the placement policy of migrant workers is crucial. According to ILO Convention 189 of 2011[337], domestic workers have the right to receive at least the minimum wage in any country they work. However, because Indonesia failed to negotiate minimum wage equality with the destination country, as outlined by ILO convention 189 and Article 9 of Law No. 39 of 2004, these migrant workers' rights were not filled. Rhacel Salazar Parrenas'[338] insisted that migrant

[333] Hidayah, Susilo, and Mulyadi. *at* 53.
[334] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 54.
[335] Azmy.*at* 74.
[336] Azmy. *at* 55.
[337] Karin Pape, Christine Bonner, and Barbo Budin, "ILO Convention on Decent Work for Domestic Workers: From Promise to Reality?," *International Union Rights* 18, no. 3 (2011): 10–11.
[338] Rhacel Salazar Parrenas, "The Indenture of Migrant Domestic Workers," *Women's Studies Quarterly* 45, no. 1 (2017): 29–51.

domestic workers are legally "at sea," as they lack complete legal protection from sending states and are exempt from labour protection in most receiving states, resulting in an indentured relationship with their employer.

3.4.2. Strengthening the Legislation Protecting Migrant Workers

Susilo Bambang Yudhoyono, elected President in the aftermath of Megawati, has proved his dedication to preserving Indonesian migrant workers. He was on a business trip to Malaysia and the Middle East to speak with migrant workers. President Yudhoyono then issued Presidential Instruction No. 6 of 2006, Concerning Policy Reform for the Placement and Protection of Indonesian Migrant Workers, based on his field trip findings. Two key points are specified in the presidential instruction. The primary objective is to establish advocacy strategies for migrant workers who face legal challenges at home and in their work countries.

Additionally, establishing a citizen service unit as a centre for the protection of migrant workers. Azmi[339] asserts that the presidential instruction's substance contained numerous flaws, most notably in terms of working hours, wage standards, holidays, and employer obligations imposed on migrant domestic workers. All these consequences have resulted from a policy developed solely by the government without input from representatives of migrant workers or organizations concerned with migrant worker issues.

On the other hand, President Yudhoyono's reform agenda contradicts another Presidential Instruction he issued in 2006, Presidential Instruction No. 3 on Investment. The job training facility formerly required for establishing any migrant workers agency company has been eliminated from this policy; however, the job training facility is critical for training migrant workers before their voyage to their target nation. According to the Ministry of Manpower, the job training centre should be closed since the agent company routinely misrepresented the training received by migrant employees before they left the country. The Ministry of Manpower's argument demonstrates how ineffective the government is at monitoring and enforcing firm agent employment.[340] As a result, job training for prospective migrant workers is critical. According to Robyn I. Stone[341], in the case of elderly care jobs,

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[339] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *at* 76.
[340] Azmy. *at* 83, 85.
[341] Robyn I. Stone, "The Migrant Direct Care Workforce: An International Perspective," *Generations-Journal of the American Society on Aging* 40, no. 1 (2016): 99–105.

for example, the lack of training raises concerns about the quality of care provided and the possibility of jeopardizing the quality of life of elderly consumers. Not to mention the linguistic and cultural barriers that necessitate basic training for prospective foreign workers. As a result, Japan and Indonesia agreed in 2008 to train their migrant candidates before they departed from Japan. In practice, managing migrant workers under the government-to-government system have increased security for migrant workers. Their employers, as well as the Indonesian migrant bureaucracy, uphold all their rights. This G-to-G migrant workers cooperation framework is ideal for Indonesia's deployment of migrant workers. However, it requires the government to exert considerable effort in bilateral cooperation with foreign countries. Consequently, the function of private intermediary migrant worker businesses is limited to technical mediation between migrant worker candidates and employers.

3.4.3. Reforming the Legislation Protecting Migrant Workers

The complexity of the issues confronting Indonesian migrant workers results from lax regulation. However, 40 laws and regulations have affected Indonesian migrant workers since 1945. The Migrant Workers Protection Law was promulgated from 2009 to 2017 with the encouragement of various segments of society. Numerous grounds exist for amending Indonesian Law No. 39 of 2004 on Workplace Placement and Protection. According to Rifma Ghulam Dzaljad[342], a Parliamentary Expert Staff member involved in amending the Migrant Labor Law, the fundamental challenges of migrant worker legislation governed by the 2004 Law are highly challenging. The intense debate was about whether to change the Migrant Act of 2004 or form a new one. Due to the provisions of Act No. 39 of 2004. 66 (38%) of the 109 articles are about placement, whilst only eight (7%) are concerning protection. Indeed, the state bears a lesser responsibility than PPTKIS (Private Companies that play a role in the placement of Indonesian migrant workers) for employee protection abroad. The protection-related articles (starting with Article 77) have a broad reach and require implementing legislation.

Second, the issue is one of inadequate protection for migrant workers from Indonesia. According to Article 18 of Presidential Regulation No. 81 of 2006 concerning BNP2TKI (National Agency for Placement and Protection of Indonesian Migrant Workers), a Deputy for Protection is responsible for formulating, coordinating, implementing, and

[342] Rifma Ghulam Dzaljad, "Review & Agenda Aksi Proses Legislasi Revisi/Penggantian UU No. 39 Tahun 2004 PPTKILN/PPILN" (Sekretariat DPR RI, 2013).

supervising the implementation of technical policies for the protection of Indonesian Migrant Workers. The protection policy must include standardization, socialization, and protection implementation, beginning with pre-departure and continuing through placement. Additionally, the Minister of Manpower has issued Ministerial Regulation PER.07/MEN/V/2010, which regulates Indonesian Manpower Insurance. The remainder of the implementing regulations of Law No. 39 of 2004 cover more specific placements, either through Presidential Instructions or Ministerial Regulations.

Thirdly, there is the issue of overlapping institutions that deal with migrant labour without clearly understanding their respective roles and duties. At least seven institutions are responsible for managing Indonesian migrant workers, most notably BNP2TKI, the Directorate General of Manpower Development and Placement under the Ministry of Manpower and Transmigration (Binapenta). Additionally, the Directorate General of Protocol and Consular Affairs (Employment Attaché) of the Indonesian Ministry of Foreign Affairs exists. The Regional Government is followed by the Private Indonesian Migrant Worker Placement Program (PPTKIS).

The fourth issue is the difficulty in locating migrant labour from Indonesia. Five Concerns Regarding Supervision Article 92 of Law No. 39 of 2004 establishes an imprecise and overbroad supervision regulation. Sixth, the issue of administrative sanctions (Article 100) is less severe; those who violate them within the Indonesian Manpower Service Company, including government officials, should face penalties and activity restrictions. In addition, criminal provisions focus primarily on placement issues (Articles 102-104), whereas those relating to carelessness in protection responsibilities (except for insurance) do not. The last problem is insufficient law enforcement regarding administrative and criminal breaches involving migrant employee management.

Between 2009 and 2017, the regular debate on the new migrant workers bill was conducted and involved multiple parties, including the government, parliament members (DPR RI)[343], Regional Representative Council (DPD RI)[344], migrant workers'

[343] In 2010, the DPR RI Legislative Body suggested the creation of a new Migrant Labor Law to replace Law No. 39 of 2004 but with the same title, namely '*UU tentang Perlindungan dan Penempatan Tenaga Kerja Indonesia di Luar Negeri'* (Act of Placement and Protection of Indonesian Migrant Worker Abroad). *See* Badan Legislasi DPR RI, "Naskah Akademik Rancangan Undang-Undang Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri" (Jakarta, 2010).

[344] The Regional Representative Council of the Republic of Indonesia (DPD RI), in collaboration with several legal academics and non-governmental organizations (NGOs), proposed amendments to Law No. 39 of 2004, which in principle encourages the adoption of key provisions of the United Nations Convention 1990 on the Protection of All Migrant Workers and Members of Their Families. *See* Hikmahanto Juwana et al., "Naskah

representatives, national and international non-governmental organizations, and academics. As a result, the government, Parliament, and Migrant Care (the national non-governmental organizations) developed three Bill concepts compared to Act No. 39 of 2004. The first Act focused on protecting migrant workers. As stated in their Bills' draft philosophical justifications, all parties have a common goal of improving the quality of migrant worker legislation. However, the approach to enhancing the quality of migrant worker legislation is distinct in terms of its political perspective, which is essentially institutional.

Finally, on November 22, 2017, Act No. 18 of 2017 was enacted into law, dubbed "*Perlindungan Pekerja Migran Indonesia*" (Law on Protection of Indonesian Migrant Worker). This new Act repeals several elements of the 2004 Act No. 39. The Act 2017 repealed the word "*Penempatan*" (Placement) from the Act 2004 and replaced the term "*Tenaga Kerja Indonesia*" (TKI) with "*Pekerja Migran Indonesia*" (PMI). Both terms are synonymous with the English term "Indonesian Migrant Worker." This modification, on the other hand, is culturally significant. TKI evokes images[345] of a low wage, like a coolie[346] with a dirty job, long hours, and a lack of suitable work or protection, whereas PMI appears more humane.

3.5. The Role of Migrant NGOs

The state's failure to protect migrant workers' human rights has piqued the interest of human rights activists, prompting them to fight injustice, intimidation, and assaults by reckless individuals. Human Rights Defenders (HRDs) play an important role in the current democratic constitution, where illiberal democratic patterns have proven to be effective in achieving populist goals. In this case, the terms "human rights activist" and "human rights defender" are interchangeable but convey the same meaning. Human rights advocates, on the other hand, actively defend and promote human rights. Meanwhile, human rights

Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri" (Jakarta, 2011).

[345] A Robo Vac advertising illustrates one of TKI's negative preconceptions. Robo Vac is a Malaysian robotic vacuum cleaner manufacturer that has been accused of utilizing marketing to disparage TKI who serve as housemaids in Malaysian households. The message of the advertisement is simply an invitation for Malaysians to fire Indonesian housemaids and replace them with robots. *See* Muhammad Masyaril Hraoom, Azhar Rizky Bumi, and Pradipta Ade Arkan, "Stereotip Tenaga Kerja Indonesia Dalam Iklan RoboVac," *Jurnal Audiens* 2, no. 1 (2021), https://doi.org/10.18196/jas.v2i1.8783.

[346] *See* Varma, "Coolie Acts and the Acting Coolies: Coolie, Planter and State in the Late Nineteenth and Early Twentieth Century Colonial Tea Plantations of Assam"; Hu-dehart, "Chinese Coolie Labor in Cuba in the Nineteenth Century : Free Labor of Neoslavery"; Yun, *The Coolie Speaks: Chinese Indentured Labourers and African Slaves in Cuba*.

defenders follow the official terms of the UN Convention as well as foreign scholars' recommendations. Although the 1998 Declaration on Human Rights Defenders does not explicitly define them, Article 1 states that "everyone has the right to support and work for the security and realization of human rights and fundamental freedoms at the national and international levels, individually and in collaboration with others." This declaration article states that any individual or organization can be a human rights defender. The following articles describe the rights guarantees that such individuals and groups must uphold to carry out human rights activities.[347]

Human rights defenders promote and protect civil, political, economic, social, and cultural rights. Human rights defenders also advocate for and defend the rights of members of marginalized groups, such as indigenous peoples. Individuals or groups that commit or propagate violence are excluded from the definition.[348] In the past, Non-Governmental Organizations (NGOs) have significantly contributed to advancing human rights, such as establishing human rights standards. They assist in drafting laws and treaties and primarily serve as experts in a particular field of human rights rather than politicians.

NGOs also play an essential role in formulating and developing international human rights law by filing complaints, engaging in international litigation, instituting, or intervening in cases as parties, serving as experts, and testifying as witnesses. Furthermore, NGOs have often been involved in articulating and gaining consensus on relevant norms and assisting in establishing institutions to enforce those norms. They also track whether states are abiding by their human rights obligations. In other words, they serve as "watchdogs" who objectively assess whether and how human rights are protected. Such monitoring aids in collecting data on human rights situations on a national and international level and identifying any issues.[349] NGOs frequently provide direct assistance to human rights victims by providing legal assistance (for example, handling individual complaints), humanitarian assistance (for example, providing emergency aid, food, water, shelter, medicine, and health care for the rehabilitation of torture victims), and other forms of direct assistance.[350]

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[347] Todd Landman, "Holding the Line: Human Rights Defenders in the Age of Terror," *The British Journal of Politics and International Relations* 8, no. 2 (May 2006): 123–47, https://doi.org/10.1111/j.1467-856x.2006.00216.x.
[348] Landman, 126.
[349] Lina Marcinkutė, "The Role of Human Rights NGO's: Human Rights Defenders or State Sovereignty Destroyers?," *Baltic Journal of Law & Politics* 4, no. 2 (January 1, 2011): 53–77, https://doi.org/10.2478/v10076-011-0012-5.
[350] Marcinkutė, 57.

The Declaration on the Right and Duty of Individuals, Organizations, and Organs of Society to Promote and Preserve Internationally Accepted Human Rights and Fundamental Freedoms (commonly referred to as the Declaration on Human Rights Defenders) was a watershed moment in international human rights protection. The regime has a long and illustrious history. The resolution resulted from a lengthy fifteen-year drafting process that included numerous meetings, negotiations, and compromises. As social equality has grown, there has been a greater emphasis on promoting and protecting the rights of individuals, groups, and communities. Graziano[351] Battistella delineates a crucial agenda for migrant NGOs, including advocacy, data gathering, legal aid, lobbying for appropriate legislation, education and empowerment, providing services, and organizing and networking.

The above fact demonstrates the importance of Human Rights Defenders (HRDs) in promoting and protecting the human rights of people, including the migrant workers. According to the UN Special Rapporteur[352], the significant challenges to human rights defenders' ability to carry out their legitimate work are significantly jeopardized by an increasingly hostile atmosphere in which they face legal and judicially placed limitations on their rights. Defenders operate in an increasingly divided and politicized world. They face grave threats to their fundamental rights and liberties, as well as their legitimate right to promote and protect human rights. Human rights defenders suffer when they are not adequately protected. Human rights defenders face challenges in protecting minorities since minorities' advocacy is carried out by an official state organ, so they face almost no direct or indirect obstacles due to their practically normative work.

In 2002, Indonesia's Constitution of 1945 was amended to guarantee civil freedoms, leading to the formation of many non-governmental groups. They wanted to advance democracy and encourage people's participation in development. Non-governmental organizations (NGOs) that focus on migrants are among the entities founded. At the very least, two well-known national NGOs have significantly contributed to the government's hitherto overlooked human rights of migrant workers. Indonesian Migrant Care, headquartered in Jakarta, and the Institute for Migrant Rights (IMR), based in Cianjur, West Java, are migrant non-governmental organizations (NGOs).

[351] Graziano Battistella, "The Human Rights of Migrant Workers: Agenda for NGOs," *The International Migration Review* 27, no. 1 (2024): 191–201.
[352] Michel Forst, "World Report on the Situation of Human Rights Defenders" (United Nations, 2018).

a. Migrant CARE

Migrant CARE is a civil society organization that advocates for Indonesian migrant workers. It was founded in 2004, which coincided with the promulgation of the first Indonesian Migrant Worker Act. This migrant NGO engages in policy lobbying, research, information gathering, legal assistance services, and organizing migrant worker groups at various levels, from national to village. It now has branches around Java Island and one in Malaysia. This NGO advocates for the rights of migrant workers throughout their migration[353] and is also focused on protecting their political rights, particularly their ability to participate in general elections. One of the thorough studies resulting from their research, campaigning, and advocacy is documented in a book titled "*Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*."[354] This book evaluated government policy on the governance of migrant labor, including a detailed regulation in the appendix.

Migrant CARE played a crucial role by participating as a party in the Constitutional Court's 2020 judicial review of the Migrant Worker Act 2017. The Association of Indonesian Worker Placement Companies (ASPATAKI) is challenging the court to eliminate specific provisions regarding money deposit requirements and criminal threats that migrant worker placement companies are obligated to adhere to under Articles 54, 82, and 85 of the 2017 Act on the Protection of Indonesian Migrants. The Constitutional Court dismissed the ASPATAKI request on November 25, 2020.[355] Migrant Care interpreted the court decision as a victory for the rights of migrant workers, safeguarding them against the negligence of particular migrant placement agencies that failed to assume accountability for their employees when they encountered workplace difficulties.[356]

In its Outlook 2020[357], Migrant Care criticized a number of the problems of Indonesian Migrant Workers' governance, including the overlapping of their placement in the Middle East, the inaccessibility of the use of the migrant digital platform by the migrants in remote areas, and some contemporary issues that affect migrant workers, such as climate

[353] Migrant Care, *Sikap Migrant Care Terhadap Problematika Buruh Migrant Indonesia* (Migrant Care, 2009).
[354] Anis Hidayah, Susilo Wahyu, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia.* (Migrant CARE, 2013).
[355] Migrant Care, "Putusan Mahkamah Konstitusi RI Terhadap Uji UU 18/2017 Menyelamatkan Ancaman Kemunduran Terhadap Perlindungan Pekerja Migran Indonesia," November 26, 2020, https://migrantcare.net/2020/11/putusan-mahkamah-konstitusi-ri-terhadap-uji-uu-18-2017-menyelamatkan-ancaman-kemunduran-terhadap-perlindungan-pekerja-migran-indonesia/.
[356] Migrant Care.
[357] Migrant Care, "Migrant Care Outlook 2020: Proyeksi Isu Pekerja Migran Indonesia dalam Analisis Berbasis Data" (Migrant Care, 2020), https://migrantcare.net/2020/01/migrant-care-outlook-2020/.

change, the sustainable development agenda, and the national issue specifically related to the implementation of the Act of 2017.

b. The Institute for Migrant Rights (IMR)

The institute was established to utilize international law in safeguarding the human rights of Indonesian migrant workers, as the conventional approach has so far been inadequate in addressing these issues. Traditional advocacy methods have yet to yield significant government protection for this group. This endeavor seeks to enhance current protocols by engaging international forums to tackle the challenges migrant workers face in Indonesia and elsewhere. This project will showcase developing best practices influenced by the newly implemented UN Convention on the Rights of the Migrant Worker, particularly in legal administration. Sharing information about migrant rights breaches globally would increase awareness and allow for the deployment of extra technical support to address the problem. Moreover, the initiative aims to enhance Indonesian compliance with human rights regulations by raising awareness of the advantages of the international human rights framework.

The initiative aims to familiarize the Indonesian public with participating in a global community rather than resisting it, regardless of where it occurs. Local public authorities commonly oppose globalization. This situation can be enhanced by providing something that showcases the tangible advantages of globalization. Past efforts to connect international law with human rights have mostly failed. Global mechanisms should be utilized or investigated by activists or scholars. The program will pioneer the investigation of international law for the benefit of individuals. It will also help migrant workers, especially low-income migrant sex workers, and Indonesian migrant Labourers who cannot afford the protection of international law. Moreover, the global community may listen to the ambitions of these low-income workers, motivating them to react accordingly. The project will act as a link between local goals and relevant international standards.[358]

According to its mission statement, the institute's operations are categorized into two groups. First, organize an international clinic to support Indonesian migrant workers dealing with legal challenges overseas. The institute aims to tackle the issue of Indonesian migrant labor through international forums in this scenario. International legal clinics are established

[358] IMR, "Institute for Migrant Rights: Advancing the Humanizing Laws," 2018, https://www.imr.or.id/.

to offer pro bono legal assistance to non-traditional victims of human rights abuses, such as non-citizens, enabling them to access international human rights mechanisms. The main reason for integrating international law into human rights promotion in Indonesia is that the existing national human rights system needs to address non-Indonesian human rights concerns. The underdeveloped research of international law, which upholds a state-centered paradigm, perhaps lacks its humanizing impacts. The contemporary discussion on human rights is mainly led by constitutional law specialists who support legal nationalism. Furthermore, prominent national human rights organizations must pay more attention to this crucial matter, weakening the core idea of a worldwide human rights movement. These clinics aim to initiate a new phase of human rights advocacy in Indonesia, leveraging the country's liberal capacity. This curriculum focuses on internationalist strategies such as publicizing domestic infractions to international entities, forming international legislation, and incorporating international standards into domestic lobbying.[359]

By means of their direct advocacy, legal clinics, research, and consultation, both migrant NGOs have demonstrated their vital role in bolstering the protection of human rights for migrants. These responsibilities are crucial during democratic transitions, such in Indonesia, to shift the focus of the migrant issue from state interests to human rights. The legislation concerning Indonesian migrant Labourers has evolved from the colonial era's coolie labor to post-colonial remittance practices, and currently reflects human rights methods inspired by NGOs and professors' ideas and campaigning. In specific contexts, they play a crucial role in shaping government policy concerning migrant workers. Yet, in a different situation, they collaborate with the government to enhance their migrant policy.

3.6. Concluding Remark

This chapter has examined how post-colonial Indonesian politics and policy have maintained a consistent posture on migrant labor throughout the country's history in an approach reminiscent of the colonial "coolie" migration sequence. This strategy is characterized by mass labour recruitment to support the Dutch government's agribusiness goals or the Japanese government's infrastructure interests. In the meantime, from 1945 to the present, Indonesian politics has been separated into two primary agendas regarding migrant workers: migrant worker remittances and poverty alleviation.

[359] IMR.

Suharto's New Order era successfully replicated this strategy for obtaining state remittances and alleviating poverty. Additionally, as a defining feature of contemporary Indonesian migrant worker political legislation, the state's political interest in migrant workers persists. The state's intention to increase remittances and alleviate poverty through exporting migrant workers was an essential component of the migrant workers' policy. As a result, migrant Labourers were hailed as remittance heroes ('*Pahlawan devisa'*). Suharto's government lauded migrant Labourers as the remittance's hero, emphasizing how critical migrant workers are to Indonesia's economic development in the modern day.

Regrettably, the state's attitude toward migrant workers has remained unchanged during Indonesia's democratic post-Suharto era. The economic well-being of migrant workers remains paramount, with two primary objectives: remittances and poverty eradication in the home country. The post-Suharto governments made a token effort to safeguard migrant workers' fundamental rights by enacting ad hoc legislation such as restructuring migrant workers and placement management. Specific regimes, such as President Wahid's, have carried out this policy by establishing a migrant labour protection system under the aegis of the foreign ministry's office. Meanwhile, other governments, including President Habibie, Megawati, and Yudhoyono, have emphasized the importance of migrant worker placement in the destination country in their migrant worker programs. Considering the status quo approach to migrant worker legislation, migrant workers, migrant worker NGOs such as Indonesian Migrant Care, and academics push for a fundamental change in migrant worker legislation incorporating a human rights perspective. As a result, in 2017, a new Act Protecting Migrant Workers was enacted. However, while the Act 2017 does not guarantee comprehensive protection for Indonesian migrant employees, it helps improve the management quality of migrant workers. Consequently, the effectiveness of the Act of 2017 to strengthen the protection of migrant workers' human rights has not changed significantly, as evidenced by the continuity of the government's approach to migrant workers' human rights issues at work.

CHAPTER 4

The National Legal Arrangements for the Protection of Migrant Workers' Rights

Institutional Structure and Inadequate Protective Mechanisms

As discussed in Chapter 2-3, political migrant worker legislation throughout Indonesian migration history was primarily concerned with state interests and provided only rudimentary protection for migrant workers' rights. Similarly, this chapter will discuss the current legal provisions in Indonesian migrant legislation regarding migrant workers' rights protection. In this context, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers will be analyzed as a more democratically enacted law than Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers. This law is considered more democratic because it involves a broad range of stakeholders, including academics, non-governmental organizations, and the public, via various consultation forums. However, some argue that the lengthy drafting process demonstrates that the government lacks the political will to implement significant changes to migrant worker management that are more modern and comprehensive. The section's basic premise is that the legislation governing Indonesian migrant workers is low in content and democratic participation in the legislative process.

Consequently, current migrant worker legislation falls short of adequately protecting migrant workers' rights. The primary evidence for this argument is the absence of provisions in existing legislation addressing these three crucial issues that substantially impact the protection of migrant workers' rights. *First*, the government's migrant worker placement strategy did not consider the destination nations' lack of protection for migrant workers' rights. *Second*, the Indonesian government uses a Memorandum of Understanding (MoU) as the agreement instrument with its foreign counterpart, which is not strictly binding on the foreign party. *Third*, the government sends migrant workers to countries without diplomatic ties to Indonesia. As a result, migrant Labourers in these four destination countries face a greater risk of human rights violations and lack of protection under Indonesia's migrant labour law system.

Additionally, Act No. 18 of 2017 paid less attention to female domestic workers and seafarers. Although, both groups of migrants require substantial government protection due to the highest incidence of human rights violations at their places of employment compared

to other occupations. In terms of numbers, an increasing number of migrants from these two groups are seeking work abroad, particularly women, due to the scarcity of jobs available to male migrant workers during the pandemic. In addition, women's engagement in meeting home demands has increased in recent years because of the rise in their household expenses, which includes the cost of their children's education.

4.1. The Current State of Migrant Worker Legislation

There were no migrant workers Act in force from the Sukarno era until the emergence of reform in 1998. During that period, many of the legal framework governing migrant workers was made up of technical laws enacted by various government agencies. Most technical laws enacted by the government dealt with the administration of migrant worker placement rather than the substantive issue that has evolved into the source of migrant workers' human rights violations.[360] The substantive issue is whether the migrant-receiving country guarantees legal protection to migrant workers, which may be the primary factor influencing the government's decision to send the migrant worker.[361] The facts show that migrant workers were denied legal status in Indonesian law for a long time until the government enacted Act Number 39 in 2004 regarding the placement and protection of migrant workers. As implied by its title, Act No. 39 of 2004's primary stipulation goal was to place and then protect migrant workers. It demonstrates that previous technical laws governing migrant worker placement significantly influenced Act No. 39 of 2004. However, before the 2004 enactment of the specific law protecting migrant workers, the 1945 Constitution guaranteed some human rights to Indonesian citizens, referred to as the legal framework for migrant worker protection. The protection of migrant workers' rights can be found in Articles 27 and 28 of the 1945 Constitution, amended in August 2000. For example, Article 27(2) states that everyone has the right to a decent job and humane treatment.

Additionally, Article 28D (1) expands citizen rights to include the right to recognition, guarantees, protection, legal certainty, and equal treatment under the law. This stipulation stated that everyone, regardless of social status, has equal rights before the law regarding the state's protection and fairness. Several additional regulations can serve as a foundation for the legal protection of migrant workers, including the right to work and to receive just and proper remuneration and treatment in an employment relationship (Article

[360] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*.
[361] Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia."

28D [2]). Additionally, every citizen has the right to have his or her honour, dignity, and property protected (Article 28G [1]). Article 28I (4) specifies the number of additional human rights protections for citizens that the state or government must observe, implement, and protect.

Along with the protections guaranteed by the 1945 Constitution, two other laws indirectly address the protection of migrant workers' rights. First, Law No. 39 of 1999 concerning Human Rights, specifically Article 38 paragraph (2), states that "*everyone has the right to freely choose the job he desires and is also entitled to just employment conditions*." Article 31 of the 2003 Manpower Regulation states that "*every worker has the same rights and opportunities to choose, obtain, or change jobs and earn a living wage at home or abroad*." These two provisions imply the right to obtain a decent job in one's home country and the right to work in another country, as the two provisions do not restrict where one can work.

Meanwhile, following Articles 27 and 28 of the 1945 Constitution, legislation should be drafted to detail citizens' human rights, mainly migrant workers, as requested by Law No. 12 of 2011 Concerning the Establishment of Laws and Regulations. According to Article 10, the content material that must be regulated by law includes a. further regulation of the Republic of Indonesia's 1945 Constitution; b. an order for a Law to be regulated by law; c. ratification of certain international agreements; d. follow-up on the Constitutional Court's decision; and/or e. fulfilment of legal needs in society.

The Law on the Protection of Human Rights for Migrant Workers, based on the provisions of Article 10, can clearly articulate the various protection provisions, both in terms of the substance of migrant workers' rights and the obligations of the state and institutions related to their management. However, the provisions about protecting migrant workers' human rights were omitted from Act No. 39 of 2004 since the provisions contained in this Act are only normatively sound. For instance, legal protection for migrant workers against rights violations while on assignment abroad cannot be fully realized. Because Law No. 39 of 2004 does not explicitly name the parties responsible for implementing and enforcing these migrant workers' rights. Additionally, Law No. 39 of 2004 contains no sanctions for violations of these rights.

Similarly, what if the migrant worker's salary falls below the legal minimum in the country where he or she works? On the other hand, Law No. 39 of 2004 imposes severe penalties on migrant workers who fail to adhere to the law's requirements, including being

classified as illegal and subject to all consequences. As a result, Law No. 39 of 2004 is incompatible with the spirit of protection embodied in it in this context.[362]

This law did not specify who was responsible for enforcing specific rights or the penalties for violating migrant workers' rights under Law No. 39 of 2004.[363] As a result, despite its 13-year duration (2004–2017), the 2004 Act No. 39 failed to safeguard migrant workers' human rights. Numerous violations of migrant workers' fundamental rights, since the recruitment stage, torture, expatriation from the destination country, and the death penalty, attest to this[364]. Various members of society have urged the government and parliament to amend Act No. 39 of 2004 because migrant workers face human rights violations in their destination country. In 2009, the parliament incorporated the amendment to Act No. 39 of 2004 into the National Legislation Program Plan ('Prolegnas') in response to a proposal from civil society. However, it did not include Bill's draft on the Parliamentary discussion agenda, as Bill's draft was not yet complete. It is incorporated into subsequent years of Prolegnas until 2014. In 2014, there has been extensive discussion between the government, parliament members, and members of civil society about the draft Bills. The primary issue under discussion was the amendment statute, specifically whether to amend a specific provision deemed to violate migrant workers' human rights protections or to repeal and replace Act No. 39 of 2004. Finally, the Legal Drafter team agreed to amend the 2004 Act. However, another issue arose following this stage: the proposed name for the new proposed Act to replace Act No. 39 of 2004. Two critical issues arose in this context: the first was the emphasis that the new Act would place on placement or protection, and the second was a state responsibility. Certain parties oppose the idea of making placement the primary focus of the new Act, citing that under Act No. 39 of 2004, placement was taken at a higher rate than protection. At the same time, some ideas agreed that the new Act's primary feature should be state accountability.[365] Finally, based on input from civil society members, the Legal Drafter team decided to use protection as the primary title for the new Act.

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[362] Susilo. Ibid.

[363] Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*.

[364] Migrant Care, a Jakarta-based migrant worker NGO, documented numerous instances of migrant workers' human rights violations in several destination countries, including Malaysia, Taiwan, Hong Kong, and Saudi Arabia, during the implementation of Act No. 39 of 2014. In this documentation book, Migrant Care expressed its position on various forms of violence experienced by migrant workers, as well as government policies addressing those cases. *See* Migrant Care, *Sikap Migrant Care Terhadap Problematika Buruh Migrant Indonesia* (Jakarta: Migrant Care, 2009).

[365] Dzaljad, "Review & Agenda Aksi Proses Legislasi Revisi/Penggantian UU No. 39 Tahun 2004 PPTKILN/PPILN."

Wahyu Susilo[366] asserts that the protracted debate over the bill protecting Indonesian migrant workers demonstrates that the government's political will to protect migrant workers remains extremely weak. Because they do not prioritize discussion of the bill on the legislative agenda. Additionally, due to the short period between the bill's discussion and ratification, the new law's substance is still widely contained. However, in terms of protecting Indonesian migrant workers, the 2017 law is far superior to the 2004 Law No. 39. In any case, Act No. 18 of 2017 had a more democratic legislative process than Act No. 39 of 2004, which was dominated by government ideas. This Act was drafted with input from various stakeholders, including academics, non-governmental organizations, and elected officials. Several engage in active research, legislative drafting, and public hearings. Participation of the public in the development of Act No.18 of 2017 improves its quality. As a result, the Act 2017 incorporates several international conventions on migrant worker rights, including the United Nations Convention on protecting migrant workers and their families (C90), which Indonesia ratified in 2012. By ratifying this convention, Indonesia committed to fully implementing its human rights provisions for migrant workers and their families. It was a watershed moment in Indonesian migrant worker legislation. In the previous law of 2004, migrant worker legislation received little public input because the law was drafted exclusively by the government.

4.2. The Main Features of the Protection of Migrant Workers' Rights

Protection of Indonesian Migrant Workers is the title of Law No. 18 of 2017. By name, this law is significantly more progressive in conveying Indonesia's strong commitment to protecting migrant workers, which was previously subordinated to the Law on the Placement of Migrant Workers in Law No. 39 of 2004. At the time of its creation, the title was a subject of academic debate, as it was a compromise of the numerous title suggestions made by academics and non-governmental organizations involved in the academic drafting process.[367] A significant change from the 2017 Law is adding the term "migrant worker" to the definition of labour. Labour employed in numerous technical regulations from the Suharto era to the 2004 Law impressed Indonesian migrant workers as "coolies" during the colonial era, ensuring their rights were not respected in the countries

[366] Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia."
[367] Dzaljad, "Review & Agenda Aksi Proses Legislasi Revisi/Penggantian UU No. 39 Tahun 2004 PPTKILN/PPILN."

where they worked and at home. The 2017 Law's substantial and paradigmatic changes toward Indonesian migrant workers will be thoroughly analyzed in this section, particularly in terms of substance, to determine whether they reflect the spirit of change envisioned by the title of the Law.

4.2.1. Migrant Worker Qualification

Act 18 of 2017 establishes who is and is not a migrant worker. Article 1, paragraph 2 defines Indonesian migrant workers as any citizen working for pay outside the Republic of Indonesia's territory. Additionally, this law establishes an eighteen-year-old minimum age requirement for residents seeking employment as migrant workers (Article 5). Article 4(1) states that this definition categorizes Indonesian migrant workers into three types based on their employer: legal entities employing Indonesian migrant workers, individuals or families employing Indonesian migrant workers, and crew sailors and fishers working on boats. Meanwhile, Article 4(2) specifies who is not considered a migrant worker: Indonesian citizens sent or employed by international organizations or countries outside their territory to perform official duties; students[368] and trainees abroad; refugees or asylum seekers; investors; members of the state civil apparatus or local employees working for the Representatives of the Republic of Indonesia; and Indonesian citizens working in institutions.

This definition refers to official migrant workers participating in the migration process, which the Ministry of Manpower oversees. Besides, Article 1(4) of Act No. 18 of 2017 recognizes the individual migrant worker who will work abroad under his arrangement. However, all risks resulting from his work are also his responsibility, according to Article 63(2). It demonstrates that individual migrant workers' human rights protection was discriminated against under the protection system outlined in this Act. This provision violates the International Convention on the Rights of All Migrant Workers and Members of Their Families, ratified by Indonesia through Act No. 6 of 2012.

[368] According to some scholars, students are classified as highly skilled migrant workers who move to developed countries for study and do not return home after completing their studies, primarily the Ph.D. However, in Article 3 of the Migrant Worker Convention (MWC), they are expressly excluded from its migrant workers definition. *See* Ryszard Cholewinski, "International Labour Law and the Protection of Migrant Workers: Revitalizing the Agenda in the Era of Globalization," in *Globalization and the Future of Labour Law*, ed. John D.R. Craigh and S. Michael Lynk, first (Cambridge: Cambridge University Press, 2006), 415–16; Stephen Castles and Mark J. Miller, *The Age of Migration: International Population Movements in the Modern World*, Third (New York: Palgrave Macmillan, 2003).

According to Article 2(2), a "migrant worker" is defined as "a person who is about to engage in, is engaged in, or has previously engaged in a remunerated activity in a state of which he or she is not a national." This definition of "migrant worker" made no distinctions between the various categories of migrant workers. It refers solely to an individual who wishes to work abroad or has worked so. As a result, Edelenbos[369] contends that the definition in the UN Convention of 1990 is broader than any other in international treaties. Consequently, a person is considered a migrant worker if he or she has a contract, regardless of whether he or she has left his or her home country. Accordingly, Article 1(1) stated that "except as otherwise provided in this Convention, the present Convention applies to all migrant workers and members of their families regardless of gender, race, colour, language, religion or convictions, political or other opinions, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or another status." Hence, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is the most comprehensive international treaty addressing migrant workers' rights. The most recent of several so-called core international human rights conventions comprise the United Nations human rights treaty system. By imposing ensuing obligations on States parties, the Convention protects the human rights of migrant workers at all stages of the migration process, in the country of origin, the country of transit, and the country of employment.[370] To implement this convention, Article 5 Act No. 18 of 2017 established certain pre-conditions that migrant worker candidates must meet before departing for their destination countries. Failure to meet the established criteria will result in non-recognition as a documented migrant worker, putting them at risk of human rights violations abroad.

However, Indonesian NGOs expert[371] have criticized the migrant worker category established by Act No. 18 of 2017, citing a scarcity of undocumented migrant workers who primarily work in low-skilled jobs such as housekeeping, gardening, and elderly care. Even though Article 5(b) of the Migrant Worker Convention states that migrant workers and their family members are considered undocumented or irregular if they do not meet this article's requirements specified in subparagraph (a). According to Article 5(a) of the MWC, migrant workers and their families are considered documented or in a regular situation if they are

[369] Carla Edelenbos, "The International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families," *Refugee Survey Quarterly* 24, no. 4 (2005): 93–98.
[370] Edelenbos. *at* 93.
[371] Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia."

authorized to enter, remain, and engage in a remunerated activity in the State of employment under the laws of that State and international agreements to which that State is a party. These two provisions make abundantly clear that the MWC protects undocumented migrant workers and their families regardless of whether they have met the requirements of the state of origin administration.[372]

Due to the lack of recognition and protection for their rights under Act No.18 of 2017, they face far more severe human rights violations than independent migrant workers. The number of Indonesian undocumented migrant workers is enormous[373], with the majority working in Malaysia, Saudi Arabia, and the Netherlands.[374] Rodrigo A. Caves[375], the World Bank's Director for Indonesia and Timor Leste, discovered in 2016 that more than half of Indonesian migrant workers travelled overseas without proper documentation.

Some factors contributing to undocumented migrant workers include migrant workers' lack of understanding of how to apply for jobs in their home country, distrust of the migrant bureaucracy, and being duped by brokers.[376] Migrants are desperate to work abroad due to household economic needs, even if they do not have a document[377]. When Indonesian undocumented migrant workers arrived in Malaysia, they were housed in a shelter called "*rumah kongsi*" (shared house) by their countrymen. "*Rumah kongsi*" is a semi-permanent structure on an active construction site. They are composed not only of Indonesian immigrants but also those from Bangladesh, India, and Vietnam, among others. Occasionally, "*rumah kongsi*" is located deep within the forest to protect migrant workers from police raids or authorities. Distancing from local communities and unexpected human-inhabited areas may help them avoid detection by authorities. Social relationships within

[372] L. S. Bosniak, "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention," *International Migration Review* 25, no. 4 (1991): 737–70, https://doi.org/10.2307/2546843.
[373] Elizaveta Perova, "Why Do Indonesian Men and Women Choose Undocumented Migration? Exploring Gender Differences in Labor Migration Patterns," *Why Do Indonesian Men and Women Choose Undocumented Migration? Exploring Gender Differences in Labor Migration Patterns* (Jakarta, 2019), https://doi.org/10.1596/32529; The World Bank, "Indonesia's Global Workers Juggling Opportunities & Risks"; S. Hune, "Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," *International Migration Review* 25, no. 4 (1991): 800–817, https://doi.org/10.2307/2546845.
[374] The undocumented migrant workers in the Netherlands came to the country as house midwives, but even though their documents have expired, they continue to work without a valid document. LIPI, *The Mobility of Unskilled and Undocumented Migrants: Indonesian Migrant Workers in the Netherlands*.
[375] The World Bank, "Indonesia's Global Workers Juggling Opportunities & Risks."*at* 14.
[376] Ridwan Wahyudi, "Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia," *Populasi* 25, no. 2 (2017): 24–43, https://doi.org/10.22146/jp.36202.
[377] Sri Wahyono, "The Problems of Indonesian Migrant Workers'Rights Protection in Malaysia," *Jurnal Kependudukan Indonesia* 2, no. 1 (2007): 27–44.

migrants' "*Rumah kongsi*" have been harmonious, assisting and complementing one another.[378]

This fact demonstrates that undocumented migrant workers exist everywhere due to various factors, but primarily due to migrant workers' mismanagement in their home country. Additionally, the international community has long expressed concern about undocumented migrant workers' rights. For instance, the International Labour Organization (ILO) adopted Convention No. 143 on Adverse Conditions of Migration in 1974. This convention provides substantial but not comprehensive protections for undocumented migrants' human rights and preserves states' authority over immigration control and national "membership policy."[379] In reality, several European countries have prioritized the rights of undocumented migrant workers, particularly regarding health care.[380] Additionally, ASEAN's 2007 declaration on the Protection and Promotion of the Rights of Migrant Workers suggests collaboration among members of regional institutions in resolving the issue of undocumented migrant worker protection.[381]

4.2.2. Approaches to Migrant Workers' Protection

Act No. 18 of 2017 provisions represent a significant change in protecting migrant workers' rights on the ground. It introduces new provisions to strengthen migrant workers' protection at all stages of migration, beginning with pre-placement, continuing through employment, and returning to their home country. Furthermore, migrant management has heavily involved multiple national, regional, and village state agencies. Meanwhile, this Act mandated the establishment of a special Attache to assist migrant workers' interests prior to and during their employment in the destination country. In summary, Act No. 18 of 2017 established six categories of migrant worker protections, including protection before departure while working in the destination country and returning to Indonesia.

Furthermore, Act No. 18 of 2017 ensures the following protections: legal protection, social protection, and financial protection. The provisions of Act No. 18 of 2017 are like those of Act No. 39 of 2004 in terms of its protection scope. However, some provisions have

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[378] Wahyudi, "Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia."*at* 30.
[379] Bosniak, "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention."*at* 738-739.
[380] Paul SCHOUKENS and Danny PIETERS, "Exploratory Report on the Access to Social Protection for Illegal Labour Migrants" (Belgium, 2003).
[381] Saidatul Nadia Abdul Aziz and Salawati Mat Basir, "Protection of Migrant Workers under the ICMW: Incompatibility with Malaysian Laws and Position in ASEAN," *Hasanuddin Law Review* 7, no. 3 (2021): 150–68, https://doi.org/10.20956/halrev.v7i3.3066.

been strengthened due to public input and the adoption of an international convention on protecting the rights of migrant workers. Among the novel ideas contained in Law No. 18 of 2017 is that it strengthens the government's role and diminishes the private sector's role in managing migrant workers, both during placement and in protecting migrant workers' human rights in general. In this law, the central and local government is charged with protecting Indonesian Migrant Workers ('PMI'), beginning before, continuing during, and concluding after work. Meanwhile, private companies are tasked with the sole responsibility of conducting PMI placements.

The expansion of the state's role at the national and regional levels demonstrates its unwavering commitment to protecting PMIs and upholding their human rights. The state's significant role in migrant worker management is hoped to mitigate the private sector's exploitative behaviour to maximize profit. Until now, the private sector's hegemony in managing exploitative migrant workers has resulted in widespread violations of PMI's human rights. The private sector plays a significant role in the implementation of Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, from providing information on job opportunities abroad, collecting data, managing documents, providing education, pre-departure administration, housing, medical check-ups, and dispatch, to resolving issues until PMI returns. The private sector's significant role is curtailed by Law Number 18 of 2017, which grants it the authority to dispatch PMIs only after they have been verified and declared ready by the government established One Roof Integrated Services ("*Layanan Terpadu Satu Atap* or LTSA"). Additionally, the private sector's role is to report PMIs' return and resolve issues that PMI are still encountering at their employment.[382]

According to the preceding description, the new provisions on migrant worker protection included in Act No. 18 of 2017 can be classified into three approaches: shared management of migrant workers at the governmental level; centralization of migrant worker administration; and reducing the role of private enterprise by involving the Attache in the placement of migrant workers. These three approaches are normative and will contribute significantly to reforming migrant workers' governance with provisions that can be realized consistently in its implementation stage.

[382] Erna Ratnaningsih, "Paradigma Baru Perlindungan Pekerja Migrant Indonesia," business-law.binus.ac.id, 2017, https://business-law.binus.ac.id/2017/12/31/paradigma-baru-perlindungan-pekerja-migran-indonesia/.

a. Shared Migrant Worker Management at All Levels of Government

As a result of 2017, Act No. 18, migrant workers' management has shifted significantly. Private enterprises were instrumental in managing migrant workers under Act No. 39 of 2004, from pre-departure to working in the destination country and returning to Indonesia. The government's role in migrant worker management has thus far been limited to validating administrative documents supplemented by private enterprises. Additionally, the government serves as the enterprise's supervisor, ensuring that the private sector complies with all applicable statutory provisions. If the government discovers a business that has violated the regulations, administrative sanctions will be imposed. By playing a minimal role in migrant worker management, the social enterprise leverages the migrant worker business as a source of strategic capital throughout the migration process.

Candidate recruitment for migrant workers is one of the most pressing issues in migrant worker management.[383] According to some studies[384], extortion and fraud against prospective migrant workers are frequently carried out by private employment agencies without the knowledge of the government. Typically, private enterprises hire calos or labour brokers[385] from the local community to find a suitable candidate. Calos[386] play various roles in this context, including delivering job opportunities to targeted migrant workers, lending money, and administering all documents requested by the government.

In some instances, Calos may not represent any private enterprises. They invest in themselves to benefit economically from referring migrant candidates to private migrant labour enterprises. On the other hand, the independent calo was not included in the migrant law. Their work constitutes a violation of the migrant law, as defined in Article 4 of Act No. 39 of 2004, punishable by a criminal charge. Due to a lack of government oversight, illegal calos activities continued unchecked, sometimes resulting in negative consequences for

[383] Lindquist, "Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry"; Moch Faisal Karim, "Institutional Dynamics of Regulatory Actors in the Recruitment of Migrant Workers: The Case of Indonesia," *Asian Journal of Social Science* 45, no. 4–5 (2017): 440–64, https://doi.org/10.1163/15685314-04504004.

[384] Juwana et al., "Naskah Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri"; Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*; Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*; Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*. *See* also Wahyudi, "Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia." *at* 29.

[385] Sudjana, *Melepas Ranjau TKI: Strategi Pemberdayaan Buruh Migran*; E. Spaan, "Taikongs and Calos: The Role of Middlemen and Brokers in Javanese International Migration," *International Migration Review* 28, no. 1 (1994): 93–113, https://doi.org/10.2307/2547027.

[386] Tagaroa and Sofia, *Buruh Migran Indonesia Mencari Keadilan*; Sudjana, *Melepas Ranjau TKI: Strategi Pemberdayaan Buruh Migran*.

migrant candidates, such as false job opportunities information and migration cost fraud. Since most labour migrant recruitment firms are based in Jakarta, migrant Labourers require a mediator to connect them to the company, and they have no choice but to seek assistance from the calos.[387]

Besides, Patron-client relationships may include job placement in some instances. The organization of the recruitment chain may change in response to government efforts to combat illegal recruitment channels. A lack of information complicates the inability of migrants to migrate independently. Migrants who pass through intermediaries obstruct the process and increase their vulnerability to exploitation. Many migrants continue to seek work through informal channels because they are unaware of safe and legal employment agencies or believe that dealing with local brokers is faster and more efficient[388]. According to Amarjit Kaur's[389] research, reliance on brokers appears to have no economic expiration date in Southeast Asia. Labour brokers have played a critical role in organizing and facilitating officially sanctioned migration, especially in the modern era. These individuals are responsible for advertising and recruiting, paying for, and facilitating migrants' travel.

To address the ongoing risk of human rights violations against migrant workers due to calos activities and private migrant worker recruitment campaigns, Article 39 to 42 Act No. 18 of 2017 established a multi-level governmental management system for migrant workers, requiring participation from national, regional, local, and village governments. Each level of government is responsible and accountable for its migrant worker-related responsibilities and tasks (Tabel 2). The government regulations will elaborate on each government structure's specific roles and responsibilities to avoid duplication.

[387] Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*. *at* 49-50.
[388] Spaan, "Taikongs and Calos: The Role of Middlemen and Brokers in Javanese International Migration," 1994.*at* 109.
[389] Amarjit Kaur, "Labour Brokers in Migration: Understanding Historical and Contemporary Transnational Migration Regimes in Malaya/Malaysia," *International Review of Social History* 57, no. SPEC. ISSUE 20 (2012): 225–52, https://doi.org/10.1017/S0020859012000478.

Tabel 2 Responsibilities Management Shared Across Government Levels

Central Government	Province Government	District/City Government	Village Government
Ensuring the protection of Indonesian migrant workers in the form of candidates and/or Indonesian migrant workers in other countries, as well as their families	Providing job education and training through accredited government and/or private educational institutions and job training institutions	Disseminating information and requests for Indonesian Migrant Workers to the community	Receiving and providing information and job requests from government agencies responsible for workforce administration
Regulating, promoting, implementing, and supervising the placement of Indonesian migrant workers	Managing the return of Indonesian Migrant Workers in the event of war, natural disasters, disease outbreaks, deportations, or when Indonesian Migrant Workers experience difficulties following their authority	Compiling a database of Indonesian Migrant Workers	Verifying data and recording Prospective Indonesian Migrant Workers; c.
Ensuring that the rights of Prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers, as well as their families, are respected	Issuing a branch office permit for the Placement of Indonesian Migrant Workers	Reporting the Indonesian Migrant Worker Placement Company's evaluation results to the provincial government regularly	Facilitating Prospective Indonesian Migrant Workers' compliance with population administration requirements
Establishing and developing a comprehensive information system for the placement and protection of Indonesian migrant workers	Reporting to the Minister the results of the evaluation of the Indonesian Migrant Worker Placement Company on a regular and staged basis	Ensuring the return of Indonesian Migrant Workers in the event of war, natural disaster, disease outbreak, deportation, or if Indonesian Migrant Workers experience difficulties following their authority	Monitoring the departure and return of Indonesian Migrant Workers
Coordinating cooperation among related agencies in responding to complaints and adjudicating cases involving Prospective Indonesian	Protect Indonesian migrant workers before and after work	Protecting Indonesian Migrant Workers prior to and following their employment in the regency/city area, which is their responsibility and authority	Empowering Prospective Indonesian Migrant Workers, Indonesian Migrant Workers

Migrant Workers and/or Indonesian Migrant Workers		
Ensuring the return of Indonesian migrant workers in the event of war, natural disaster, epidemic disease, deportation, and problematic migrant workers	Aid posts and on-site services for the departure and repatriation of Indonesian migrant workers who meet the required and accepted health standards	Providing education and job training to Indonesian Migrant Worker Candidates who are willing to cooperate with accredited government and/or private educational institutions and job training institutions
Making efforts to ensure that the rights and protection of Indonesian migrant workers are fully realized in the country of placement	Provide and facilitate training of Indonesian Migrant Workers candidates through vocational training funded by the education function	Conducting guidance and supervision of educational institutions and job training institutions in districts/cities
Developing policies to safeguard Indonesian migrant workers and their families	Regulating, fostering, implementing, and supervising the placement of Indonesian Migrant Workers	Conducting social and economic reintegration of Indonesian Migrant Workers and their families;
	Can establish a one-stop integrated service for the placement and protection of Indonesian Migrant Workers at the provincial level	Provide and facilitate training of Indonesian Migrant Workers Candidates through vocational training funded by the education function
		Regulating, fostering, implementing, and supervising the placement of Indonesian Migrant Workers
		Can form an integrated one-stop service for the placement and protection of Indonesian Migrant Workers in the district

As shown in Table 2, all migrant workers were primarily managed by regional and local governments before departure. The primary responsibility of the Central Government is to protect the rights of migrant workers and their dependents. On the other hand, the central and local governments share three responsibilities: protecting migrant worker rights, supervising migrant worker placement, and providing capacity-building training before migrant worker departure. In terms of accountability, Wahyu Susilo[390] emphasized the importance of clearly defining who is accountable for what at the various levels of government to avoid institutional conflict. Another issue that must be resolved is the relationship between the workforce ministry and other government agencies, such as the ministry of foreign affairs. This relationship will prevent future responsibilities from being passed back and forth.[391] Indeed, Article 43 of Act No. 18 of 2017 anticipated resolving this potential institutional conflict by directing the central government to establish a Government Regulation outlining how the central, regional, and local governments collaborate through clearly defined roles.

Meanwhile, village governments are primarily responsible for ensuring that the migrant worker recruitment process is transparent and legal at all stages. As a result, calos or brokers[392], which had long operated in the history of Indonesian migrant workers, ceased to exist. For instance, the village government informs migrant labour candidates about a job opportunity from the workforce ministry. The veracity of job information is critical, as Calo has been accused of providing false job opportunity information[393] to migrant worker candidates in some instances. Additionally, the village apparatus is responsible for validating the personal data of migrant workers prior to the migrant candidate submitting his/her data to the Manpower office (Article 42). Previously, the calos completed all these tasks in exchange for a fee derived from the calos' services. Calo or broker and all expenses associated with migrant worker recruitment and placement are prohibited under Act No.18 of 2017 (Article 69 and Article 30). This provision benefited candidates for migrant workers by preventing them from incurring high costs during the recruitment process and pre-departure period. However, historically, the head of the village or lurah was involved in the

[390] Susilo, "Membaca Kritis UU Pelindungan Pekerja Migran Indonesia."
[391] Ratnaningsih, "Paradigma Baru Perlindungan Pekerja Migrant Indonesia."
[392] *See* Karim, "Institutional Dynamics of Regulatory Actors in the Recruitment of Migrant Workers: The Case of Indonesia"; Lindquist, "Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry."
[393] Juwana et al., "Naskah Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri"; Sudjana, *Melepas Ranjau TKI: Strategi Pemberdayaan Buruh Migran*.

frontline stage of migrant worker recruitment. In the colonial migrant worker system, the head of the village, or lurah, served as both administrator and *calo*, or broker. This historical experience should be carefully considered when implementing Act No. 18 of 2017, particularly regarding managing migrant worker recruitment.

b. Centralization of Migrant Worker Administration Body

Chapter IV Article 38 of Act No.18 of 2017 establishes a special provision for the new administration form to serve migrant workers via a single gate (*'pelayanan satu atap'*). This provision directs the central and local governments to implement one-gate services systematically. However, the local government is solely responsible for establishing a single-gate service. This single-gate service system has three objectives: to operate effectively, efficiently, and transparently to improve migrant workers' placement and protection. Article 39 states that government regulation will further define this concept of shadow services. The President promulgated Government Regulation No. 10 of 2020 on January 29, 2020, regarding the Procedures for the Placement of Indonesian Migrant Workers by the Indonesian Migrant Workers Protection Agency – (BP2MI).

In essence, the single gate service is a good idea for improving service to migrant workers, previously organized through brokers. However, because Indonesian bureaucracy is divided into three tiers of government: central, regional, and local, shared administration in this scenario must be well prepared. Unless this is addressed, migrant workers will face uncertainty when applying for employment administration services. Thus far, the single-gate service has resulted in a noticeable improvement in service delivery to migrant workers. According to the evidence from Lombok, the Local Government[394], many procedures, time, and costs have been eliminated through the one-gate services (*'Layanan Terpadu Satu Atap-LTSA'*). This fact shows that, in terms of migrant worker management, Indonesia has made significant progress under Act No.18 of 2017, which effectively protects migrant workers' rights to adequate services, legal certainty, and transparency before departing for their destination countries. Additionally, it demonstrates that one migrant worker issue has been adequately addressed in the home country.

[394] Siti Yulianah M. Yusuf, Dhea Candra Dewi, and Vidya Yanti Utami, "Peningkatan Pelayanan Publik Bagi Pekerja Migran Melalui Lembaga Terpadu Satu Atap (LTSA) Kabupaten Lombok Tengah," *JIP Jurnal Inovasi Penelitian* 2, no. 7 (2021): 2117–26.

c. Attache's Involvement in Migrant Worker Placement

Regarding state evolution, constitutional development, and international law, the diplomatic protection of citizens abroad is relatively new. Diplomatic protection did not become a factor in international relations until modern public law clearly defined the state's legal position toward individuals, its citizens, and foreigners, and between states. Thus, a discussion of the subject necessitates a preliminary examination of three different legal relationships: the first between the state and its citizens; the second between the state and aliens residing within it; and the third between states in terms of their rights over and international liability for delinquencies toward aliens.[395]

The history of the state's legal relations with citizens and foreigners is primarily a story of the transition from a system of personal laws to the territoriality of law. It was accompanied by the increasing control of central power over the individuals under its jurisdiction and the emergence of specific characteristics, territorial independence, and sovereignty as required qualifications for admission to the society of nations.[396]

Following this theoretical framework, the 2017 Indonesian migrant worker law reaffirmed the country's diplomatic commitment to protecting Indonesian migrant workers by reclaiming Attache's roles in migrant worker management. Attache's involvement in the migrant workers' placement management body established by Act No. 18 of 2017 is fictitious. Because according to Manpower Ministry Regulation No. 12 of 2011, Attache was introduced as a component of the Ministry of Manpower's migrant worker placement management. Additionally, with a few exceptions, Attache's duties are like those outlined in Act No. 18 of 2017. In Chapter III, Article 7, the protection for migrant workers is stated comprehensively in all stages of migration, from pre-departure to destination country, while working abroad, and upon return to Indonesia. Act 18 of 2017 mandates the government to designate an Employment Attache in the destination country responsible for evaluating the validity of the employment given to migrant workers to increase their protection while working in the destination country.[397] Aside from this Attache responsibility, its establishment appears to be more mandatory than the 2011 Ministry of Manpower regulation, which was voluntary. The employment Attache has the legal status of a technical Attache with diplomatic functions, as defined in Article 1(12) of the Decree of The President

[395] Edwin M. Borchard, "Basic Elements of Diplomatic Protection of Citizens Abroad," *The American Journal of International Law* 7, no. 3 (1913): 497–520.
[396] Borchard. Ibid.
[397] Article 22.

of the Republic of Indonesia Number 51 of 1976 Concerning the Principles for Organizing the Republic of Indonesia's Representatives. As a result, because the attache's role is diplomatic, he is bound by Article 5 of the 1963 Vienna Convention on Consular Relations.

The involvement of an Attache in job placement is a significant step forward for migrant worker protection management, which was previously non-existent. Formerly, under Act No. 39 of 2004, the government lacked the authority to validate the validity of migrant workers' jobs offered by the destination country. The private company agent was solely responsible for organizing all information about the job and placement of migrant workers. In this situation, there was a high risk of fraud and violation of migrant workers' right[398] to accurate job information.[399]

The detailed job description for the Manpower Attaché is outlined in Government Regulation No. 10 of 2010 on the Indonesian Migrant Workers Protection Agency's Procedures for the Placement of Indonesian Migrant Workers. The detailed job description for the Manpower Attaché is governed by Government Regulation Number 10 of 2010 of the Indonesian Migrant Workers Protection Agency. Generally, the Government Regulation assigns the Manpower Attaché six significant responsibilities, including validating the request letter for Indonesian workers submitted by the Indonesian Migrant Workers Protection Agency (*'Badan Perlindungan Pekerja Migran Indonesia* or BP2MI').[400] The Attache receives data on Indonesian Migrant Workers (*'Pekerja Migran Indonesia* or PMI)' dispatched to the destination country where the Attache works.[401] Receiving PMI arrival reports;[402] Collecting PMI arrival data via the WNI care portal;[403] Advising PMIs upon their arrival in the destination country;[404] and receiving reports on the return of PMIs whose work period in the destination country has ended.[405]

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[398] Juwana et al., "Naskah Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri"; Badan Legislasi DPR RI, "Naskah Akademik Rancangan Undang-Undang Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri."

[399] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*; Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*; Sudjana, *Melepas Ranjau TKI: Strategi Pemberdayaan Buruh Migran*.

[400] Article 7.

[401] Article 24.

[402] Article 27.

[403] Article 28.

[404] Article 29.

[405] Article 31.

The Employment Attaché appears to have a more administrative role, ensuring proper documentation of PMI's presence in the destination country. Meanwhile, Attache's substantive role in protecting migrant workers' rights is to ensure that employers provide an appropriate working environment, as specified in Article 15(2) of Government Regulation No. 59 of 2021 on the Protection of Indonesian Migrant Workers. However, this provision will be difficult to implement if Attache's authority to monitor PMI is not included in the agreement with the work provider. As a result, Attache must carefully consider this provision[406]when performing this task. Otherwise, this supervisory function would be analogous to the advocacy duties mandated by the Ministry Regulation 2011, later repealed by Act No. 18 of 2017 due to the difficulty in implementing this duty. Ida Susanti[407] argued in her study that specific provisions of the Indonesian migrant workers law, such as the one in place, imply extraterritoriality toward its nationals. Susanti[408] believes that, in practice, this provision will be ineffective at resolving disputes between Indonesian migrant workers and their employers, as it lacks a mechanism for determining the *lex causae* in a particular case. In this context, Act No. 18 of 2017 details diplomatic involvement in migrant worker management less clearly, such as the relationship between Indonesia and its citizens abroad, citizens and aliens, and between Indonesia and the receiving country, as Borchard[409] insisted.

Additionally, R.P. Barston[410] asserts that much of diplomacy's substantive work is concerned with managing short-term routine issues in bilateral and multilateral relations (coordination, consultation, lobbying, adjustment, and the agenda of official or private visits). In this case, Indonesian diplomatic efforts were ineffective in coordinating and lobbying the destination country to establish a clear position on the relationship between Indonesian citizens and aliens. It was demonstrated by the absence of legal protection for migrant workers provided by the Indonesian diplomatic mission in response to various cases involving migrant workers.[411]

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[406] Berkat Anugrah Kurunia Situmorang, Marzuki, and Ibnu Affan, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Informal Menurut Undang Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran," *Jurnal Ilmiah Metadata* 3, no. 2 (2021): 1689–99; Hartono Widodo and R. Jossi Belgradoputra, "Perlindungan Pekerja Migran Indonesia," *Binamulia Hukum* 8, no. 1 (2019): 107–16, https://doi.org/10.37893/jbh.v8i1.42.

[407] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*.

[408] Susanti. Ibid.

[409] Borchard, "Basic Elements of Diplomatic Protection of Citizens Abroad."

[410] R.P. Barston, *Modern Diplomacy*, Third (England: Pearsong Longman, 2006).

[411] Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*.

4.2.3. Protection of the Rights of Migrant Workers' Families

Another new provision in Act No. 18 of 2017 is the inclusion of protection for the rights of migrant worker families. The inclusion of family migrant worker rights in Act No. 18 of 2017 is a result of Indonesia's ratification of the International Labour Organization's Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families through Act No. 6 of 2012. Article 3 enshrines three rights for the families of migrant workers: legal, economic, and social protection. Article 6(3) also protects the migrant worker's family members specifically, including the right to information about the migrant worker's health and working conditions abroad and the migrant's schedule to return to Indonesia. Furthermore, the migrant workers' family also has the right to receive a copy of the migrant worker's employment contract and the ability to communicate with them. In the event of a migrant worker's death, the migrant worker's relatives are entitled to the migrant's entire estate.

The International Convention on Migrant Workers (ICMW) contains a few provisions that are incompatible with the Act 2017, as illustrated in Table 3. For example, the family member category in Act 2017 is limited to four individuals: the spouse, children, parent, and persons determined by the court. Meanwhile, the ICMW defines family members as those recognized by legislation or state concern agreements. Regarding migrant families, the Act 2017 provides most of the protection in the home country. The ICMW underlined legal protection as one of the essential subjects, whether it be legal protection against crime for migrant families or job-related rights such as working conditions, income, and social security.

In addition, even though Act No.18 of 2017 adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Act does not give place to undocumented migrant workers' rights. As a result, the rights of all migrant workers and members of their families cannot be enjoyed by undocumented migrant workers. Part III of the convention even directs member states to fully protect migrant workers' rights without regard to the migrant workers' status, whether documented or undocumented.[412] In this case, Act No.18 of 2017 contradicts the convention.

[412] Edelenbos, "The International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families."*at* 94.

Table 3 Incompatibility of the Act 2017's Protection with the ICMW 1990

No.	Family Members Protection in Act 2017	Incompatibility with ICMW 1990
1	The term "family member" refers to the husband and wife, children, parent, and other family members as determined by the court	According to Article 4 of the Convention, "family members" includes migrant workers' spouses, common-law spouses recognized by the law of the state of employment, their dependent children, and "other dependent persons recognized as family members by applicable legislation or applicable bilateral or multilateral agreement between the states concerned."
2	Family members of migrant workers are protected prior to departure, during employment, and upon return home (Article 1 point 5). The Act 2017 categorizes the protection of members of migrant families into three categories in Article 3: legal (the receiving country's security criteria-Article 31-33), economic (remittance arrangements, financial education, and entrepreneurial training-Article 35), and social protections (Article 29).	The Convention protects "all migrant workers and members of their families" from various civil and employment rights violations. Thus, states parties to the Convention are required to provide undocumented and documented migrants with a range of civil, social, and labour rights against the state of employment, employers, and other individuals within the state[413]. These include, but are not limited to, the right to due process in criminal proceedings, the freedom of expression and religious observance, domestic privacy, equality before the courts with nationals, emergency medical care, education for children, respect for cultural identity, and process rights in the detention and deportation context. Additionally, they include the right to enforce employment contracts against employers, to join unions, and to benefit from workplace wage, hour, and health regulation protections (Articles 8–35 of the Convention's Third Part).

[413] Bosniak, "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention."*at* 740-741.

The inconsistency between Act No.18 of 2017 and the convention contributes to Indonesia's uncertainty about the constitutional status of international treaties, which results in applying the treaty's binding power. It is because Indonesia recognizes directly applicable international law norms in limited circumstances by referencing and citing various provisions of international instruments. As a result, Indonesia is a monist. On the other hand, Indonesia does not always regard international treaties as norms directly incorporated into domestic law. This Indonesia's attitude means that before a provision becomes legally binding or can be referred to as dualism, it must be transformed into national law[414]. This fact demonstrates that the Indonesian constitution's indecision in incorporating international law into domestic law results in inconsistent application of international law in domestic law, as evidenced by the 2012 ICMW ratification law.

4.2.4. The Right to Social Security Provisions

The concept of social security has developed in numerous ways over time, reflecting the understanding and perspective of each author. However, even international law cannot construct the social security concept, as opposed to describing the content of the desired schemes, enumerating the names of the desired national law schemes, or combining both techniques. For instance, the material scope of International Labour Organization Convention No. 102 on minimum standards in social security has had a substantial effect. However, it does not describe social security's content but the intended programs.[415]

Danny Pieters[416] asserts that the ILO Report entitled "Into the 21st Century: The Development of Social Security" established a more general approach to social security. It regards social security as a response to the broadest sense instead of a set of systems that guarantee such security. In addition, the authors' definitions of social security follow the same non-instrumental approach, describing social security as a state of complete protection against the loss of resources. At the same time, another defines social security as a state of complete

[414] Noor Sidharta, "Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy," *Constitutional Review* 3, no. 2 (2018): 171, https://doi.org/10.31078/consrev322; Ari Wirya Dinata, "The Dynamics of Ratification Acts of International Treaty Under Indonesian Legal System," *Jurnal Hukum Dan Peradilan* 10, no. 02 (2021): 197–218; Simon Butt, "The Position of International Law within the Indonesian Legal System," *Emory International Law Review* 28, no. 95 (2014): 1; Damos Dumoli Agusman, "Self Executing and Non Self Executing Treaties What Does It Mean?," *Indonesian Journal of International Law* 11, no. 3 (2014), https://doi.org/10.17304/ijil.vol11.3.501.

[415] Danny Pieters, *Social Security: Introduction to the Basic Principles*, first (Netherland: Kluwer Law International, 2006).

[416] Pieters. *at* 2.

protection against human injury. However, this social security concept of diversity does not have many adverse effects.

Pieters[417] proposes a broader definition of social security as the collection of arrangements that shape solidarity with people who face the risk of a lack of earnings (i.e., income from paid labour) or a particular cost. In this regard, Pieters[418] is primarily concerned with the policies that provide cash benefits in the event of what is commonly known as a "social risk." Pieters[419] identifies the following as elements of social risk: a lack of income from paid labour affecting those who do not (or no longer have to) work due to old age, incapacity to work, or unemployment; the death of one's income-providing partner; the particular costs associated with raising one's children; the need for (coverage of the costs associated with) health care; and a lack of means necessary for adequate exercise. The Peters refer to each of these components as a "branch" or "scheme" of social security.

Therefore, social assistance and social insurance are, according to Pieters[420], the most well-known social security techniques currently in use. In the case of social insurance, a contribution will be paid, voluntarily or predominantly obligatorily, for and/or by the members of the solidarity systems so that when a member of the solidarity network is affected by a social risk, he or she can receive a social benefit, which the government frequently subsidizes.

Considering Pieters' conception of social security, particularly insurance schemes, the migrant worker insurance system governed by Act No. 39 of 2004 was a critical component of current migrant workers' management in Indonesia. In 2006, the Ministry of Manpower issued a regulation requiring migrant workers to obtain insurance. Later, the Ministry of Manpower Regulation No. 7 of 2010 regarding Insurance Protection for Migrant Workers amended this regulation. The Indonesian Supreme Court dismissed it in 2013 due to insurance governance chaos. Specific issues concerning the implementation of insurance protection for migrant workers, including the extortion of migrant candidates required by law to obtain insurance. Even though migrant workers frequently face difficulties with insurance claim payments.

Additionally, some private insurance companies have deducted 50% of the benefit from the insurance premium, claiming that this is necessary to cover the company's domestic and international operations. Additionally, insurance is required when applying for a migrant worker permit with the Ministry of Manpower; insurance calos or brokers thrive in society by

[417] Pieters. Ibid.
[418] Pieters. *at* 2-3.
[419] Pieters. *at*.3.
[420] Pieters. *at* 5.

targeting migrant worker candidates.[421] Regrettably, the insurance broker is legally protected under insurance law, even if the migrant worker is defrauded. For example, in some cases, the insurance broker paid the migrant worker's insurance premium but did not require him or her to sign the insurance purchase. As a result, the migrant worker was unaware of how migrant workers, or their families could utilize the insurance benefits protection.[422]

Act 18 of 2017 ended the insurance chaos by establishing a single national insurance system. According to Article 29, protecting migrant workers' social security is one of the government's responsibilities for migrant workers. However, no other provision specifically addresses migrant workers' access to insurance coverage, whether mandatory or voluntary. The Act directs the Ministry of Manpower Regulations to go over the insurance protection system in greater detail. In this context, there is a conflict between Article 29(2) and 29(5) of Law No. 39 of 2017. According to Article 29(2), migrant workers' social security is a component of the national security system. However, according to Article 29(5), the social security system for migrant workers will be further specified in the ministry of workforce's regulations. Despite this, the provisions of the worker national security system are adequately regulated by Act No.40 of 2004 on the National Social Security System and Articles 14 to 19 of Act No. 24 of 2011 on the Social Security Administrator. However, each article contains provisions governing workers' insurance protection in their home country. It cannot be imposed on a foreign employer or a migrant worker. According to Ida Susanti[423], the Indonesian Private International must be amended in this case to ensure that it does not conflict with the receiving country's migrant worker law system.

The protection system for Indonesian migrant Labourers (*'Buruh Migrant Indonesia* - BMI') is depicted in Figure 2 as a summary of the preceding explanation. Human rights that address the body responsible for migrant worker protection and ratify the international law-related protection constitute the migrant worker protection strategy. Due to the body's lack of authority to ratify the international law relating to the protection of migrant workers, this mandate will only make this body an agent to collect data and provide them to the government.

In the meantime, Act No. 18 of 2017 is reluctant to use a Memorandum of Understanding (MoU) as the agreement instrument with the receiving countries due to the

[421] Linda Ikawati, "Mekanisme Penegakan Hak Dan Pencarian Kompensasi Program Asuransi Buruh Migran," *Syariati: Jurnal Studi Al-Qur'an Dan Hukum* 2, no. 02 (2016): 227–44, https://doi.org/10.32699/syariati.v2i02.1131.
[422] Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*; Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*.
[423] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*. *at* 213-214.

MoUs' lack of legal force. Therefore, MoU cannot resolve the violation of the human rights of migrant workers in their country of employment. Furthermore, a component of this system that requires diplomatic ties between Indonesia and the receiving country runs counter to its actual implementation. It is demonstrated by the case of Taiwan, where the number of Indonesian migrant workers increases significantly yearly, although the two countries have no diplomatic relations. This case demonstrates that the Act 2017 has not consistently considered this requirement. As a result, the protection afforded to Indonesian migrant workers in Taiwan is inadequate, and their safety, particularly those working on Taiwanese fishing vessels, is jeopardized.[424]

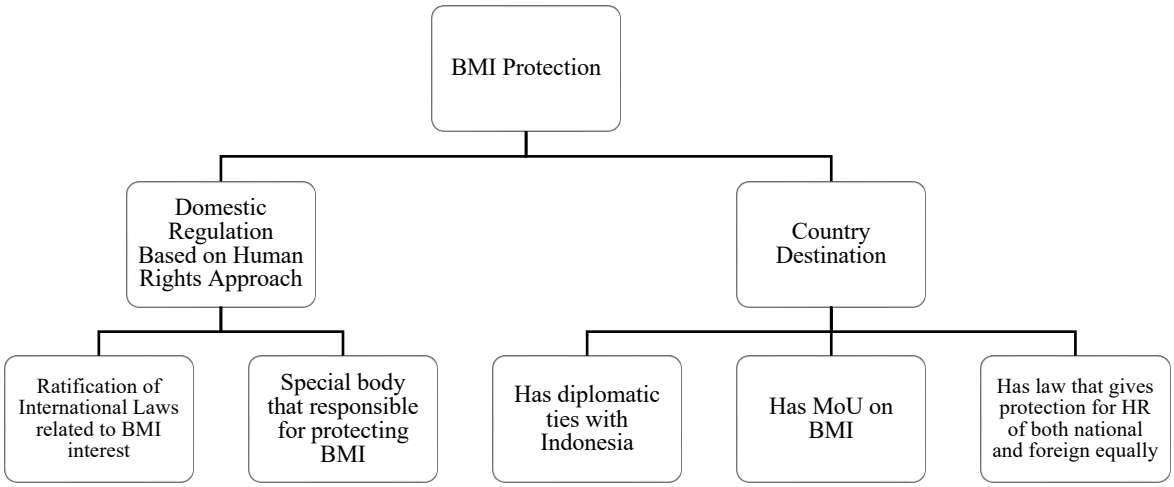


Figure 2 The Indonesian Migrant Workers Protection System Established by Act of 2017

4.3. The Legal Protection of Migrant Workers

The legal protection was given a special place in Article 31 Act No. 18 of 2017, which was previously incorporated into the Attache duties under Act No. 39 of 2004. It demonstrates the Indonesian government's unwavering commitment to migrant worker protection. Three areas are classified as legal protection within this framework, which essentially refers to the destination country requirement as the only place of employment for migrant workers who will be served their legal problems. The receiving country must provide adequate protection for migrant workers, have a written agreement with Indonesia, and have a safety net or insurance system for migrant workers. It remains to be seen how and to what extent these receiving country requirements will be met. Are these requirements cumulative, implying that all

[424] This case will be discussed in greater detail in Section 4.5 and section 4.6. of the following page.

conditions must be met by migrant workers, or are they only applicable individually? All these questions will be elaborated upon in the subsequent section.

4.3.1. Establishing Country Criteria for Migrant Destination

Act No. 18 of 2017 takes another significant step forward in protecting the rights of migrant workers to legitimate job and workplace protection. Countries with robust migration protection systems should be the best destinations for migrants covered by Article 31. Due to the cumulative nature of the Article 31 provision relating to legal protection for Indonesian migrant workers, each requirement must be met before the migrant worker placement proposal can be accepted. Article 31 provides that an Indonesian migrant worker may work in a country that meets three criteria: the destination country has a legal system that protects the migrant worker. Additionally, the receiving country has signed an agreement with Indonesia, providing migrant workers with social security or insurance. Because Article 31 and its explanation contain no provision for optionality, these criteria are cumulative. Additionally, there is no further explanation of the criteria stated in Article 31 in the Presidential Regulation No. 59 of 2021 Concerning the Implementation of the Protection for Indonesian Migrant Workers. Article 25 of this Presidential Regulation completely replicates Article 31 of Act No. 18 of 2017. Since the receiving country requirement is optional, the right of Indonesian migrant workers to choose their destination country is less sure to be protected under Article 31 of Law No. 18 of 2017.

The provisions of Law No. 39 of 2004 relating to the destination country's requirements for the placement of migrant workers are more stringent than those of Act No. 18 of 2017. According to Article 11, the government may send migrant workers to the destination country only if a written agreement exists between Indonesia and the destination country. However, private companies have no comparable provisions for sending migrant workers, except they must comply with the company's administrative requirements and obtain a permit from the ministry of the workforce before sending migrant workers to the destination country.[425]

4.3.2. Obstacles in Adhering to the Country's Criteria

Two issues arise because of the Article 31 provision. *First*, the norms specified are a facultative or suppletive[426] standard, implying that the migrant worker is only advised to freely

[425] Article 12.
[426] The two articles that follow provide an in-depth examination of the choices norm in the context of legal language. *See* Alejandro M Garro, "Codification Technique and the Problem of Imperative and Suppletive Laws,"

choose a country destination that meets the criteria specified in Article 31. In this case, the imperative norm is critical as it prohibits migrant workers from working in countries that do not meet the criteria outlined in Article 31. On the other hand, the government is not required to prohibit migrant workers from working in countries that do not meet the Article 31 criteria or prohibit migrant intermediary companies from sending migrant workers to such countries. In practice, this provision does not affect the placement of migrant workers, regardless of the type of country destination or requirement. This provision means that protection for migrant workers' rights remains vulnerable to violations, primarily by employers in the destination country.

The actual effect of the facultative standards regulated in Article 31 of Act No.18 of 2017 is that they are easily violated, even by government agencies. For example, in 2018, the Ministry of Manpower issued Decree No. 291 on Guidance for Migrant Workers' Placement in Saudi Arabia. This Decree was issued primarily to reinstate the 2015 moratorium on terminating the sending of Indonesian migrant workers to Saudi Arabia. In October 2017, the Indonesian Minister of Manpower met with the Saudi Minister of Labour and Social Development prior to issuing this Minister of Manpower Decree. Based on the outcome of the meeting, Indonesia proposed a Memorandum of Understanding (MoU) to Saudi Arabia in 2019 to normalize the sending of migrant workers to Saudi Arabia.[427]

The MoU was primarily based on information provided by the Saudi Arabia delegate during the two delegate countries' meeting, which revealed that Saudi Arabia had established a social security system for migrant workers. In this regard, it has met one of the criteria outlined in Article 31 of Act No.18 of 2017. However, the article's norm is cumulative, requiring two other requirements, such as legal protection for migrant workers and a written agreement signed by both parties, to be met and referring to sending the migrant worker to Saudi Arabia. However, the more severe issue is that Saudi Arabia lacks a legal system to protect migrants who work primarily in low-skilled jobs. This fact demonstrates that no progress has been made regarding the criteria applicable to receiving countries, as required by Article 31 of Act No. 18 of 2017.

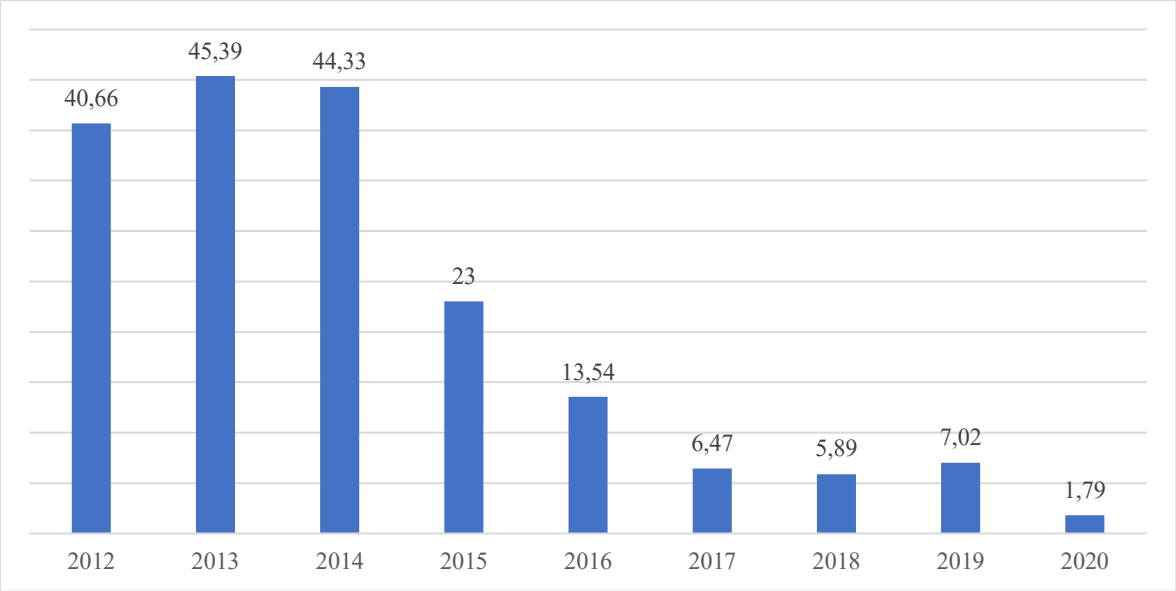
Even though, from the 2015 moratorium until the 2020 pandemic, sending migrant workers to Saudi Arabia has become less common. According to Figure 3, approximately 1.79

Lousiana Law Review 41, no. 4 (1981): 1007–30; Anna Ruusila and Emilia Lindroos, "Conditio Sine qua Non: On Phraseology in Legal Language and Its Translation," *Language and Law / Linguagem e Direito* 3, no. 1 (2016).

[427] Aubrey Kandelila Fanani, "Kemnaker Buat MoU Terkait Perlindungan PMI Di Luar Negeri," AntaraNews, 2019, https://www.antaranews.com/berita/786457/kemnaker-buat-mou-terkait-perlindungan-pmi-di-luar-negeri.

thousand Indonesian nationals were working in Saudi Arabia in 2020. The number of Indonesians working in Saudi Arabia has decreased significantly in recent years due to the Indonesian government's 2015 moratorium on sending migrant workers in response to the widespread abuse of migrant workers' human rights by Saudi Arabian employers and the COVID-19 pandemic. Even though the two countries signed a new memorandum of understanding on migrant worker placement in 2019, it is impossible to send large numbers of migrant workers to Saudi Arabia due to the COVID-19 pandemic mobility restriction. Thus, this is an excellent opportunity for the Indonesian government to improve the quality of migrant worker management. For instance, the government prepared a more skilled migrant worker for deployment to Saudi Arabia while negotiating a more binding agreement for migrant worker dispatch rather than relying on the memorandum of understanding, which was ineffective at protecting migrant workers' rights.

Figure 3 Number of Indonesians working in Saudi Arabia 2012-2020



Source: Statistics Indonesia. "Number of Indonesians working in Saudi Arabia from 2012 to 2020 (in 1,000s)." Chart. February 26, 2021. Statista. Accessed February 28, 2022. https://www.statista.com/statistics/702228/number-of-indonesians-working-in-saudi-arabia/

Additio nally, Indonesia proposed sending migrant workers to Malaysia, despite Malaysia's lack of a transparent legal system protecting migrant workers. Malaysia has only a few rudimentary legal protections for the rights of migrant workers.[428] In Malaysia, for

[428] Sharmin Jahan Putul and Md Tuhin Mia, "Exploitation of Migrant Workers in Malaysia and Protection under Domestic Laws," in *Proceeding of the International Law Conference (IN-LAC2018)* (Kualalumpur: SCITEPRESS, 2018), 125–31, https://doi.org/10.5220/0010054801250131.

example, the primary employment legislation is the Employment Act 1955 (Act 265), which safeguards employees' fundamental rights. This Act establishes a minimum level of protection for the rights of Malaysian and foreign workers, except for domestic workers. Act 265 established annual minimum wages for employees, overtime pay and payment deductions for employees, a daily word limit for female employees, maternity leave for female employees, and other types of leave and holidays. Employers who fail to provide their employees with these benefits may be prosecuted in labour court under Act 265.

The 1952 Workmen's Compensation Act protects only migrant workers from injury. However, only employees in the public sector and those working in businesses with fewer than five employees are considered injured. Workers with a monthly income of less than RM500 can join the Workmen's Compensation Order (Foreign Worker Scheme) (Insurance) 2005. Employers must pay RM86 to the Foreign Workers Scheme for each migrant worker hired yearly. Furthermore, Malaysia's 1967 Industrial Relations Act protects the rights of migrant workers. If an employer makes it more difficult for an employee to join a union, they may file a complaint with the Director-General of Industrial Relations. Migrant workers, on the other hand, will generally not receive justice under this Act if their employers fire them, their work permits are revoked, or they are forced to return to their home country after filing a complaint. The Malaysian Bar Council issued a press statement condemning the practice but leaving out the employer's attitude in this case.

The Occupational Safety and Health Act of 1994, which established migrant workers' rights to workplace safety and health, is another piece of legislation that protects migrant workers. This Act covers various industries, including construction, manufacturing, agriculture, mining, transportation and storage, and lodging and dining establishments. Employers are required by this Act to provide necessary guidelines and training to employees before allowing them to use hazardous equipment on the job. Employers with more than 40 employees must also form a committee to address health and safety concerns. Employers who violate this order and cause an on-the-job accident face a maximum two-year prison sentence or an RM500,000 fine.

The 1967 Factory and Machinery Act also protects the health and safety of factory workers. In addition, if an employer is negligent and a worker is killed or suffers bodily harm due to the accident, the employer must notify the nearest inspector and may face a fine of up to RM5000. Employers are generally required to compensate employees who are terminated without cause under the Employment (Termination and Lay-Off Benefits) Regulations of 1980. Because foreign labour is always less expensive than domestic labour, domestic labour has

been phased out in favour of foreign labour. In 1998, the Employment Act was amended to reverse the trend.

Even though Malaysia is a signatory to several international human rights treaties, including the ILO's fundamental Convention on Forced Labour (C29), which Malaysia ratified in 1957. However, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) recognized the government's protection measures for migrant workers continued abusive practices and inadequate working conditions for migrant workers[429]. It is because Malaysia's government lacks a comprehensive legal and policy framework for regulating migrant workers' recruitment, admission, placement, treatment, and repatriation[430]. As a result, Indonesian migrant workers will continue to face human rights violations, particularly those with low skills. Hence, this COVID-19 pandemic momentum may provide an excellent opportunity for the Indonesian government to improve migrant worker management, particularly in the country's migrant worker placement system or other private enterprises that serve as migrant workers' final employment destination. Additionally, it is critical to convert the Indonesian government's legal agreement instrument from a Memorandum of Understanding (MoU) to a more legally binding document.

Second, the Indonesian government has reiterated its previous interpretation of the agreement's provision with the receiving country, as defined in Article 31 of Act No.18 of 2017 as the Memorandum of Understanding (MoU). However, a Memorandum of Understanding is not a legally binding instrument for a formal agreement.[431] A Memorandum of Understanding is a legal document entered into by two or more parties for collaboration. It is not legally enforceable. It differs from a Memorandum of Agreement (MoA), a legal instrument entered by two or more parties for collaboration and intended to be legally binding and enforceable. As a result, a memorandum of understanding (MoU) can be defined as "an agreement to agree." It is occasionally an agreement to enter into a more specific and comprehensive contract or agreement later or in response to the occurrence of specific circumstances. A memorandum of understanding frequently establishes a framework for organisation collaboration and details the parties' shared goals or vision. In general, an MoU will not address the specifics of individual projects. As a result, a Memorandum of Understanding is a more abstract document.[432]

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[429] United States Department of Labor, "Situation and Gap Analysis on Malaysian Legislation, Policies and Programmes, and the ILO Forced Labour Convention and Protocol" (Washington, 2018).
[430] Putul and Mia, "Exploitation of Migrant Workers in Malaysia and Protection under Domestic Laws."
[431] Andreas Zimmermann, "Possible Indirect Legal Effects of Non-Legally Binding Instruments," 2021.
[432] Justice Connect, "Memorandum of Understanding," www.nfplaw.org.au, 2021, https://www.nfplaw.org.au/sites/default/files/media/Memorandum_of_Understanding_CTH.pdf.

Even if a Memorandum of Understanding lacks legal force, it is not meaningless. If properly drafted, it may become soft law. This term refers to instruments or standards that are not "the law" *per se* but are sufficiently significant within a legal framework to play a role.[433] If a legal field is politically divisive, soft law may be preferable. If concluding a legally binding international treaty is implausible, whether soft law is preferable to no regulations arises. In such cases, collaboration may be worthwhile without a formal agreement but through an MoU.[434] Thus, the relationship between the states concerned can be elevated to a new level. By signing an MoU, the governments indicate their intention to work more closely together and to discuss cooperation in greater detail in the field at hand. Ministers rather than civil servants should sign the memorandums of understanding. Apart from the symbolic value, agreement on specific formal procedures and direct contacts between administrative units in both states can be reached, once again, on a non-binding basis. Additionally, it is worth noting that soft law demonstrated to be beneficial can eventually be binding.[435]

In practice, the 2014 Memorandum of Understanding between Indonesia and Saudi Arabia demonstrated its ineffectiveness as an agreement instrument[436]. Historically, this MoU sought to address widespread employer abuses of Indonesian migrant workers. Encouraged by the numerous incidents of violence against Indonesian migrant workers in Saudi Arabia[437], the Indonesian government has finally issued a circular letter requesting the employer's and family's identification and their complete address. However, the circular letter offended

[433] Mauro Barelli, "The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples," *International and Comparative Law Quarterly* 58, no. 4 (2009): 957–83, https://doi.org/10.1017/S0020589309001559.

[434] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000): 421–56.

[435] As Dinah L. Shelton defines it, soft law is a social norm rather than a legal one. While there is no universally accepted definition of "soft law," the term is frequently used to refer to any written international instrument, other than a treaty, that contains principles, standards, or other statements of expected behavior. Additionally, "soft law" expresses a preference for the state to act in a particular manner or abstain from acting in a particular manner, not an obligation. *See* David Armstrong, *Routledge Handbook of International Law*, ed. David Armstrong, *Routledge Handbook of International Law*, first (London and New York: Routledge, 2016).

[436] In the context of the Association of Southeast Asian Nations (ASEAN), the use of memorandums of understanding (MoUs) for cooperation has persisted because the region's countries prefer a looser form of cooperation to a more rigid one. The MoU is treated more as a diplomatic than a legal cooperation, and any disputes arising from the interpretation and implementation of this MoU shall be settled amicably via diplomatic channels by so-called consultations or negotiations between both governments "without reference to a third party."See Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*. *at* 146.

[437] According to Migrant CARE data released at the end of 2014, there were less than 1,503 cases of rights violations against Indonesian migrant workers in Saudi Arabia, including unpaid wages, exploitation, physical, psychological, and sexual violence. Additionally, 281 migrant workers faced the death penalty in 2015, with 59 sentenced to death, 219 awaiting execution, and two sentenced to death. *See* Rosalyn Theodora Tamba, "Evaluasi Kebijakan Perlindungan PMI Sektor Informal Di Arab Saudi 2011-2018," *Jurnal Suara Hukum* 1, no. 2 (2019): 199, https://doi.org/10.26740/jsh.v1n2.p199-221.

migrant workers' employers, prompting the Saudi government to request that Indonesia rescind the circular letter.

The case was expected to be resolved by signing a memorandum of understanding between the two states following meetings between the states' leaders. Indonesia proposed this Memorandum of Understanding to enshrine protections for migrant workers' human rights and end employer violations of migrant workers' human rights. However, human rights violations against migrant workers persisted following the MoU's signing, prompting Indonesia to suspend the sending of migrant workers to Saudi Arabia from 2015 to 2018.[438] As a result, the World Bank[439] proposed that moving away from Memorandums of Understanding and toward more legally binding bilateral agreements would aid in promoting and protecting migrant workers' rights. Furthermore, the World Bank[440] advises Indonesia to learn from the Philippines[441] and other labour-sending countries that have negotiated effective bilateral agreements covering labour placement, wage and contract details, migration costs, and protection measures.[442]

4.4. Sending Migrant Workers to Country with which Indonesia Lacks Diplomatic Ties

Another critical issue with the migrant worker placement regulation stipulated in Article 7 Act No.18 of 2017 is the lack of a prohibition provision to send Indonesian migrant workers to countries with which Indonesia has no diplomatic relations, such as Taiwan. Indonesia applied a double standard to its relations with Taiwan in the name of a free and active ("Bebas-Aktif")[443] diplomatic approach. On the one hand, Indonesia adheres to the One China Policy, which recognizes Taiwan solely as part of China's territory; on the other hand,

[438] Diana Fatmawati, "Penandatanganan MoU Antara Indonesia Dan Arab Saudi Tahun 2014," in *Program Pascasarjana Universitas Muhammadiyah Yogyakarta* (Yogyakarta: Universitas Muhammadiyah Yogyakarta, 2014), 200–208; DPR RI, "Laporan Akhir Pelaksanaan Tugas Tim Pengawasan DPR RI Terhadap Perlindungan Tenaga Kerja Indonesia Pada Rapat Paripurna DPR RI" (Jakarta, 2014).
[439] The World Bank, "Indonesia's Global Workers Juggling Opportunities & Risks."
[440] The World Bank. Ibid.
[441] Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*.
[442] The use of a memorandum of understanding for a bilateral agreement on migrant workers is not unique to Indonesia. It is a bilateral agreement instrument for migrant workers that is widely used by Asian nations. In contrast, Africa and Europe prefer to use the Bilateral Agreement Instrument outlined in Article 2(1)(a) of VCLT 1969, which binds the parties, rather than a Memorandum of Understanding. In contrast, a memorandum of understanding (MOU) is not a legally binding contract; rather, it is merely an expression of bilateral agreement between the parties involved, whose implementation is contingent upon the parties' good fait. *See* Piyasiri Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Geneva: International Labour Office, 2015), https://doi.org/10.2139/ssrn.2636289; ILO, *Standar Internasional Migrasi Ketenagakerjaan Berbasis HAM*.
[443] Anwar, "Indonesia-China Relations: Coming Full Circle?"; Sukma, "The Evolution of Indonesia's Foreign Policy: An Indonesian View."

Indonesia collaborates with Taiwan in social, economic, and cultural spheres. Indonesia initiated this collaboration in 1990 when it established the Indonesian Economic and Trade Office (IETO) in Taiwan. The International Economic and Trade Organization (IETO), headquartered in Taipei, is a non-governmental economic organization tasked with the primary mission of facilitating and enhancing economic and trade cooperation under the auspices of the trade minister. IETO differs from diplomatic or consular representative offices, despite its organizational structure, vision, mission, primary tasks, and functions. As a result, the IETO's presence in Taipei serves no diplomatic purpose and is not a premise of the mission. In 2011, the Indonesian government issued Minister of Home Affairs Regulation No. 08/M-Dag/Per/4/2011 establishing the organizational structure and operating procedures for the Indonesian Economic Trade Office in Taipei. According to the Minister of Home Affairs Regulation, the IETO in Taipei's function is to represent and protect the economic interests of Indonesian nationals (WNI) in Taiwan. Indonesian citizens' protection in Taiwan is one of the governments of Indonesia's active national principles in international law to protect Indonesian citizens in Taiwan.[444] On the other hand, Indonesia's relations with Taiwan are not recognized as diplomatic relations under the 1961 and 1963 Vienna conventions.

Additionally, the IETO has a different status from the Attache, as stipulated in Article 22 of Act No.18 of 2017, which designates the IETO as the official diplomatic entity assisting Indonesian migrant workers working abroad. As a result, Indonesian citizens' legal protection under the IETO in Taiwan is limited.[445] Thus far, when Indonesian migrant workers are sent to Taiwan, they are more likely to face serious human rights violations, as discussed in the following section.

4.4.1. A Snapshot of Migrant Workers' Human Rights Violations in Taiwan

Unlike other migrant workers' destination countries, where they work in informal or low-skilled jobs, many work in Taiwan's fishing industries. They are primarily from Java Island but also from Nusa Tenggara and Sumatra. Unfortunately for Taiwan's sovereignty, Indonesia does not recognize it as a sovereign state. As a result, Indonesia and Taiwan have no diplomatic relations, which has a detrimental effect on the state's ability to protect migrant workers working in Taiwan. On the other hand, the government reminds migrant workers to continue

[444] M Fahrezal Maulana, Kholis Roisah, and Peni Susetyorini, "Implikasi One China Policy Terhadap Hubungan Luar Negeri Indonesia Dan Taiwan Dalam Perspektif Hukum Internasional," *Diponegoro Law Journal* 5, no. 3 (2016): 1–18.
[445] Borchard, "Basic Elements of Diplomatic Protection of Citizens Abroad."

sending them to Taiwan for various industries. However, the fishing industry is infamous for human rights violations against migrant workers.

The high seas are one of the world's most lawless places, with many social crimes going unpunished.[446] Human trafficking in the Taiwanese fisheries industry is one of the most striking examples. In recent years, there have been increasing reports of migrant fishing labour violations on Taiwanese-flagged vessels.[447] Workers are coerced or forced to work in deplorable conditions against their will, moved around the oceans, threatened with violence, and sometimes prevented from going ashore.[448] In addition, garnished and unpaid wages, confiscated identification, verbal abuse, beatings, and rumours of murder at sea have all been reported. The case is symptomatic of a global fishing industry primarily left outside international regulatory standards and operates in a traditionally tricky environment to police.[449] The tactics used by Taiwanese-owned fishing vessels to avoid persecution are also common in the reports. Onboard Chinese-flagged, Taiwanese-flagged, and foreign-flagged vessels owned by Taiwanese citizens, NGOs, and the media have reported numerous cases of alleged forced labour and trafficking of Indonesian migrant fishers.[450]

According to the Taiwan Fisheries Agency of June 2019, 21,994 Indonesian fishermen were employed on Taiwanese coastal and distant-water fishing vessels[451]. Migrant boat crews from Indonesia and the Philippines make up a large part of Taiwan's distant-water fleets, which are among the world's top five and responsible for a $2 billion-a-year industry. Meanwhile, the Soulinan and Yovani study confirms that approximately 20.000 migrant workers, with the majority working in precarious jobs that do not provide adequate working rights protection or wage.[452]

Meanwhile, according to the head of the National Placement Agency for Indonesian Migrant Labourers, the severity of the situation for Indonesian migrant workers in Taiwanese fishing is a result of several factors, including migrant fishing workers seeking a tourist visa. This fact indicates that resolving workplace conflicts will be difficult. A shortage of seafaring

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[446] Rachel A Decapita, "Business and Human Rights: Human Trafficking in the Fisheries Industry," *The Indonesian Journal of International & Comparative Law* VI, no. October (2019): 453–93.
[447] Greenpeace Southeast Asia, Greenpeace, and Serikat Buruh Migran Indonesia, "Seabound: The Journey to Modern Slavery on the High Seas," *Greepeace.Org*, December 9, 2019.
[448] James X. Morris, "The Dirty Secret of Taiwan's Fishing Industry."
[449] James X. Morris.
[450] Andy Shen, "What's the Catch? Forced Labour and Trafficking in the Taiwanese Distant Water Fishing Industry," *Institute for Human Rights and Business*, May 26, 2020.
[451] Basten Gokkon, "Deadly Conditions for Indonesian Migrant Crews Tied to Illegal Fishing," *MONGABAY: News & Inspiration from Nature's Frontline*, January 6, 2020.
[452] Soulina and Yovani, "Forced Labor Practices of Indonesian Migrant Fishing Vessels Crew on Taiwan-Flagged Ships? A Need for Cognitive Framework Transformation."

skills is also an issue. Migrant fishers, for the most part, lack basic safety training and seafaring skills training from the Minister in charge or other agencies involved. They must have been paid less in this situation. Shipowners only pay them $150-300 per month if they do not have health or security insurance.[453]

Aside from those issues, Indonesian fishermen in Taiwan face more complex issues, such as a lack of working conditions that meet the requirements of the International Labour Organization's (ILO) Convention No. 188/2007, which include Article 13, Article 25 to Article 39. Affordably priced housing, safe food, affordable social protection insurance, accident prevention, and health protection are all examples of decent living conditions. Fishers' poor working conditions, such as not having enough time to rest after long shifts[454], are further explained. After working 14-18 hours daily, they only get 3 hours of sleep. This condition diolates ILO Convention 188/2007, which states that employers must provide at least ten hours of rest per 24-hour period and 77 hours per week.

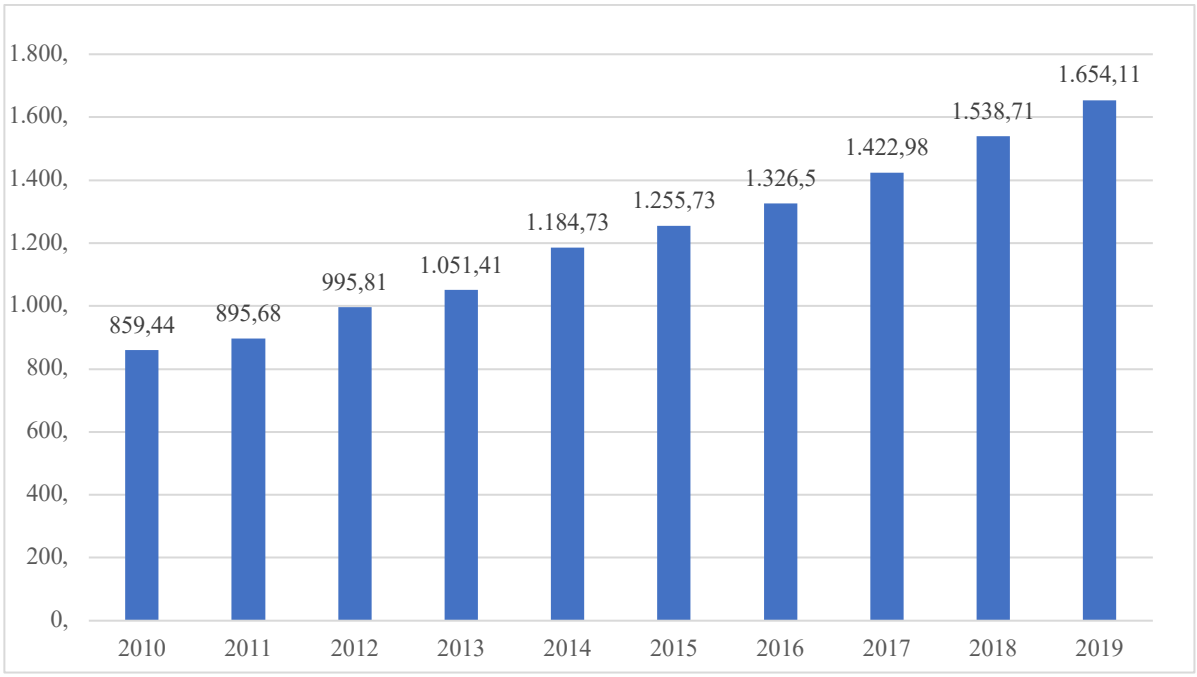
Another serious issue is the lack of legal protection and the receipt of official documents. Their agent did not provide them with a passport or a working visa due to the lack of these essential documents, and they do not have an explicit work agreement. As a result of this situation, Indonesian fishers in Taiwan have faced several difficulties. Aside from human rights violations in the Taiwanese fishing industry, there is also the issue of unpaid wages for workers, both Indonesians and migrant workers from other countries. Even the right to an adequate wage is necessary for migrant workers, as numerous legal instruments for migrant workers stipulate.

According to Figure 4, human rights violations in business practices in Taiwan occurred in many industrial sectors from 2010 to 2019, with violations increasing yearly. Unpaid wages in Taiwan's agricultural, forestry, fishing, and animal husbandry industries totalled around 1.65 million TWD in 2019, more than double in 2010. This situation demonstrates the perilous treatment meant to migrant Labourers operating in a country not fully recognized by most governments. In this case, the loss of protection for migrant workers mainly results from the absence of a diplomatic channel connecting the exporting country and Taiwan. As a result, there are no legal or diplomatic remedies to migrant workers' concerns unless the media or non-governmental organizations (NGOs) help raise awareness of their suffering. Additionally, this fact highlights a significant issue in international law: the difficulty of protecting the human

[453] Soulina and Yovani.
[454] Decapita, “Business and Human Rights: Human Trafficking in the Fisheries Industry.”

rights of migrant workers in the absence of a diplomatic relationship between the sending and receiving countries.

Figure 4 Volume of Unpaid Wages in several Industries in Taiwan 2010-2019



Source: Statista, https://www.statista.com/statistics/653221/taiwan-amount-of-overdue-unpaid-wages-in-agriculture-forestry-fishing-animal-husbandry/ (last visited March 18, 2021).

Meanwhile, Non-governmental organizations (NGOs) and journalists have openly acknowledged slavery in the Taiwanese fishing industry. However, there are no concrete solutions to end business practices that violate the human rights of Taiwanese shipping workers. Migrant fishers' fates remain uncertain because they accuse others of committing against them out on the open sea, far from the scrutiny of regulators who could ensure that they have proper working conditions and safety. Greenpeace Southeast Asia strongly emphasizes the need for ASEAN member states, mainly the Philippines and Indonesia, to take concrete policy actions to address the issues raised in this report and ensure that modern slavery at sea becomes a thing of the past due to the lessons learned.[455]

This section examines the issue of undocumented Indonesian migrant Labourers working in Taiwanese fishing sectors, even though Indonesia has no diplomatic relations with Taiwan due to its foreign policy commitment to China. Whether the lack of diplomatic relations

[455] Greenpeace Southeast Asia, Greenpeace, and Serikat Buruh Migran Indonesia, "Seabound: The Journey to Modern Slavery on the High Seas."

between the two nations influences the state's protection of migrant workers' rights, and what political measures should Indonesia take to address this issue.

4.4.2. Taiwan's International Legal Status

Even though Taiwan is de facto a country, most international community still considers it part of China. Taiwan lacks the qualifications to meet the minimum conditions outlined in Article 1 of the 1933 Montevideo Convention, namely the ability to maintain foreign relations. The diminished capacity to establish international ties results in a decline in the international community's recognition.[456] Liu Yulin[457] also emphasized the Montevideo Convention's implications for Taiwan's UN recognition, stating that this prohibition prevents Taiwan from establishing diplomatic relations with other countries. Taiwan must obtain approval from the UN Security Council, as stipulated in Article 27 of the UN Charter, to become a member of the UN under the pretext of self-determination rights.[458]

Nonetheless, meeting these requirements is challenging because China is a permanent member of the Security Council with veto power. As a result, according to Liuthe only way for Taiwan to gain "recognition" is to follow in the footsteps of Palestine, which has gained sympathy from many countries despite failing to become a UN member due to the United States veto. However, gaining international public sympathy is a difficult task in and of itself.[459] According to Liu, a catalyst must draw the world's attention to the issue. For example, China's international influence is dwindling, and it is taking "aggressive" actions against Taiwan, affecting its global image.[460]

Meanwhile, Steve Allen's[461] compassion argued that the economy's strength enabled the "Taiwan state" to persist to the present day. As a result, Allen appealed to the international community to sympathize with the Taiwanese people. It will be difficult for Taiwan (Republic

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[456] James Crawford and R. McCorquodale, "The Creation of States in International Law," *European Journal of the International Law* 18, no. 4 (2007): 775–82, https://doi.org/10.1163/9789004386242_046; Augusto Hernández-Campos, "The Criteria of Statehood in International Law and the Hallstein Doctrine: The Case of the Republic of China on Taiwan," in *Chinese (Taiwan) Yearbook of International Law and Affairs* (Brill & Nijhof, 2006), https://doi.org/10.1163/9789004424968_006.

[457] Liu Yulin, "Statehood Theory and China's Taiwan Policy," *Tsinghua China Law Review* 2, no. 1 (2012): 1–17, https://doi.org/10.2139/ssrn.2676563.

[458] Chi Jen Yang and Hui Chen Chien, "Could Taiwan Be Included in UNFCCC Negotiations?" *Climate Policy* 10, no. 3 (2010): 317–21, https://doi.org/10.3763/cpol.2009.0053; Phil C.W. Chan, "The Legal Status of Taiwan and the Legality of the Use of Force in a Cross-Taiwan Strait Conflict," *Chinese Journal of International Law* 8, no. 2 (2009): 455–92, https://doi.org/10.1093/chinesejil/jmp014.

[459] Yulin, "Statehood Theory and China's Taiwan Policy."

[460] Yulin.

[461] Steve Allen, "Statehood, Self-Determination and the 'Taiwan Question'," *Asian Yearbook of International Law,* 9 (2004): 191–219.

of China, ROC) to maintain its status as a 'country' if its economy deteriorates. According to Pasha L Hsieh and Cameron M. Otopalikcan,[462] this economic route also brings diplomatic recognition to Taiwan from ASEAN countries, even if it is not statehood or legal. At the very least, economic cooperation between Taiwan and ASEAN countries can be a step toward strengthening Taiwan's future existence while also paving the way for international recognition. Furthermore, according to Gezim Krasniqi, Taiwan's international expansion will impact its citizens' citizenship status when engaging in international mobility, such as participating in international sporting events.[463]

In a nutshell, Taiwan must meet all legal criteria outlined in the Montevideo Convention of 1933 to be recognized as a state normatively. Furthermore, the issue of Taiwan's statehood should be resolved using rules established under international customary law, which establishes four requirements for statehood. The following are the reasons for Taiwan's non-recognition of its statehood and the substance of China's claims. One argument in favour of Taiwan's non-recognition is that the island does not meet all the requirements for statehood under international law and, thus, is not a sovereign state. Examining this argument's merits necessitates reviewing international law's criteria for statehood. A sovereign state is an entity that must have (1) territory, (2) permanent population, (3) government, and (4) sovereignty or capacity to enter international legal relations, according to the general theory of international law – specifically the theory of the subjects of international law. The Montevideo Convention on the Rights and Duties of States of 1933 is the declaratory treaty of this customary law. These qualifications are also repeated in the United States' Restatement of Foreign Relations Law.[464]

Taiwan has been isolated from most sovereign countries due to its poor status as an independent state. Only a handful of countries, especially in South America, have acknowledged Taiwan's statehood. As a result, most countries, especially Asia-Pacific ones, do not recognize Taiwan diplomatically. However, despite their limited ability to protect their residents, most countries that do not recognize Taiwan and allow their citizens to migrate to Taiwan for work are unaware of the situation. The primary reason is that their home nation is experiencing economic difficulties, but Taiwan is seeing rapid growth.

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[462] Cameron M. Otopalik, "Taiwan's Quest for Independence: Progress on the Margins for Recognition of Statehood," *Asian Journal of Political Science* 14, no. 1 (2006): 82–100, https://doi.org/10.1080/02185370600832570; Pasha L. Hsieh, "Rethinking Non-Recognition: Taiwan's New Pivot to ASEAN and the One-China Policy," *Cambridge Review of International Affairs* 33, no. 2 (2019): 204–28, https://doi.org/10.1080/09557571.2019.1657796.

[463] Krasniqi, "Contested Territories, Liminal Polities, Performative Citizenship: A Comparative Analysis."

[464] Hernández-Campos, "The Criteria of Statehood in International Law and the Hallstein Doctrine: The Case of the Republic of China on Taiwan."

4.4.3. How are Migrant Workers Protected in Taiwan?

As previously stated, economic, social, and cultural channels are how Taiwan's existence can continue to be recognized by the international community. Taiwanese citizens can contact the international community in this context. Taiwan has done this repeatedly to develop its economy to attract foreign workers, such as in the fishing industry. In this regard, international law provides Taiwan with a haven. The issue is how foreigners can be treated fairly and adequately protected. This section will look at Taiwan's protection of non-citizens through the lens of international human rights law. Furthermore, a political approach to cooperation via the ASEAN route will be examined concerning the protection of Indonesian workers in Taiwan and the fact that Indonesia and Taiwan have no diplomatic relations.

a. Human Rights Law Approach

Initially, the debate over applying international human rights law was centred on the poles of universalism and particularity, which were sparked by the values that underpin human rights, which Eastern countries mistook for Western values of individual liberty. However, this debate is not a roadblock to efforts to protect humanity anywhere. According to a group of academics, regardless of racial or geographic identities, everyone's human rights must be protected.[465] It makes no difference whether he is a native or a foreigner.[466] This concept is based on the Universal Declaration of Human Rights (UDHR), which guarantees the free exercise of individual rights.[467]

According to William Binchy[468], the two concepts of human rights, namely human dignity, and universality of human rights, have broken down the barriers of state sovereignty, territorial boundaries, and gaps for non-citizens. These two ideas combine to support the need for protection for every human, regardless of their circumstances or characteristics. Tanya Basok emphasized that migrant workers in a country can still receive human rights protection because of the universality of human rights norms[469]. However, Jacqueline Bhabha supports

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[465] Kate Nash, "Between Citizenship and Human Rights," *Sociology* 43, no. 6 (2009): 1067–83.
[466] Arthur C Helton et al., "Protecting the World's Exiles: The Human Rights of Non-Citizens," *Human Rights Quarterly* 22, no. 1 (2000): 280–97.
[467] AG Noorani, "Rights of Foreigners," *Economic & Political Weekly* 21, no. 33 (1986): 1439; David Weissbrodt and Stephen Meili, "Human Rights and Protection of Non-Citizens: Whither Universality and Indivisibility of Rights?" *Refugee Survey Quarterly* 28, no. 4 (2010): 34–58, https://doi.org/10.1093/rsq/hdq020.
[468] William Binchy, "Human Rights, Constitutions and Non-Citizens," *Persona Y Derecho* 71, no. 2007 (2014): 275–306, https://doi.org/10.15581/011.71.175-306.
[469] Tanya Basok and Martha L. Rojas Wiesner, "Precarious Legality: Regularizing Central American Migrants in Mexico," *Ethnic and Racial Studies* 41, no. 7 (2018): 1–20, https://doi.org/10.1080/01419870.2017.1291983; Basok and Carasco, "Advancing the Rights of Non-Citizens in Canada: A Human Rights Approach to Migrant Rights."

the concept of citizenship as a justification for denying non-citizens the same rights as citizens in a country or countries that are members of the EU.[470] This provision is inextricably linked to the state's ability to exercise sovereignty. Regarding the rigidity of the citizenship law system, Jonathan Josefsson and Bosniak[471] proposes a shift in thinking about non-citizens' rights from normative to ethical approaches, which are more in line with the concept of universality of human rights, in dealing with cases of non-citizens' demands for human rights protection, particularly among children seeking asylum.

Even though the UN does not recognize Taiwan's statehood, the country is still obligated to protect human rights on its soil, both for its citizens and immigrants, including migrant workers. Taiwan has also ratified two important international human rights treaties. On March 31, 2009, the Republic of China's Legislative Yuan (in Taiwan) ratified two United Nations human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. On the same day, the legislature passed a law making the International Covenants on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights legally binding in Taiwan.

Government agencies must comply with the human rights guarantees of the two covenants, avoid infringing on human rights, protect people from infringements by others, and actively promote the realization of every human right, according to the new nine-article.[472] In addition, they must plan, promote, and implement the provisions of the two covenants following their mandated professional duties; where the professional duties of different agencies are involved, they must coordinate and consult with one another in handling matters. In order to protect and advance the realization of the human rights guaranteed by the two covenants, the government must work with governments from all countries, Non-Governmental Organizations (NGOs), and human rights organizations.[473] The government must also establish a human rights reporting mechanism.[474]

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[470] Jacqueline Bhabha, "Enforcing the Human Rights of Citizens and Non-Citizens in the Era of Maastricht: Some Reflections on the Importance of States," *Development and Change* 29, no. 4 (1998): 697–724, https://doi.org/10.1111/1467-7660.00096.

[471] Bosniak, "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention"; Jonathan Josefsson, "Non-Citizen Children and the Right to Stay–a Discourse Ethical Approach," *Ethics and Global Politics* 12, no. 3 (2019): 1–18, https://doi.org/10.1080/16544951.2019.1678800.

[472] Article 4.

[473] Article 5.

[474] Article 6.

Meanwhile, the United Nations General Assembly's Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country They Live provides absolute protection for non-citizens residing abroad.[475] Article 5 states that Aliens shall enjoy, subject to applicable domestic law and the relevant international obligations of the State in which they are present, certain rights, including the right to life and personal security. Additionally, no alien shall be subjected to arbitrary arrest or detention. No alien shall be deprived of his or her liberty except on such grounds and according to such procedure.

Article 6 states that no alien shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment and that no alien shall be subjected to medical or scientific experimentation without his or her express agreement. Additionally, Article 8 provides that Aliens legitimately resident on a state's territory should enjoy the right to safe and healthy working conditions. Additionally, the right to just wages and equal remuneration for work of equal value without discrimination of any kind, emphasizing women being guaranteed working conditions comparable to those enjoyed by men, with equal pay for equal work.

Despite the lack of official documents, the human rights covenant requires protecting migrant workers on ships with Taiwanese nationality. People who fall into state-defined legal status categories have different rights than those who do not. This statement is true for political, civil, employment, and social rights. Legal status influences access to public services. As a result, people's status and rights have far-reaching consequences. Citizenship status does not always imply citizenship practice, and citizenship does not always resolve inequality – many citizens face discrimination and poverty. Non-citizenship, on the other hand, is associated with social exclusion and vulnerability, as well as limitations in terms of voice, membership, and rights in a political community.[476]

In general, all migrant workers who work in other countries without legal documents will face legal difficulties, particularly in countries with no diplomatic relations with the migrant worker's home country.[477] Migrant workers from Indonesia who work in the shipping industry owned by Taiwanese businessmen are similar. Indonesia did not recognize Taiwan as a separate country until recently and considered it part of China. Due to the lack of diplomatic relations between Indonesia and Taiwan, the state's ability to protect its citizens in Taiwan, particularly undocumented, is weakened.

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[475] Binchy, "Human Rights, Constitutions and Non-Citizens."
[476] Luin Goldring and Patricia Landolt, "The Conditionality of Legal Status and Rights: Conceptualizing Precarious Non-Citizenship in Canada," in *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada*, ed. Luin Goldring and Patricia Landolt (University of Toronto Press, 2013), 1–27.
[477] Basok and Rojas Wiesner, "Precarious Legality: Regularizing Central American Migrants in Mexico."

Indonesia's failure to protect migrant workers in Taiwan is strangely viewed as a problem similar to migrant Labourers in other countries such as Malaysia and Saudi Arabia. Even though Indonesia maintains diplomatic connections with these two countries, the issue of migrant labour remains complex. This situation is exacerbated by Indonesia's attitude, which perceives the issue of migrant workers abroad via a domestic lens, resulting in a lack of urgency or a sense of crisis[478]. As a result, the plight of migrant workers abroad is deteriorating, notably in Taiwan, where diplomatic relations are non-existent.

b. Using ASEAN to address Migrant rights violations

The mistreatment of Indonesian workers on Taiwanese fishing boats serves as a lesson for Indonesia to strengthen its legal system of migrant worker protection abroad, particularly in countries with which it does not have diplomatic relations, such as Taiwan. Due to the lack of diplomatic relations, Indonesia's ability to carry out rescue operations has been hampered by its inability to communicate directly with the Taiwanese government.

Indeed, the government has begun to improve the protection system for Indonesian workers working in other countries by amending labour laws. The Indonesian labour law system has significantly transformed migrant worker protection. The system of governance for migrant workers from Indonesia was centralized during the 1970s under President Suharto, resulting in a weak position for migrant workers because there was no room for aspirations or participation in any policies affecting migrant workers from Indonesia. After the fall of the Suharto regime, the government implemented fundamental reforms to the governance of migrant workers, including opening up spaces for public participation in labour sector management[479]. However, the situation for Indonesian migrant workers in other countries did not immediately improve. Many cases of slavery among Indonesian migrant workers in destination countries such as the Middle East, Malaysia, and Taiwan attest to this.

The failure of the Indonesian government to provide jobs for the fishing industry has influenced the ability of migrant workers in this sector to seek work elsewhere, such as in Malaysia and Taiwan. However, the government has not seriously taken the high demand for this workforce, resulting in job seekers being supported by agents who are often hampered by government regulation. As a result, slavery has been practised in job placement, especially in the Taiwanese fishing industry. Regrettably, Indonesia follows the one-China principle, which

[478] Dewanto, Mantouvalou, and Dewanto, "The Domestication of Protection: The State and Civil Society in Indonesia's Overseas Labour Migration."
[479] Dewanto, Mantouvalou, and Dewanto. Ibid.

means Taiwan is considered part of Chinese territory. Despite the political void, Indonesia can still protect its migrant workers through informal ASEAN-Taiwan relations. Although Taiwan and ASEAN do not have diplomatic ties, they have reaped substantial economic benefits, primarily through bilateral investment and trade cooperation.[480]

On September 22, 2016, Tsai attended the National Chengchi University's "2016 Annual Conference on Southeast Asian Studies in Taiwan" (ACSEAST 2016). Tsai explained the government's "New Southbound Policy" at the conference, saying Taiwan will seek mutually beneficial ties with Southeast Asian countries. Tsai emphasized that Taiwan should actively respond to Southeast Asia's transformation by fostering confidence with Southeast Asian countries. Taiwan's foreign policy has new directions in an age of regionalization, thanks to the "New Southbound Policy." This determination was reiterated at the 2020 Yushan Forum. Taiwanese President Tsai Ing-wen emphasized the importance of the New Southbound Policy and reaffirmed the spirit of "Taiwan helps Asia, and Asia helps Taiwan," a slogan Tsai has promoted on numerous occasions. She also listed Southeast Asia and India as particular policy focus areas.[481] HUYNH Tam Sang[482] suggested Taiwan broaden its position in ASEAN countries by focusing on diplomatic and security issues, including (i) fostering people-to-people relations with Southeast Asian counterparts and exchanging economic development experiences. Actors play a significant role in international relations. Historically, the state has been regarded as the principal player in foreign affairs. However, over the last two decades, the importance of non-state actors, including individuals, in international affairs has increased;[483] (ii) effectively coordinating with ASEAN in pursuit of solutions to resolve conflicts and facilitate East Asian integration; and (iii) promoting economic development.

According to the promotional plan posted on the Executive Yuan's website, the "essence of the Current Southbound Strategy" is to "forge a new and mutually beneficial model of cooperation" and "develop a sense of economic community." It defines four goals to accomplish this:[484]

1. Economic cooperation should be promoted.

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[480] Nhan Thanh Thi Hoang, Hoan Quang Truong, and Chung Van Dong, "Determinants of Trade Between Taiwan and ASEAN Countries: A PPML Estimator Approach," *SAGE Open* 10, no. 2 (2020), https://doi.org/10.1177/2158244020919516.
[481] Sana Hashmi, "Perfecting Taiwan's New Southbound Policy," *The Diplomat*, February 5, 2021.
[482] Tam Sang HUYNH, "Taiwan's Integration with Southeast Asia in the New Asian Context," *East Asian Policy* 10, no. 02 (2018): 100–108, https://doi.org/10.1142/s1793930518000211.
[483] Paramitaningrum Paramitaningrum, "Enhancing People-to-People Cooperation between ASEAN and East Asia Countries through Counterparts: The Case of Indonesian Student in Taiwan," *JAS (Journal of ASEAN Studies)* 1, no. 2 (2013): 148, https://doi.org/10.21512/jas.v1i2.69.
[484] Hunter Marston and Richard C. Bush, "Taiwan's Engagement with Southeast Asia Is Making Progress under the New Southbound Policy," *Brookings.Edu*, July 30, 2018.

2. Conduct a talent exchange.
3. Capital allocation
4. Establish regional ties.

These are part of the program to facilitate talent exchange, educational links, the "two-way movement of professionals," and assist immigrants in seeking work and overcoming language barriers in Taiwan.[485] Along with the undocumented problem that is causing ASEAN workers to become victims in the Taiwan fishing industry, it has been established that there is a language barrier. ASEAN members must seriously discuss this talent exchange, especially those sending migrant workers to Taiwan.

Taiwan's attempts to work with ASEAN members have produced positive results in practice. At the very least, this is reflected in the positive outlooks of several ASEAN member countries. Taiwan's new ASEAN policy has garnered support from a broad cross-section of regional countries. Taiwan enjoys a favourable reputation, especially in light of its expanding economic and political landscape. Apart from these two areas, the primary factor contributing to China's declining image in regional countries is the assertiveness of its actions in the South China Sea, which primarily violates the sovereignty of ASEAN member states.[486] However, this truth demonstrates that Taiwan requires extensive cooperation with ASEAN members to improve its role in the eyes of the international community and, of course, in front of China.

Accordingly, migrant issues may be proposed as a joint strategic partnership. Furthermore, Indonesia could pressure Taiwan to integrate human rights principles into its business practices. This initiative would be made more accessible by Taiwan's demonstrated commitment to promoting and defending human rights. On June 29, 2020, in Taipei City, the Executive Yuan released Taiwan's third national report on the implementation of the United Nations International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, emphasizing the government's commitment to democracy and human rights. Premier Su Tseng-chang said during the document's launch that it details government policies that adhere to the covenants while stressing cooperation between the public and private sectors in Taiwan to strengthen practices. Additionally, ASEAN member countries, who are also signatories to the two United Nations Human Rights Covenants, have

[485] Marston and Bush.
[486] Jeremy Huai-Che Chiang, “How Does Asia Think About Taiwan and Its New Southbound Policy?” *The Diplomat*, February 26, 2021.

the authority to monitor Taiwan's compliance with human rights obligations, including Taiwanese fish shipping.[487]

Consequently, as a covenant signatory, Taiwan is expected to protect and uphold human rights on its territory. This fact will provide ASEAN with a solid negotiating role with Taiwan, which needs the help of many ASEAN friends to preserve its statehood status in the international community. Similarly, ASEAN members who do not have diplomatic relations can use this momentum to advance their interests, especially in protecting their migrant workers in Taiwan. The Association's mitigation strategy for migrant workers from ASEAN countries in Taiwan is strategic, intending to halt China's animosity toward ASEAN countries individually. ASEAN is an organization governed by international law that self-governing all rights and authorities, including cooperating with any international entity.

This section shows that Indonesian employees in Taiwan's fishing industry face two dangers concurrently: slavery and job exploitation. Another drawback is the absence of diplomatic ties between Indonesia and Taiwan, as Indonesia considers Taiwan a Chinese province rather than an independent country. Additionally, efforts to protect Indonesian workers in Taiwan are ineffective, especially for undocumented migrant workers. Following the tragic exploitation of migrant workers in Taiwan's fishing industry, Indonesia should take two measures to prevent potential occurrences. To begin, select and supervise the dispatch of employees to Taiwan, ensuring that the legal and capability requirements of the target company are met. Second, ASEAN's unilateral efforts to cooperate with the Taiwanese government to tackle slavery committed against ASEAN workers by private companies, especially in the shipping industry. Other ASEAN nationalities, such as Filipinos and Cambodians, were also enslaved.

Additionally, ASEAN can force Taiwan to integrate human rights issues into its business practices. As a result of Taiwan's ratification of two significant human rights treaties. Accordingly, Indonesian migrant worker legislation must state unequivocally that the government may not send migrant workers to jobs that are primarily informal and unskilled or undocumented workers. Additionally, as a foreshadowing of the future, the government should participate actively in the ASEAN discussion on protecting migrant workers' human rights in the region, particularly those working in Taiwan.

[487] Taiwan Today, "Taiwan Releases 3rd National Report on UN Human Rights Covenants," *Taiwan Today*, June 30, 2020.

4.5. Inadequate Protection for Migrant Seafarers

Indonesian workers employed as foreign ship's crew or on fishing vessels are now classified as migrant workers under Article 4 of Act No.18 of 2017, a classification previously denied by Act No.39 of 2004. However, the Act 2017 contains no additional provisions addressing how and to what extent their human rights are protected. Article 64 further regulates migrant boat crews and fishing vessels through government regulation. According to the Director of the Indonesian Migrant Worker Protection Agency (BP2MI),[488] there is currently little protection for Indonesian migrant workers who work as crew on foreign ships or as workers on foreign fishing vessels, from recruitment to placement while working and upon return home. Indonesian migrant workers working on foreign ships face a lack of protection due to governing laws and regulations. However, BP2MI has received complaints about the conditions in which migrant workers and their families find themselves.

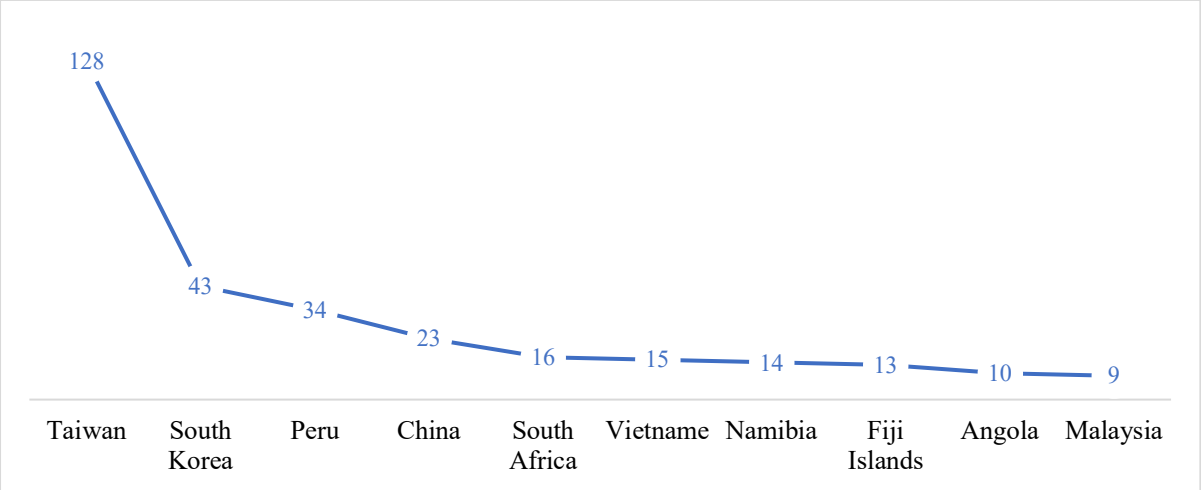
As illustrated in Figure 5,[489] most cases reported by Indonesian migrant workers occurred aboard numerous foreign ships owned by shipping entrepreneurs in the Asia-Pacific and Africa between 2018 and 2020. Taiwanese fishing vessels were involved in most reported incidents, while Malaysian-flagged vessels were involved in the fewest. Violations against Indonesian migrant boat crews working on foreign vessels occur most frequently in the lawless high seas, where international law is inapplicable. Similarly, the Indonesian court failed to protect migrant workers' right to access justice because the case brought before the court occurred outside Indonesia's legal jurisdiction.[490] This fact demonstrates that Indonesian migrant workers' human rights are unprotected under Indonesian law, most notably the 2017 migrant workers' law.

Meanwhile, almost all human rights violations against migrant workers on foreign ships have been reported, ranging from minor to fatal due to unsafe working conditions or forced labour. According to the statistics in Figure 6,[491] the most frequently occurring violation of the rights of Indonesian workers employed by foreign shipping companies is nonpayment of wages, followed by death. While fraud involving phoney job offers on foreign shipping receives the fewest complaints. Numerous complaints filed by Indonesian migrant workers or

[488] BP2MI, "Peran Pemerintah Dalam Penempatan Dan Perlindungan Pekerja Migran Indonesia Di Kapal Asing" (Jakarta, 2020).
[489] Daniel Surianto and Ida Kurnia, "Perlindungan Hukum Abk Indonesia Di Kapal Asing Dalam Perspektif Hukum Nasional," *Jurnal Hukum Adigama* 4, no. 1 (2021): 1667–91.
[490] Kapal Liao et al., "Kapal Perikanan China, Kuburan Terapung Pekerja Migran Indonesia," Kompas.id, 2021, https://www.kompas.id/baca/nusantara/2021/10/12/kapal-perikanan-china-kuburan-terapung-pekerja-migran-indonesia.
[491] Surianto and Kurnia, "Perlindungan Hukum Abk Indonesia Di Kapal Asing Dalam Perspektif Hukum Nasional." Ibid.

their families against human rights violations on foreign shipping vessels demonstrate how vulnerable migrant workers are to human rights violations on these ships, but the state takes no action.

Figure 5 Number of Case Complaints by Ship's Crews by Country 2018-2020

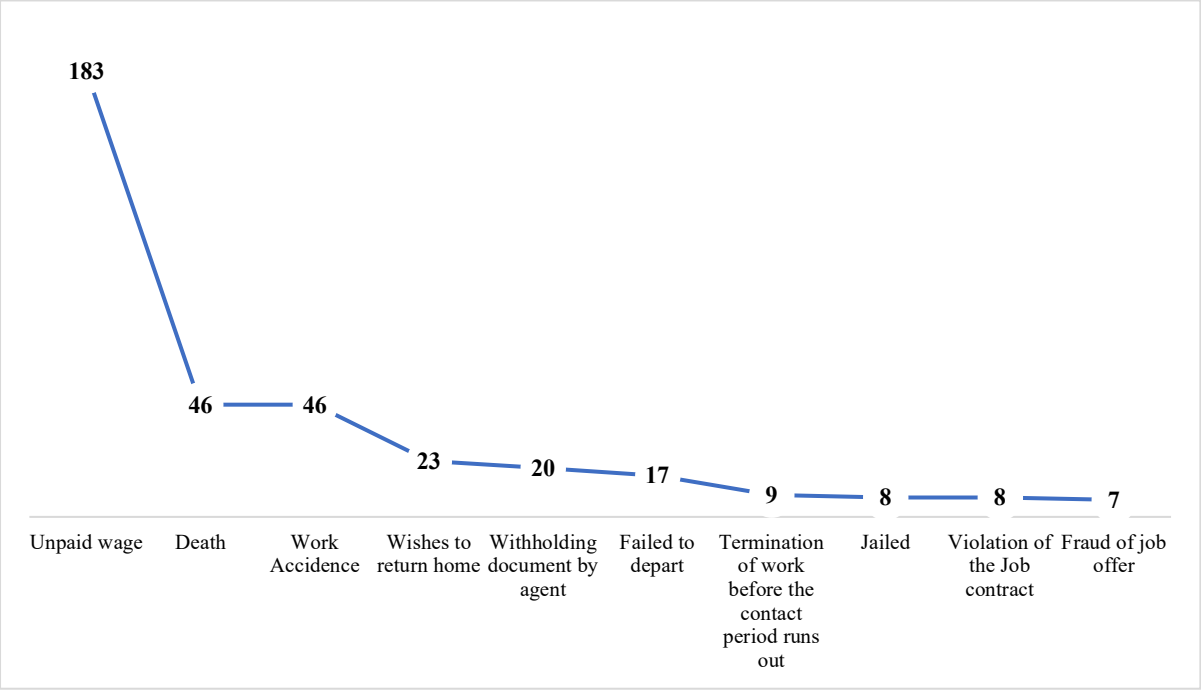


Additionally, no single government agency is charged with its management due to seafarers' lack of legal protection. Numerous government agencies are involved in the recruitment and placement of seafarers on foreign ships operating under their flag. As a result, recruitment standards were unclear, and the government provided no oversight. Furthermore, migrant workers employed by foreign fishing vessels are not subject to any requirements,[492] resulting in flagrant human rights violations,[493] mainly when working on lawless high seas.[494] This fact demonstrates that the Indonesian government violated the human rights of seafarers on purpose, even though Indonesia ratified the 2006 Maritime Labour Convention (MLC2006). According to the international law treaty, once ratified, the Convention's regulations become part of domestic law, making them applicable to ships flying the nation's flag. The ratifying country is ultimately responsible for compliance (flag state control). The MLC2006 requires ships, particularly those from non-signatory countries, "do not receive preferential treatment."[495]

[492] Ditjen Binapenta dan PKK, "Peran Kementerian Ketenagakerjaan Dalam Perlindungan Pekerja Migran Indonesia Yang Bekerja Di Kapal Berbendera Asing" (Jakarta, 2020).
[493] Liao et al., "Kapal Perikanan China, Kuburan Terapung Pekerja Migran Indonesia."
[494] Greenpeace Southeast Asia, Greenpeace, and Serikat Buruh Migran Indonesia, "Seabound: The Journey to Modern Slavery on the High Seas."
[495] Marina Liselotte Fotteler, Despena Andrioti Bygvraa, and Olaf Chresten Jensen, "The Impact of the Maritime Labor Convention on Seafarers' Working and Living Conditions: An Analysis of Port State Control Statistics," *BMC Public Health* 20, no. 1 (2020): 1–9, https://doi.org/10.1186/s12889-020-09682-6.

Meanwhile, as illustrated in Figure 6, three significant cases were reported between 2018 and 2020. The first is unpaid wages, which accounted for 183 of the reported cases, followed by death and work accidents involving seafarer migrants, which accounted for 46 of the reported cases. These two cases, the death and the work accident involved the fundamental human rights of seafarers, which the Indonesian government has failed to protect. The fatality of work accidents suffered by Indonesian seafarer migrants is primarily reported on Chinese[496] or Taiwanese ships,[497] and the incidents typically occur in lawless high-seas water.[498] As a result, Indonesia must find a way to protect its seafarer migrants, who are the most vulnerable migrant workers compared to other migrant workers.

Figure 6 Number of Complaints from Ship's Crew Based on Cases 2018-2020



The government regulation governs the only method provided by the Act of 2017 specifically to govern the seafarer protection system, which has not changed much up to this point as cases of violations against Indonesian seafarers continue to rise without a clear government response. One of the measures taken by the Indonesian government to protect seafarer migrant workers is the implementation of Article 64 provision of Act No. 18 of 2017. This article is addressed to the government, requesting that it establish regulations governing

[496] Kapal Liao, "Kapal Perikanan China, Kuburan Terapung Pekerja Migran Indonesia," 2021.
[497] James X. Morris, "The Dirty Secret of Taiwan's Fishing Industry."
[498] Greenpeace Southeast Asia, Greenpeace, and Serikat Buruh Migran Indonesia, "Seabound: The Journey to Modern Slavery on the High Seas."

the management of seafarer migrant workers. This is accomplished through the publication of Government Regulation of the Republic of Indonesia Number 22 of 2022 Concerning the Placement and Protection of Migrant Trade Ship Crew and Migrant Fishing Vessel Crew.

The Ministry of Manpower's Office, responsible for this provision, initiated the establishment of government regulations governing seafarer management, including recruitment, placement, and return home. The regulatory process is a collaborative effort involving over ten government agencies.[499] Regrettably, civil society was excluded from the discussion, and as a result, the interests of migrant seafarers are unlikely to be recognized in the proposed government regulation.

Additionally, there is a significant issue about the inclusion of seafarers in the category of migrant workers despite the different nature of their respective roles. Seafarers are workers who operate in commercial shipping and have a variety of hierarchical and systematic roles. They live in a mini-global society (global citizenship) that travels over large oceans, passes several countries, and makes periodic stops for commercial activity.[500] With this unique working environment, international law pays special attention to ensuring protection and limiting the risk of violations of their human rights while working, particularly on the high seas, which are not monitored by the worker's country of origin or the ship owner.[501] Conceptual issues arose during the development of the Maritime Labor Convention (Maritime Labor Convention, MLC 2006) about the role of seafarers in the international labor legal environment. The argument involves questions such as "Are seafarers included in the category of migrant workers?". Sailors who work on foreign ships share characteristics with migrant Labourers, including working outside of their home country. However, seafarers' normal labor and working environment differs significantly from that of migrant workers.[502] In this regard, the following will address the status of seafarers in the international legal environment and their dynamics in national law in countries that have signed vital conventions such as the MLC, ILO, and IMO, as well as explain the law governing Indonesian seafarers and migrants.

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[499] Ditjen Binapenta dan PKK, "Peran Kementerian Ketenagakerjaan Dalam Perlindungan Pekerja Migran Indonesia Yang Bekerja Di Kapal Berbendera Asing."

[500] Maria Borovnik, "Are Seafarers Migrants? - Situating Seafarers in the Framework of Mobility and Transnationalism," *New Zealand Geographer* 60, no. 1 (April 2004): 36–43, https://doi.org/10.1111/j.1745-7939.2004.tb01703.x.

[501] Rachel A DeCapita, "Business and Human Rights: Human Rights Trafficking in the Fisheries Industry," *Comparative Law*, no. October (2019): 458; Luci Carey, "The Maritime Labour Convention, 2006: The Seafarer and the Fisher," *Australian & New Zealand Maritime Law Journal*, no. 31 (2017): 31.

[502] Iryna Pidpala, "Special Status of the Seafarer in the System of Labor Relations," October 30, 2016, https://doi.org/10.5281/ZENODO.4608786.

a. Definition of Seafer

Seafarers are defined differently under different countries' regulations. This diversity is connected to regulatory items within the seafarer's category. The term "seafarer" generally refers to people who work on ships, such as sailors, boatmen, and crew members. All of these words refer to the profession of 'going on water' or assisting in ships' operation, maintenance, or service. In actual situations, people use these names interchangeably based on their preferences.[503]

In recent years, the terms seaman and seafarer have become increasingly common in marine legislation across the globe. Denmark, for example, employs the term "The Seaman's Rights and Duties" in its statute, which is synonymous with "seafarer." However, the term sailor first appeared as a legal phrase in English in 1436, in The Libelle of English Policy.[504] Until the 1940s, the word "safe" was employed in conventions, international accords, and national maritime regulations across the globe. However, because this term is gender biased in favor of women who become seafarers, the ILO Convention (CO68) on 'Food and Catering' replaced it with the term "seafarer" in 1946 to prevent gender bias and acknowledge the presence of female seafarers in the convention. Similarly, in its many conventions, protocols, and publications, the IMO (International Maritime Organization) favors the term "seafarer" to "seafarer." Meanwhile, a ship's crew is defined as a group of sailors (seafarers), which is also used to refer to the crew of an airplane. The term "crew" refers to people working together aboard ships, planes, and other locations.[505]

Seafarers are also defined differently in national legislation across countries. In the Philippines, for example, the term "seafarer" refers to anyone (other than the navy or workers on national non-commercial boats) working on ships operating in waters outside their country's boundaries.[506] In contrast, Denmark employs the term "seafarer" to refer to anyone other than the Master who works on a Danish ship. However, the ILO employs the term "seafarer" inconsistently in its numerous conventions. For example, under The Seafarers' Identity Documents Convention 1958, the term "seafarer" refers to anyone active in shipping activities other than the military whose flag is the country to which the convention applies. Meanwhile, in The Seafarers' Hours of Operate and the Manning of Ships Convention 1996,

[503] Pengfei Zhang, *Seafarers' Rights in China: Restructuring in Legislation and Practice Under the Maritime Labour Convention 2006* (Cham: Springer International Publishing, 2016), 9, https://doi.org/10.1007/978-3-319-43620-3.
[504] Zhang, 10.
[505] Zhang, 10.
[506] Olivia Swift, "Seafaring Citizenship: What Being Filipino Means at Sea and What Seafaring Means for the Philippines," *Southeast Asia Research* 19, no. 2 (June 2011): 273–91, https://doi.org/10.5367/sear.2011.0046.

"seafarer" refers to all persons in whatever capacity who operate on ships, as recognized by national rules, and the country implements this convention. So, in this convention, the ILO requires two prerequisites to be recognized as a seafarer: recognition from the national legislation of the seafarer's place of origin and the country adopting the convention. The Maritime Labor Convention (MLC 2006) defines a "seafarer" as any person in any capacity who engages in activities or works in shipping where this convention is applicable.[507]

In contrast, the United Kingdom and the United States continue incorporating the phrase "as safe" into their legal systems, albeit with minor distinctions. Under the Merchant Shipping Act 1995, the United Kingdom defines "seaman" as any individual who works on ships in any capacity, excluding masters and pilots. In the United States Code of 1944, on the other hand, "seaman" refers to all individuals who operate in any capacity on ships, excluding apprentices.[508]

It is evident from the various definitions of seafarers that some contend that all individuals employed on ships qualify as seafarers. Others, however, do not consider pilots and masters to be mariners. The legitimacy of each of these definitions is acknowledged by the legal sovereignty of its respective nation. As the parent global legislation, MLC 2006 establishes several substantive requirements for seafarer qualifications that each country must satisfy. Ensuring adherence to the 2006 MLC standards for seafarers further validates the robust safeguarding of human rights for maritime workers and the imperative for all relevant stakeholders, including participating nations and seafarer agency entrepreneurs, to implement preventive measures.

b. International Law Protection for Seafarers

Legal safeguards for seafarers were dispersed among many agreements from 1920 to 2006, reducing effectiveness in safeguarding seafarers' rights during labor. Before 2006, the International Labour Organization (ILO) needed a specific legal framework for seafarers, leaving their protection lacking. The International Maritime Organization (IMO) focused mainly on regulating ships rather than addressing seafarers' safety, suitability, and welfare. Seafarers' protection is governed by international law and human rights law. Therefore, several infringements of seafarers' human rights, particularly in international waters, are nearly

[507] Zhang, *Seafarers' Rights in China: Restructuring in Legislation and Practice Under the Maritime Labour Convention 2006*, 10.
[508] Zhang, *Seafarers' Rights in China: Restructuring in Legislation and Practice Under the Maritime Labour Convention 2006*.

immune to legal protection.[509] In January 2001, representatives of ship owners and seafarers' union groups in the ILO organization reached a joint agreement to establish a legal framework that offered equitable and robust protection to both parties. The Maritime Labor Convention (MLC 2006), often known as 'The International Bill of Rights for Seafarers,' was established in 2006 after thorough talks. The ILO's role as a regulator for seafarers is the outcome of successful collaboration with the IMO, the primary regulator in maritime affairs, overseeing ship standards and seafarer credentials.[510]

Peter B. Payoyo[511] stated multiple reasons for the ILO's ratification of the 2006 MLC. MLC 2006 combines different international agreements and guidelines, including legally binding and non-binding ones, concerning maritime labor. It contains a variety of topics relating to sailing that are organized into several categories. They discussed the necessities, working conditions, accommodations, recreational amenities, food, health care, welfare, social security, grievance procedures, rule enforcement, and salaries for sailors. MLC 2006 aspires to establish social justice standards for seafarers and fair competition regulations in the international maritime industry. MLC 2006 is a rule that seeks to intervene directly in international commercial activities that affect global market operations. MLC 2006 imposes comprehensive responsibilities on ship owners to safeguard, honor, and fulfill seafarers' rights. The 2006 MLC does not acknowledge mariners as migrant Labourers. MLC 2006 emphasizes meeting the criteria to become a seafarer and the necessary safeguards for seafarers during their ship employment.[512]

The 2006 Maritime Labour Convention (MLC) consolidates 68 ILO treaties concerning marine labor. The ILO has a supervisory responsibility[513] in overseeing the operations of ships

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[509] Sandra Lielbarde, "Concept of Seafarer Before and After the Maritime Labour Convention 2016: Comparative Analysis of the Legal Effects of Defining Legal Concepts in the Shape of Legal Terminology," ed. George Ulrich, Research Paper No. 17 (Riga Graduate School of Law, 2017), 11–18.

[510] Oana Adăscăliţei, "The Maritime Labour Convention 2006 – A Long-Awaited Change in the Maritime Sector," *Procedia - Social and Behavioral Sciences* 149 (September 2014): 12, https://doi.org/10.1016/j.sbspro.2014.08.163.

[511] Peter B Payoyo, "Seafarers' Human Rights: Compliance and Enforcement," in *The Future of Ocean Governance and Capacity Development: Essays in Honor of Elisabeth Mann Borgese (1918-2002)* (Brill, 2018), 470.

[512] Alexandros X.M. Ntovas, "Maritime Labour Convention," *International Legal Materials* 53, no. 5 (October 2014): 933–1018, https://doi.org/10.5305/intelegamate.53.5.0933; Marina Liselotte Fotteler, Despena Andrioti Bygvraa, and Olaf Chresten Jensen, "The Impact of the Maritime Labor Convention on Seafarers' Working and Living Conditions: An Analysis of Port State Control Statistics," *BMC Public Health* 20, no. 1 (December 2020): 1586, https://doi.org/10.1186/s12889-020-09682-6; Carey, "The Maritime Labour Convention, 2006: The Seafarer and the Fisher."

[513] Nancy H. Chau et al., "The Adoption of International Labor Standards Conventions: Who, When, and Why? [With Comments and Discussion]," *Brookings Trade Forum*, 2001, 115; Iliana Christodoulou Varotsi and Dmitry A Pentsov, *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers* (Berlin, Heidelberg: Springer Berlin Heidelberg, 2008), https://doi.org/10.1007/978-3-540-72751-4; Payoyo, "Seafarers' Human Rights: Compliance and Enforcement," 470–71.

that hire seafarers to guarantee corporations are held responsible for providing decent work conditions in the shipping industry.[514] The ILO's supervision focuses on critical aspects outlined in the 2006 MLC and IMO regulations to ensure the well-being and safety of seafarers and address long-standing human rights breaches encountered by seafarers.

c. Migrant Status for Seafarers

Many studies and regulations concerning migrant labor and sailors restrict the classification of migrants as seafarers. Typically, attributing migrants to seafarers is a term used in academia rather than in a legal context. Taiwan specifically employs the term 'migrant' to describe fishers, rather than 'migrant Labourers'.[515] This is intended to facilitate domestic and foreign maritime experts in recognizing and referring to each other during maritime operations.

In the Philippines, the term 'migrant' is used to describe all workers who are employed overseas, classifying them as either land-based or sea-based. Sailors belong to the second category. The category was established by the "Migrant Workers and Overseas Philipinos Act of 1995," with different regulations. In 2007, the Philippines created a specialized commission to oversee seafarers more comprehensively. In 2007, Philippine Congressional Senator Loren Legarda[516] expressed the need for special regulations for Filipino seafarers due to their significant contribution to the country's economy and their high representation among migrant workers. Legarda noted that sailors' conditions and situations are markedly unlike from those of mainland migrant workers, despite both being migratory Labourers. The term "seafarers" is used to differentiate migrants from local seafarers in Taiwan, where it specifically refers to migrant fishers.[517] In the Philippines, seafarers are referred to as migrant fishers instead than migrant workers.[518] Maria Bovornik's[519] study concluded that seafarers are considered 'migrants' but not in the technical sense of being migrant workers. Bovornik highlights that sailors have established transient and multinational work-based communities on ships, in addition to creating social networks like migrant worker communities overseas.

[514] Payoyo, "Seafarers' Human Rights: Compliance and Enforcement," 471.
[515] Chen Chu et al., *Road to Migrant Fishers' Rights: NHRC Foreign Fishermen's Human Rights Special Report*, Compact (Taiwan: National Human Rights Commission, 2002).
[516] Loren Legarda, "Explanatory Note for An Act Creating A National Seafarers Commission, Prescribing Its Powers and Functions and Appropriating Funds Therefore, and for Other Purposes" (Senate of the Philippine Congress, 2007).
[517] Chu et al., *Road to Migrant Fishers' Rights: NHRC Foreign Fishermen's Human Rights Special Report*.
[518] Legarda, "Explanatory Note for An Act Creating A National Seafarers Commission, Prescribing Its Powers and Functions and Appropriating Funds Therefore, and for Other Purposes."
[519] Borovnik, "Are Seafarers Migrants?" 42.

d. Migrant Worker Status for Seafarers in Indonesian Law

Multiple Indonesian regulations define the term "seafarer" in various conditions. An illustration of this can be found in Article 1(3) of Government Regulation ("*Peraturan Pemerintah*"-PP) No. 7 of 2000 on Maritime Affairs, which defines a seafarer as "an individual possessing the requisite knowledge or abilities to serve as a member of a vessel's crew." This definition emphasizes the particular competencies that are required for crew member acceptance. This establishes that seafarers are the ship's crew members with specialized expertise. In contrast, Indonesia's Law No. 17 of 2008 about Shipping does not classify seafarers as a unified group. Article 1 (40, 41, and 42) of the Shipping Law provides definitions for three entities: ship's crew, master, and ship's crew. Specifically, it states:

> "Ship crew are individuals who are employed or work on board a vessel on behalf of the ship's owner or operator to execute duties and responsibilities commensurate with their certificate book-recognized position."
> "The captain is one of the crew members who is the highest leader on the ship and has certain authority and responsibilities in accordance with the provisions of the laws and regulations." "Boat crew are crew members other than the captain."

According to this definition, all individuals employed on a vessel hold identical positions, that of sailors, unless their roles are specified otherwise, such as the captain assuming the crew leader role. In accordance with the Shipping Law 2008, therefore, seafarers encompass all crew members employed on a vessel, irrespective of the vessel's nationality. Seafarers are categorized solely on the basis of their respective positions—captain, crew member, and ship operator. Government Regulation No. 7 of 2000 on Maritime Affairs and Regulation No. PER-12/KA/IV/2013 of the Head of the National Agency for the Placement and Protection of Indonesian Workers on Procedures for Recruitment, Placement, and Protection of Seafarers on Foreign-Flag Ships define the term "seafarer" and its limitations. Article 1(1) of the Regulation states that "Indonesian Seafarer Workers, hereinafter referred to as Seafarers, are workers who have qualifications and expertise or skills as ship crew members who work on foreign-flagged ships for a certain period of time based on a sea work agreement."

The definition of "seafarer" as it appears in the Regulation of the Head of the Agency is consistent with the Shipping Law's definition. Nevertheless, the Regulation issued by the Agency Head explicitly designates all personnel employed on foreign-flagged vessels as seafarers. Thus, seafarers are referred to as migrant workers under Indonesian law. This is emphasized further in Government Regulation Number 22 of 2022 regarding the Placement and Protection of Migrant Commercial Ship Crews and Migrant Fishing Ship Crews, which details the provisions of Article 4 of Law Number 18 of 2017 concerning the Protection of

Indonesian Migrant Workers. The two categories of crew members are delineated in Article 1 (22, 23) as follows: "Migrant Commercial Ship Crew comprises Indonesian Migrant Workers engaged in service or employment by the ship owner or operator aboard foreign-flagged commercial vessels to execute responsibilities commensurate with their designated position as documented in the certificate book."

> "Migrant Fishing Vessel Crew are Indonesian Migrant Workers who are employed or work on a foreign-flagged fishing vessel by the owner or operator of the ship to carry out duties on the ship in accordance with their position as stated in the certificate book."

During the Working Committee meeting with the Government on the Draft Law on Protection of Indonesian Migrant Workers on July 19, 2017, the Working Committee ("*Panitia Kerja*-Panja") and the Government did not discuss the rationale behind classifying seafarers as migrants. The Government was solely concerned with the inclusion of seafarers in the bill. In response, the chairman of the "Panja" meeting asserted that seafarers' status was equivalent to individual migrant Labourers. The subsequent discourse comprises an exhaustive exchange between the "Panja" and the Government about seafarers classified as migrant workers.[520]

Government:

> "Sir, before its adjournment by the working committee chair. There is one concern that we have failed to consider. Sir, that pertains to seafarers. Therefore, as of now, there is no mandatory reference to seafarers under this law. Even though it has been addressed, it is evident that a link is still necessary. Consequently, if deemed essential, this legislation may be supplemented to require governmental regulations pertaining to special protection for the ocean. The Chairperson made that statement.

Chairman of the Meeting:

> "The Government has proposed a location for its installation, which I believe is satisfactory. In which chapter does it pertain? Try to access Article 4. Permit me to read article 4: "Indonesian migrant workers who legal entity users employ are classified as a. Indonesian migrant workers who seafarers and individual household users employ are b." Fisheries sailors and ship crew members. Mr. Hermono already exists."

Chairman (Dede Yusuf Macan Effendi):

> "Permission from the leader. Indeed, I recall this being Article 4 of the discourse we engaged in during our time at sea. This was, in fact, our concern, and I was the one in charge at the time when I suggested that it would be more effective to publish it as a special article. The Government, however, still needs to specify the type of special article in question. Therefore, if it is returned to me, I will immediately present it to the Members for their input on whether further words are required to instruct them to create these Regulations. I recall that we will produce a new article, a special article for this, at that time. Where exactly do you wish to be, and where exactly do you wish to position it? It is impossible. The matter is covered in Article 4. Thus, seafarers are the only

[520] "Risalah Rapat Panja RUU PPILN Komisi IX DPR RI dengan Pemerintah" (Gedung DPR RI, July 18, 2017), 10–14.

category in which migrant workers are classified. However, except for seafarers, who are treated similarly to other employees, a distinct article has been drafted to address this. Therefore, while you are still working, kindly complete this. Therefore, once this is closed, I will proceed to synchronizing and drafting teams. "Kindly, please."

Chairman Of The Meeting:

"Mr. Chairman, I want to extend my gratitude. "Kindly permit."

Government:

"Sir, subsequent to article 62, individual migrant workers are governed by article 62. Then, in accordance with Article 62, substances pertaining to seafarers may be regulated. Later, we will incorporate the formulation. It may appear in the following paragraph."

Co-Chairman:

"Alternatively, we could pause it for one minute while the Government develops a formula, if that's alright. After one minute, to reach an agreement, return. "Following suit."
"The placement and protection of seafaring workers, ship crew, and fishery sailors, as mentioned in article 4, paragraph (1) letter c, are additionally governed by a government regulation," as stated in section 63 below. Because there will inevitably be maritime affairs and transportation departments in the future, Sir, this period will be protracted.

It appeared that the inclusion of seafarers in the category of migrant workers during the dialogue (drafting) of the Migrant Workers Bill between the Government and the Parliament (DPR RI) Commission IX Working Committee did not reflect an in-depth discussion, as the only objective was to determine the correct position for the article in the Migrant Workers Bill. Thoughts concerning the justifications for classifying seafarers as migrant workers do not constitute the core of the discourse. This demonstrates that neither the Government nor the working committee conducted exhaustive research before determining seafarers' classification as migrant Labourers.

The academic version of the Indonesian Migrant Wokers Bill does not explain the factors contributing to seafarers being classified as migrant workers. It merely states that Law No. 6 of 2012, which regulates ratification of the ILO Convention International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990 (International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families), also relates to this matter. In actuality, the ICRMW 1990 defines seafarers exclusively and then omits them from the list of migrant worker groups. This is stated in Article 3 of the 1990 ILO Convention, which, along with five other categories, specifies that the convention does not apply to seafarers. The 1990 ILO Convention aligns with the provisions of two preceding ILO conventions: Convention Number C-097 (1949) and Convention Number 143 (1975). C-097 specifies in Article 11(2), point c that seafarers and

ship's crew are not considered migrant workers. Article 11(2), point c) of C-143 was subsequently modified marginally to specify that migrant workers were restricted to sailors exclusively. In the interim, the exception about ship crews has been removed from Convention 143 of 1975. Similarly, seafarers are not classified as migrant workers under Article 1, paragraph 2(c) of the 1977 European Union Convention Concerning the Legal Status of Migrant Workers. This demonstrates that neither the ILO nor the EU classify seafarers as migrant workers.

Converting the status of seafarers to migrant workers has both advantages and disadvantages. Advocates for adding seafarers in the category of migrant workers believe it will lead to the consolidation of regulations and institutions currently overseen by the Ministry of Transportation and the Ministry of Manpower.[521] Conversely, the group that declined contended that the usual tasks of seafarers are distinct from those of migrant workers. Seafarers and other multinational communities working on foreign ships travel to different nations, stopping to load or unload products or passengers. This position differs significantly from migrant workers residing and working within a country or 'frontier Labourers' who are migrant workers near state frontiers. Various international regulations, such as the International Transport Workers Federation and the ILO, establish requirements for the protection and well-being of seafarers.[522]

For individuals seeking to become sailors in the maritime industry, adherence to stringent selection criteria established by international regulations is mandatory throughout the recruitment and placement process. Ship manning firms recruiting seafarers should ensure transparency on their licensing status and business obligations to address any issues that may occur for seafarers efficiently.[523] The ILO focuses on ensuring decent work and protecting human rights for seafarers. In contrast, the Ministry of Manpower's role in seafarer governance is restricted to employment matters, as stated in Article 337 of the 2008 Shipping Law. Regrettably, no additional clarification is provided regarding the regulations mentioned in Article 337. Payoyo's[524] rational explanation can be utilized to elucidate the employment responsibilities of the Ministry of Manpower, particularly in overseeing the enforcement of decent work rights for seafarers in the shipping industry by their employers. This supervision

[521] Rusdi Siswanto, "Pro Dan Kontra Terhadap PP Tentang Pelindungan Awak Kapal Migran," *Kompas*, June 18, 2022, https://www.kompas.com/tren/read/2022/06/18/151000065/pro-dan-kontra-terhadap-pp-tentang-pelindungan-awak-kapal-migran?page=all.
[522] Lely Farida Mahadi, "Kajian Akademik Dampak PP No 22 Tahun 2022 Tenaga Kerja di Sektor Maritim Terhadap Nasib Pelaut Khususnya Perwira Pelayaran Niaga (PPN)," Research, 2022.
[523] Siswanto, "Pro Dan Kontra Terhadap PP Tentang Pelindungan Awak Kapal Migran."
[524] Payoyo, "Seafarers' Human Rights: Compliance and Enforcement."

mirrors the role of the ILO in upholding the regulations outlined in the 2006 MLC. The 2008 Shipping Law does not explicitly mention seafarers as part of the category of migratory workers. Law no. 18 of 2017 and PP no. 22 of 2022 categorize sea and fisheries crew members as migrant workers, which goes against ILO Convention Number C-097 of 1949, Number C-143 of 1975, and the ILO Convention concerning the Protection of Migrant Workers and Their Families 1990.

Meanwhile, assigning seamen to the migrant labor category is biased. The employment characteristics vary between the two. Maria Borovnik[525] unequivocally dismisses seamen as migrant labor in her research. He stated that mariners have two attributes with migrant workers: mobility and transnationalism. Seafarers and migrant Labourers in this scenario depart from their home countries and send remittances to their relatives in their home countries. Historically, mariners were recognized as transnational workers safeguarded by international regulations and mandated to possess professional credentials for their specific roles, distinguishing them from migratory Labourers on land. Protection for migrant workers in international law was first established through safeguarding foreign citizens (aliens or non-citizens). International protection for migrant workers is distinct from protection for foreigners and independent from refugee groups, each having its legal protection system.[526] In 1990, the ILO issued a convention for safeguarding migrant workers and their families. However, sefarers were not included as part of this group according to Article 3(f) of the convention.

Fitzpatrick and Anderson[527] endorse Borovnik's argument. He stated that mariners in the international system had two intrinsic rights. A combination of international, regional, and domestic laws safeguards seafarers' human rights. Secondly, workers' rights are protected by particular regulations, specifically MLC 2006.[528] Borovnik argues that mariners do not fit the classification of migrant workers while sharing some characteristics with them, as they do not fully encompass the category—diverse characteristics of the sailor.

Sailors' characteristics and the traits of fisheries sailors are distinct. Seafarers are governed by the MLC 2006, while workers in the fishing vessel sector are controlled by The Work in Fishing Convention, 2007 (C188), according to Daphne Guelker.[529] Guelker's study identified four notable distinctions between fishers and seafarers. These include the fisher

[525] Borovnik, "Are Seafarers Migrants?," 11.
[526] Pranoto Iskandar, *Hukum HAM International: Sebuah Pengantar Kontekstual*, Kedua, 2012, 530–31.
[527] Michael Anderson and Deirdre Fitzpatrick, eds., *Seafarers' Rights* (Oxford University Press, 2015).
[528] Lielbarde, "Concept of Seafarer Before and After the Maritime Labour Convention 2016: Comparative Analysis of the Legal Effects of Defining Legal Concepts in the Shape of Legal Terminology," 19.
[529] Daphne Guelker, "Fishers and Seafarers in International Law – Really so Different?" *Marine Policy* 148 (February 2023): 148, https://doi.org/10.1016/j.marpol.2022.105473.

population exceeding 39 million, varying classifications such as workers, job sharing with ship owners, large fish catchers (corporations), and the widespread presence of small-scale fisheries sector workers. Additionally, the employment framework for sailors is more stringent, relying on explicit contracts. There are different types of fishermen with employment contracts that are relative.

Another distinction is that, historically, seafaring was an international occupation. Meanwhile, fishermen only went point to point within their country's borders. Furthermore, seafarers are bound by several international conventions, including the Convention for the Safety of Life at Sea (SOLAS), the Convention on the International Regulations for Preventing Collisions at Sea (COLREG), the Convention for the Prevention of Pollution from Ships (MARPOL), and the Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW). MLC 2006, which results from collaboration between the IMO and the ILO, complements the preceding four pillars.[530] According to Article 2(4) of the MLC 2006, "Unless otherwise expressly provided, this Convention applies to all vessels, whether publicly owned or privately owned, which are ordinarily engaged in commercial activities, other than vessels used in fishing or similar activities and vessels which made traditionally like dhow and jung." In this situation, the 2006 MLC does not regulate fishing vessels. The Indonesian government recognized the 2006 MLC on October 6, 2016, with Law No. 15 of 2016. Thus, all the norms outlined in the 2006 MLC apply to Indonesia. As a result, national and regional legislation and policies governing maritime workers must refer to the provisions of the 2006 MLC.

e. Categorization of Migrant Workers

One factor contributing to the advantages and disadvantages of enforcing Law Number 18 of 2017 and Government Regulation Number 22 of 2022 is the classification of seafarers and their management, impacting the seafarer employment migration industry due to the lack of explicit differentiation between land-based and sea-based migrant workers in the Migrant Law 2017. Migrant classification is crucial as it dictates the handling of individual labor migration. Hein de Haas, Stephen Castles, and Mark J. Mill[531] argue that categories play a vital role in comprehending migration by analyzing intricate social phenomena, identifying trends,

[530] Guelker, 148.
[531] Hein de Haas, Stephen Castles, and Mark J. Miller, *The Age of Migration: International Population Movements in The Modern World*, sixth edition, reprinted by Bloomsbury Academic (London: Bloomsbury Academic, 2022), 21.

and facilitating comparisons. Yet, the thoughtless application of classifications can lead to misunderstanding and misrepresentation. Misconceptions regarding migration often stem from the terminology and classifications employed by politicians, the media, and researchers to characterize various forms of migration and migrants. One issue is the thoughtless acceptance of legal and policy classifications to define migration. These categories need more significance and impede a more profound comprehension of migration.

Migrant categorization in national legislation and policy ensures clarity and consistency in labor migration management. It is crucial to note that the status of sailors as migrant Labourers is also a subject of academic discussion[532], as mentioned earlier. Some studies refer to seafarers as sea-based migrant Labourers and migrants. However, in their national laws, few countries include seafarers in the phrase migratory labor. The Philippines is one of the few countries that use it. The Philippines is the second leading provider of seafarers globally, as outlined in Republic Act No. 8042 and The Migrant Workers and Overseas Act of 1995, which established two distinct kinds of migrant workers: land-based migrants and sea-based migrants.[533] The status of sailors in the Philippines falls under the second category, sea-based migrant, according to these two statutes. The Philippine government established the 2007 National Seafarers' Commission Law to address the distinctive and intricate nature of seafarers' employment and to ensure compliance with all necessary administrative and substantive regulations for seafarers. This regulation was enacted one year after the International Labour Organization (ILO) introduced the 2006 Maritime Labour Convention (MLC). The National Commission for Seafarers operates autonomously under the President's office to oversee seafarer labor migration, addressing all essential elements required to train skilled seafarers. Senator Loren Legarda[534] introduced the 2007 National Seafarers' Commission Law.

> "This measure seeks to create a National Seafarers Commission (NSC) which will serve as a centralized government agency that will provide the necessary services, supervision, guidance, regulation and guidance the Filipino seafarer needs in order to develop as a globalized professional. Training programs, seminars, certifications and other documents needed by the seafarer will be readily made available under one agency".

The Philippine government has implemented a specialized law for seafarers to enhance the management of seafarer labor migration in the country. This law ensures that the management is led by experienced professionals in the field, aiming to produce highly skilled

[532] Chu et al., *Road to Migrant Fishers' Rights: NHRC Foreign Fishermen's Human Rights Special Report*.
[533] Legarda, "Explanatory Note for An Act Creating A National Seafarers Commission, Prescribing Its Powers and Functions and Appropriating Funds Therefore, and for Other Purposes."
[534] Legarda.

and internationally recognized Filipino seafarers while safeguarding their welfare. The term "migrant" is used for seafarers to distinguish them from domestic seafarers, so they are referred to as "migrant seafarers" rather than "migrant workers." Article 4 of the 2017 Indonesian Migrant Workers Law does not classify Indonesian migrant workers into land-based and sea-based categories, yet their administration is distinct. Regulatory inconsistencies have emerged between the 2017 Indonesian Migrant Worker Law, Government Regulation Number 22 of 2022, and existing marine regulations.

f. Legal Framework for Indonesian Seafarers

Indonesia has a well-established legal framework for seafarers, including the ratification of the Maritime Workers Convention (MLC 2006), the 2008 Shipping Law, the 2017 Indonesian Migrant Workers Law, and various related regulations at different levels of government. In 2012, Indonesia ratified the 1990 ILO Convention on Protection for Migrant Workers and Their Families through Law Number 6 of 2012. The 1969 Vienna Convention states that when a country approves an international rule, it is fully obligated to adhere to the regulations outlined in the convention it ratifies. This is reiterated in Articles 1(2) and 10 of Law Number 24 of 2000 on International Agreements. Article 23(2) of the 1969 Vienna Treaty allows a country to submit a reservation or statement not to be bound by specific treaty articles it ratifies. This submission must adhere to the conditions outlined in Article 23(2). Indonesia ratified the 1990 Migrant Workers Convention with Law Number 6 of 2012 without making any complaints regarding its contents. All provisions of the 1990 Convention, including Article 3(f), which excludes mariners as migratory labor, are binding on Indonesia. Article 88 of the 1990 Convention confirms that countries that have ratified the agreement must adhere to and execute all its terms without deviation.

> " A State ratifying or acceding to the present Convention may not exclude the application of any Part of it, or, without prejudice to article 3, exclude any category of migrant workers from its application".

Article 88 of the 1990 Migrant Convention specifies that countries ratifying the convention must adhere to all its provisions without exception, including Article 3, which outlines the types of jobs not considered as migrant work. Article 4 of Law Number 18 of 2017 categorizes mariners as migrant workers, contradicting Article 3(f) of the 1990 Convention. The regulations in Article 4 of Law Number 18 of 2017 regarding the Protection of the Indonesian Migrant Act need to be aligned with the rules in Article 3(f) of the 1990

Convention, which are the main international labor migration rules that Indonesia adopted in 2012.

The position of sailors was governed by Law Number 17 of 2008 concerning Shipping before the enactment of the Migrant Act 2017. Regulations concerning Seafarers begin with Article 145 and include other articles outlining specific competency standards for anyone aspiring to become a seafarer. The rules for Indonesian sailors are restated in Government Regulation 7 of 2000 regarding Maritime Affairs. Article 2 of the Government Regulation outlines the specific technical qualifications that sailors must meet. PP Number 31 of 2021 addresses the regulations for Seafarers in Articles 52, 154, and 183. The Circular Letter UM-003/96/9/DJPL-16 from the Director General of Maritime Affairs addresses ship crew members' rights and the agency company's obligations to recruit and place them.

The legal framework for seafarers and the maritime business chain in Indonesia is thorough and efficient, providing legal protection for seafarers and ensuring certainty for recruitment and placement agencies for ship crews. Government Regulation 22 of 2022, which enforces Law Number 18 of 2017, conflicts with Government Regulation 31 of 2021 regarding the implementation of the shipping sector.

g. The Consequences for Seafarers and Crew Agency Firms

Law No. 18 of 2017, Article 64, required the development of a Government Regulation detailing the specifications of Article 4 regarding the classification of seafarers as migratory workers. After Government Regulation Number 22 of 2022 was issued, some of its provisions conflicted with Government Regulation 31 of 2021, which focused on maritime sector management. Several provisions in Government Regulation Number 22 of 2022 regarding crew protection on commercial and fishing vessels are inconsistent with 31 of 2021, which focuses on the implementation of the shipping sector. A study undertaken by Lely Farida Mahadi[535] has shown that this incompatibility has significant consequences for both companies and seafarers. Staffing and recruitment agency. These implications mainly relate to bureaucratic issues that worsened the existing burden before the implementation of Law No. 18 of 2017. They specifically pertain to the bureaucratic procedures involved in acquiring business permits for companies that hire seafarers or for the seafarers themselves.

1. The Consequences for Seafarers

[535] Mahadi, "Kajian Akademik Dampak PP No 22 Tahun 2022 Tenaga Kerja di Sektor Maritim Terhadap Nasib Pelaut Khususnya Perwira Pelayaran Niaga (PPN)."

Labeling sefarers as migrant workers contradicts the definition of migrant workers outlined in the 1990 ILO Convention on Migrant Workers. Seafarers work aboard ships and do not live in the nations they pass through. Migrant Labourers enter and stay in a foreign country for a specific duration. Sailors passing through are not considered migratory labor, including frontier, seasonal, and project-tied workers. Licensing and reporting seafarers demand significant time and financial resources, negatively impacting the profession. Consequently, the procedures for seafarers to cease their jobs are extended, especially for independent seafarers who find it easier to choose their positions directly.[536] As per Government Regulation 22 of 2022, the numerous duties that individual seafarers must undertake are becoming increasingly burdensome. Government Regulation 22 of 2022 mandates that ship crew must inform the Regency/City Service of their departure plans and provide the required documentation, similar to the requirements for land-based migrant workers. This is specified in Articles 4 to 7 of the regulation.

Furthermore, the seafarer must submit an online report to the State representative via the Indonesian Citizen Care portal in the nation they are passing through. Before Government Regulation Number 22 of 2022 was implemented, seafarers needed a Seaman's Visa, Transit Visa, or Visa on Arrival to work aboard an overseas ship. Currently, Independent Seafarers must have a Work Visa. Seafarers are facing twice as many challenges. Applying for a Work Visa is burdensome and expensive for seafarers, and the particular sort of Work Visa needed is still being determined. Does one qualify for a work visa in the country where the vessel is registered, the country where the ship is boarded, or both?.

2. Impact on Ship Crew Recruitment and Placement Agency Firms

Government Regulation 22 of 2022, which enforces Law Number 18 of 2017, increases the administrative burden for seafarers and raises the business licensing requirements for agencies that recruit and place ship crew. Government Regulation 22 of 2022 mandates that agencies possess two permits to operate: an Indonesian Migrant Worker Recruitment Permit (SIP2MI) and an Indonesian Migrant Worker Placement Company Permit (SIP3MI). Government Regulation Number 31 of 2021 regulates the issuance of permits for ship crew agency businesses, specifically the Business License for Recruitment and Placement of Ship Crews (SIUPPAK). This regulation supersedes Minister of Transportation Regulation Number

[536] International Labour Office, *International Labour Standards on Migrant Workers' Rights: Guide for Policymakers and Practitioners in Asia and the Pacific* (Bangkok: ILO, 2007), www.ilo.org/asia/library/pub15.htm.

84 of 2013, which governed the recruitment and placement of ship crews. The Minister of Transportation Regulation has been abolished by Government Regulation Number 3 of 2021 and replaced by Minister of Transportation Regulation Number 59 of 2021, which is currently in effect regarding service enterprises in water transportation.

The recruiting and placement of ship crew can be managed through SIUPPAK licensing from the Ministry of Transportation, SIP2MI from the Ministry of Manpower, or SIP3MI from BP2MI. Business actors may find it confusing to choose between permits issued by the Ministry of Manpower and the Ministry of Transportation for recruiting and placing ship crew agencies, as both regulations are currently in effect. The ambiguity surrounding the agency's permits affects sailors' legal certainty, which will serve as a basis for protection in their future work in the shipping industry.

After a thorough discussion of the legal status of seafarers in international and national law, it is evident that seafarers are not classified as migrant workers according to three ILO conventions: Convention Number C-097 of 1949, Convention Number C-143 of 1975, and the ILO Convention on the Protection of Migrant Workers and Their Families 1990. Article 4 of Law Number 18 of 2017 and the technical policy for managing labor migration through PP Number 22 of 2022, which includes seafarers as migrant workers, do not align with the principal international regulations for managing labor migration for land-based migrant workers as outlined in the three conventions mentioned. The ILO has created a unique legal framework for seafarers under the 2006 MLC agreement, which Indonesia has approved through Law Number 15 of 2016. As a party to both Conventions, Indonesia shall ensure consistent implementation under national legislation.

Changing the status of seafarers to migrant workers in the 2017 Indonesian Migrant Worker Law has led to conflicting regulations in Government Regulations Number 22 of 2022 and Number 31 of 2021 regarding the Shipping Sector. Seafarers face the extra responsibility of managing licensing requirements, which results in increased time and expenses. This may result in Indonesian sailors being overlooked for job vacancies on foreign ships, as ship owners may opt to hire sailors from other nations who reply more promptly. Agency companies that recruit and place ship crews need to enhance their business permissions to align with the licensing requirements of land-based Indonesian Migrant Worker agencies. Article 4 of Law Number 18 of 2017 should be reviewed to exclude seafarers from the labor group to maintain institutional harmony in managing labor migration in Indonesia, both on land and at sea. The exclusion of some workers from the list of migrant worker groups is specified in Article 4, paragraph 2 of the Indonesian Migrant Workers Law Number 18 of 2017. This is also meant

to ensure that the 2017 Indonesian Migrant Worker Law aligns with the three ILO conventions, which serve as the primary legislation and framework for international labor migration.

4.6. Lack of Affirmative Provisions for Women Migrant Labour

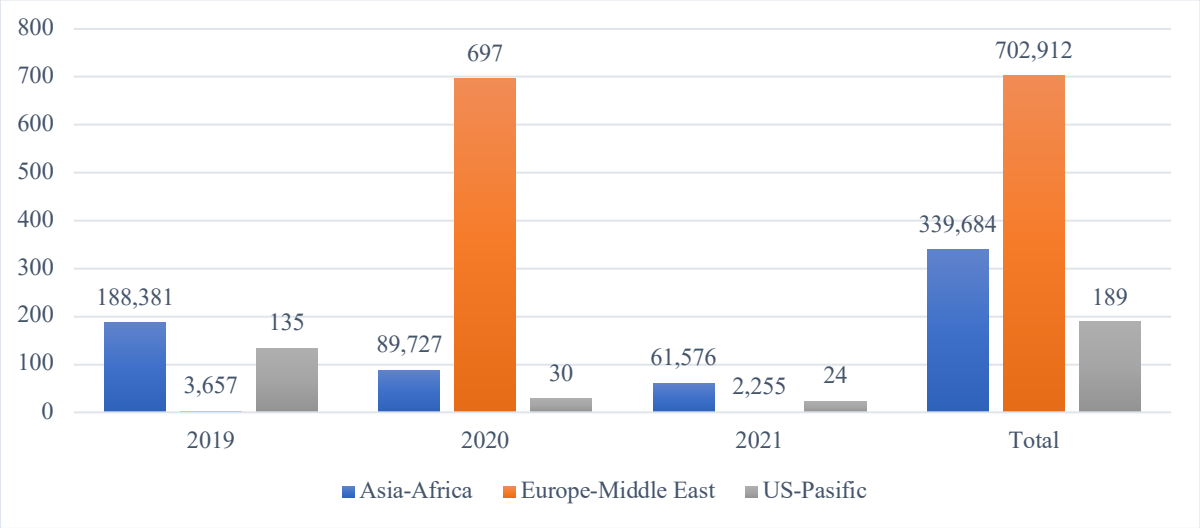
Initially, the system of international migrant workers was based on the male-dominated employment model. Globalization has resulted in a significant increase in women's participation in global employment in recent years. Most women migrant workers, on the other hand, continue to work in low-skilled jobs. On the other hand, Western or developed countries have sorted their youth population due to low fertility.[537] As a result, they heavily rely on migrant workers from developing countries to care for their elderly citizens or fill unskilled labour positions.

In the Indonesian context, women's participation in global labour markets has increased significantly recently, primarily in low-skill jobs, but their status received scant attention in Act No.18 of 2017. The distribution of female migrant workers by world region over three years from 2019 to 2021 is depicted in Figure 7.[538] Europe-Middle East has the highest proportion of female migrant workers, followed by Asia-Africa and the United States-Pacific. In general, according to data on migrant worker placement by gender in 2021, female migrant workers outnumber men during semester I-2021. There were 26,539 female migrant workers and only 3,795 male migrant workers.[539] According to the report's historical data[540], female migrant workers prefer to work in Saudi Arabia over other ASEAN member countries such as Malaysia, Singapore, or Brunei Darussalam. Male migrant workers, on the other hand, are preferred to work in these countries in construction or oil palm plantations. It indicates that the demand for female migrant workers to work in foreign countries remains high, particularly in informal jobs such as housekeeping, childcare, and other domestic work. Due to the informal nature of these jobs, the employment contract is often informal. Azmy[541] discovered during his research that most women working in informal foreign employment are recruited by private

[537] Mary Cornish, Fay Faraday, and Veena Verma, "Securing Gender Justice: The Challenges Facing International Labour Law," in *Globalization and the Future of Labour Law*, first (Cambridge: Cambridge University Press, 2006), 377–408.
[538] BP2MI, "Data Penempatan Dan Pelindungan PMI Periode Tahun 2021" (Jakarta, 2021).
[539] Monavia Ayu Rizaty, "Indonesia Tempatkan 36,2 Ribu Pekerja Migran Pada Semester I-2021," https://databoks.katadata.co.id/ (Jakarta, 2021), https://databoks.katadata.co.id/datapublish/2021/07/27/indonesia-tempatkan-362-ribu-pekerja-migran-pada-semester-i-2021#:~:text=Sedangkan berdasarkan jenis kelamin%2C pekerja, laki-laki hanya 3.795 orang.; BP2M, "Data Pekerja Migran Indonesia Periode 2021" (Jakarta, 2021).
[540] Farbenblum et al., *Akses Buruh Migran Terhadap Keadilan Di Negara Asal: Studi Kasus Indonesia*.
[541] Azmy, *Negara Dan Buruh Migran Perempuan: Menelaah Kebijakan Perlindungan Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010*.

migrant worker agent companies, with the company's officer overseeing all migration stages. Regrettably, despite the additional training provided by non-governmental organizations (NGOs), the private company sending them abroad warned them to strictly adhere to its regulations and guidelines. The migrant workers could not express concerns or questions to the company representative during the private company's pre-departure training.

Figure 7 Distribution of Female Migrant Workers by World Regions



Source: https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pmi-periode-tahun-2021 <Accessed on March 2, 2022,>.

Indeed, most Indonesian migrant women are employed in low-skilled jobs such as housekeeping, elder care, or gardening. Additionally, these jobs are frequently ad hoc and unprotected by law. As a result, most women migrant workers employed in such jobs had their human rights, including working hours, torture, unpaid wages, limited communication, passport detention, and trafficking to sex work,[542] had been violated. Even during a pandemic, female migrant workers falling prey to criminal syndicates engaged in human trafficking continues to rise. According to data from the Ministry of Women's Empowerment and Child Protection,[543] the number of women and children trafficked has increased significantly, reaching 62.5 per cent in 2021. Between 2015 and 2019, there were 2648 victims of human trafficking, 2319 of whom were female and 329 of whom were male. Even though Indonesia

[542] Cholewinski, "International Labour Law and the Protection of Migrant Workers: Revitalizing the Agenda in the Era of Globalization."
[543] Biro Hukum dan Hukum Kemen PPPA, "KEMEN PPPA: Perempuan Dan Anak Banyak Menjadi Korban Tindak Pidana Perdagangan Orang," https://www.kemenpppa.go.id/, 2021, https://www.kemenpppa.go.id/index.php/page/read/29/3309/kemen-pppa-perempuan-dan-anak-banyak-menjadi-korban-tindak-pidana-perdagangan-orang.

passed Act No. 21 of 2007 on Combating Human Trafficking, it has been unable to protect female migrant workers from trafficking due to a lack of protective institutions and mechanisms. Unfortunately, Indonesia's 2017 migrant worker legislation did not include affirmative protection for female workers, leaving them vulnerable to human trafficking[544]. Additionally, the 2017 Migrant Workers Act lacks an interconnection provision with the 2007 Human Trafficking Act and the 2011 Domestic Worker Convention. This legal loophole is being exploited by organized crime to prey on female migrant workers candidates, most of whom have a low education background. Additionally, the criminal syndicate is exposed by the government's oversight mechanism, which sometimes conceals itself behind the operation of migrant brokers.

The absence of legislation protecting female migrant workers, particularly those engaged in domestic work, is inextricably linked to the global absence of legislation regulating this type of work. Domestic work was not classified as decent work throughout the long history of migrant workers, particularly in the post-Cold War era[545]. It was perceived as an informal job involving the migrant worker and an individual employer. According to Hune[546], a significant trend in today's world is the increased presence of women in international migration, which reflects their growing economic importance and role in the global economy. Equally as many women as men are recruited as migrant workers. Women currently account for roughly half of the migrant worker population in the countries for which data are available. In 2011, the ILO made the most significant advance toward protecting domestic workers by enacting Convention 189 Concerning the Domestic Worker. The historic Convention applies ILO standards to a largely unregulated sector and a component of the informal economy. The convention was developed because of field research conducted throughout the world about domestic workers. According to ILO estimates, there are approximately 53 million domestic workers worldwide based on national surveys and/or censuses in 117 countries. However, ILO assumed the total number could be as high as 100 million since this work is frequently concealed and unregistered. According to the ILO, domestic workers must account for at least 4% to 12% of wage employment in developing countries. Approximately 83 per cent of these workers are women or girls, with a sizable proportion being migrant workers. Domestic

[544] The following article expands on the history of Indonesian human trafficking. *See* Q. Zaman, "Sank Pidana Perdagangan Perempuan (Women Trafficking): Studi Komparatif Antara Undang Undang No.21 Tahun 2007 Tentang Tindak Pidana Perdagangan Orang Dan Hukum Islam," *Al-Turast* 5, no. 1 (2018): 123–56.
[545] Castles and Miller, *The Age of Migration: International Population Movements in the Modern World*, 2003. a*t* 188.
[546] Hune, "Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families."*at* 802.

workers account for 3.6 per cent of global wage employment. The new standard applies to all domestic workers and includes additional safeguards for those who may face additional risks due to their young age, nationality, or live-in status.[547]

Concerning the high risk of domestic workers'[548] human rights violations continuing to exist domestically and internationally, Indonesian NGOs and academics[549] are advocating for legislation to protect their rights. Regrettably, the political will of the government to pursue the legislative proposal was minimal. As evidenced by the legislature's and government's lack of commitment to advancing the draft law on domestic worker protection, which has been on the national legislation program's agenda since 2004 and will remain on the program's agenda each year until 2022, the draft law has not been successfully promulgated.[550] As a result, domestic workers' human rights protections in their home country and abroad remain deficient. Recent cases documented by Indonesian migrant NGOs[551] involving violations against female domestic workers indicate that the Indonesian government lacks a strategic plan to protect female migrant workers.

4.7. Concluding Remarks

This chapter has critically examined the current legislation governing migrant workers in Indonesia. In general, Act No. 18 of 2017 on the Protection of Indonesian Migrant Workers has significantly improved over the previous Act of 2004. Additionally, it was developed democratically through public participation in academic research, legal drafting, and hearings. Moreover, the Act 2017 marked a substantive shift in the management of migrant workers by placing government agencies at the forefront of assisting migrant workers' interests throughout the migration process, from pre-departure to placement in destination countries and return to Indonesia. Additionally, the Act 2017 protects the family members of migrant workers, which was inspired by the Migrant Worker Convention (MWC), which Indonesia ratified in 2012.

However, this analysis identified several flaws in the Act 2017's provisions that are critical for determining whether the law's implementation was successful or unsuccessful. The

[547] HRW, "The ILO Domestic Workers Convention: New Standards to Fight Discrimination, Exploitation, and Abuse" (Geneva, 2013).
[548] The growth of Indonesian domestic workers continues at a steady pace, involving children aged 15 to 18 years old. *See* Uzair Suhaimi and Muhammad Farid, *Toward a Better Estimation of Total Population of Domestic Workers in Indonesia*, First (International Labour Organization, 2018).
[549] Ida Hanifah, "Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum," *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 193–208; Agusmidah, "Membangun Aturan Bagi Pekerja Rumah Tangga, Mewujudkan Hak Asasi Manusia," *Jurnal Hukum Samudra Keadilan* 12 (2017): 18–25.
[550] Baleg DPR RI, "Urgensi Dan Pokok-Pokok Pikiran Pengaturan Penyusunan RUU Perlindungan Pekerja Rumah Tangga" (Baleg DPR RI, 2020).
[551] Migrant Care, *Sikap Migrant Care Terhadap Problematika Buruh Migrant Indonesia*, 2009.

primary evidence for this argument is the absence of provisions in current legislation that address these critical issues that significantly impact the protection of migrant workers' rights. To begin with, the government's strategy for migrant worker placement omitted consideration of destination countries, primarily due to a lack of protection for migrant workers' rights. The criteria for receiving countries are specified in a facultative standard, which encourages candidates for migrant workers to choose a country destination specified in the Act 2017. In an ideal world, the destination criteria would be enshrined in law, with the government restricted from sending migrant workers to countries that do not meet the criteria established in the Act 2017. Second, the Indonesian government utilizes a Memorandum of Understanding (MoU) as an instrument of agreement with its foreign counterpart, which is not strictly binding on the foreign party. As a result, countries receiving migrant workers cannot be held liable for violations of the MoU. Third, the government continues sending migrant workers to countries without diplomatic relations with Indonesia. Consequently, the protection of migrant workers is much more challenging to achieve; on the other hand, the potential for violations of migrant workers' human rights on the job is much greater than for migrant workers in countries with diplomatic relations with Indonesia. As a result, migrant workers in these two countries face a much greater risk of human rights violations and a lack of protection under Indonesia's migrant labour laws.

Another flaw in the Act 2017 is that it provides insufficient protection for seafarers, putting their human rights at risk, particularly on the lawless high seas. Gender also does not come up in the Act 2017's affirmative provisions, which primarily help women who work in domestic jobs. In this case, the Act 2017 is less consistent with other relevant laws, such as the Act 2007 Concerning the Combating of Human Trafficking and the 2011 ILO Domestic Workers Convention. Meanwhile, on the other hand, the government and parliament's commitment to domestic worker protection legislation is also run-down, as evidenced by the fact that the issue's legislative agenda has remained unfinished since 2004.

CHAPTER 5

Enhancing the Quality of Indonesia's Migrant Worker Legislation

The preceding chapters of this dissertation discussed the evolution of Indonesian migrant labour from coolie origins during colonial times to its continued existence in modern Indonesia as the migrant worker. The changing pattern of migrant workers is undoubtedly influenced by the migrant legislation imposed by the entire Indonesian government's migrant regime thus far. For more than half a century of Indonesian migrant worker legislation, migrant Labourers have been substituted as government remittance targets.[552] In contrast, breaches of the human rights of migrant workers are more severe in their home countries and abroad.[553] The government finally changed its migrant labour legislation fundamentally in 2017 by eliminating all 'coolie features' that disregard migrant workers' "status' as workers, allowing them and their families to be more respected. This 'reform' of migrant workers' legislation approach results from legal academics' involvement and migrant NGOs that provided valuable insight during the 2009–2017 drafting of migrant worker legislation.[554]

Even though the Migrant Worker Act 2017 still has some shortcomings, it represents a significant step toward creating more modern migrant labour legislation and management that adheres to international migrant labour standards.[555] Stephen Castles and Mark J. Miller[556] have drowned some contemporary migrant worker patterns, such as the globalization of migration,

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[552] *See* Hidayah, Susilo, and Mulyadi, *Selusur Kebijakan Minus Perlindungan Buruh Migran Indonesia*; Firdausy, "The Economic Effects of International Labour Migration on the Development"; Ukhtiyani and Indartono, "Impacts of Indonesian Economic Growth: Remittances Migrant Workers and FDI."

[553]Numerous cases of human rights violations against Indonesian migrant workers in destination countries have been filed by Migrant Care, a prominent migrant worker NGO in Indonesia. *See* Migrant Care, *Sikap Migrant Care Terhadap Problematika Buruh Migrant Indonesia*, 2009.

[554] The participation of several Indonesian law scholars in the academic draft study for drafting the Migrant Worker Law 2017 demonstrates that the legislative process was transparent and democratic. *See* Juwana et al., "Naskah Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri"; Dzaljad, "Review & Agenda Aksi Proses Legislasi Revisi/Penggantian UU No. 39 Tahun 2004 PPTKILN/PPILN."

[555] Numerous experts have examined the International Labour Standards (ILS), beginning with their fundamental conception, development, and implementation, as detailed in the following articles. *See* ILO, *International Labour Standards on Migrant Workers*; Werner Sengenberger, "International Labour Standards in the Globalized Economy: Obstacles and Opportunities for Achieving Progress," in *Globalization and the Future of Labour Law*, ed. John D.R. Craig and S. Michael Lynk, First (Cambridge University Press, 2006), 331–55; Caroline Edwall, "The Legalisation of International Labour Standards in Trade Agreements" (UPPSALA Universitet, 2020); Philip Alston, "'Core Labour Standards' and the Transformation of the International Labour Rights Regime," *European Journal of International Law* 15, no. 3 (2004): 457–521; Harold J Ruhukya, "The Role of International Labour Standards in Decision-Making on the Rights of Vulnerable Groups in Botswana," in *The Judicial Colloquium on the Rights of Vulnerable Groups* (Bostwana: University of Boswana, 2014), 85–93.

[556] Castles and Miller, *The Age of Migration: International Population Movements in the Modern World*, 2003. *at* 7-9.

which has resulted in the diversification of migrants' countries of origin across a broad spectrum of economic, social, and cultural factors. Additionally, the differentiation of migration is another characteristic of current and possibly future migration, as it results in receiving countries having not just one type of immigration, such as labour migration, refugees, or permanent settlement, but a variety of them simultaneously. Typically, migratory chains that begin with one type of movement frequently continue with others, despite or frequently due to government efforts to halt or control the movement. This distinction is a significant impediment to both domestic and international policymaking. Feminization of migration is the most recent development in a trend that began in the 1960s. Women workers now outnumber men migrants, in movements as diverse as those of men migrants. While gender variables have always played a role in the history of global migration, awareness of women's unique characteristics in contemporary migration has grown.

On the other hand, globalization continues to shrink state borders, aided by information technology machines, resulting in a future world economy growing faster than ever recorded. As a result of this rapidly changing environment, labour law must be adaptable from an inward-focused to a global perspective. In this context, migrant labour legislation must address global migrant characteristics. John Craig and Michael Lynk[557] identified several global labour issues that interact with other issues, such as national sovereignty, regional cooperation, and the proliferation of different labour law regulatory systems. The diversity and number of workers who lack formal protection and the tremendous pace of economic change result in unprecedented problems. Although the 2017 Act has improved migrant worker management, it is still insufficient to protect migrant workers in receiving countries, especially women and seafarers. Additionally, the bilateral legal agreement regarding the deployment of migrant workers is insufficient.

To address these challenges, it is vital to improve the quality of Indonesian migrant worker legislation by combining international labour law and learning from more vital migrant worker legislation in foreign countries. Additionally, the migrant labour regulation's legislative process should be more transparent by allowing a broad range of public participation and insight. In this internet age, public participation in the legislative process is more accessible and inclusive. Similarly, with the aid of the virtual platform, parliamentarian meeting attendance, which had previously impeded completing any legislative agenda, is no longer an issue. In short, all forms of public participation and parliament meetings can now be conducted

[557] John Craig and Michael Lynk, "Introduction," in *Globalization and the Future of Labour Law*, ed. John Craig and Michael Lynk, First (Cambridge University Press, 2006), 1–5.

remotely, which benefits the legislative process's quality. The pandemic experience, which shifted traditional modes of meeting, discussion, and works to a remote mode, significantly aided in developing a new mode of parliament meetings that can be used in the future. To do this new mode of legislating, the legal framework within which parliament operates must be amended.[558]

5.1. Improving the Legislation's Substance on Migrant Workers

While Indonesia retains complete autonomy over how and to what extent it regulates migrant workers, it is critical to learn from countries with more vital legislation. Additionally, the business of migrant workers is not solely an Indonesian issue; it intersects with the interests of regional and international communities. As a result, Ida Susanti[559] insisted on increasing the inclusion of Indonesian legislation governing migrant workers to comply with regional and international standards.[560] Additionally, this concept conforms with the International Labour Organization (ILO) or other organization that works with international migrant workers. In this context, the author envisioned those lessons learned from international migrant worker conventions, regional migrant worker standards, and individual countries with more vital migrant worker legislation would be analyzed in terms of similarities and differences with Indonesian migrant worker law. Furthermore, it is proposed that the pertinent portions of these legal provisions be incorporated into future Indonesian migrant worker legislation using any of the preferred legislative instruments, including ratification, legal transplant, or vernacular approach. Relevant in this regard is Nobuyuki Yusada's[561] concept of the contextualization of import law in the current legislative approach. According to Yusada, import law was one of the common law practices among ASEAN nations during the colonial era. Colonials brought their law to the natives, and it became the official law, whether it was public, private, or

[558] Saru Arifin, "Post-Pandemic Legislation in Indonesia: A Virtual Platform for Future Legislative Options?" *International Journal of Parliamentary Studies* 2, no. 2 (October 3, 2022): 240–62, https://doi.org/10.1163/26668912-bja10052.
[559] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*.
[560] Daniel Maul, "'Help Them Move the ILO Way': The International Labor Organization and the Modernization Discourse in the Era of Decolonization and the Cold War," *Diplomatic History* 33, no. 3 (June 2009): 387–404, https://doi.org/10.1111/j.1467-7709.2009.00777.x; Velibor Jakovleski, Scott Jerbi, and Thomas Biersteker, "The ILO's Role in Global Governance: Limits and Potential," in *The ILO @ 100: Addressing the Past and Future of Work and Social Protection*, ed. Christophe Gironde and Gilles Carbonnier (BRILL, 2019), 82–108; Kamala Sankaran, "Human Rights and the World of Work," *Journal of the Indian Law Institute* 40, no. 1/4 (1998): 284–94; Jasmien Van Daele, "The International Labour Organization (ILO) in Past and Present Research," *International Review of Social History* 53, no. 03 (December 2008): 485, https://doi.org/10.1017/S0020859008003568.
[561] Yasuda, "Law and Development in ASEAN Countries."

administrative. In this context, international law ratification is a literal import law that has been incorporated into local law under the modern legal system. Hence, current migrant worker legislation enhancement can benefit from import law such as international law standard, regional and country that has more robust migrant worker legislation.

5.1.1. ILO as the World's "Legislative Body" for Labor Rights Protection

The International Labor Organization was founded in 1919 in response to the post-World War I labour conditions that included injustice, hardship, and deprivation. The ILO constitution expressly states that it is committed to protecting those identified as in need of protection while ensuring equality for all people engaged in work.[562] The ILO core Conventions – the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105). The ILO supplemented the Forced Labour Convention with a legally binding ILO Protocol to address implementation gaps, strengthen prevention, protection, and compensation measures, and advance the goal of eradicating all forms of forced labour;[563] and the Worst Forms of Child Labour Convention, 1999 (No. 182) – bind countries to abolish all forms of forced or compulsory labour, as well as the worst forms of child labour. In 2014, the ILO adopted the Protocol on Forced Labour to bolster global efforts to eradicate forced labour.[564] The Palermo Protocols, which the United Nations adopted to supplement the 2000 Convention Against Transnational Organized Crime, include the following: (i) the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Particularly Women and Children; (ii) the Protocol Against Migrant Smuggling by Land, Sea, and Air; and (iii) the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts, and Components. These instruments commit ratifying States to preventing and combating human trafficking, protecting, and assisting victims of trafficking, and promoting inter-state cooperation to accomplish those goals.[565] Additionally, the International Labor Organization (ILO) seeks to establish rules that enable all people, regardless of race, creed, or gender, to pursue material

[562] Van Daele, "The International Labour Organization (ILO) in Past and Present Research."
[563] In reality, modern forms of forced labor continue to exist in a variety of informal industries, including agriculture. In light of this, the (ILO) report's depictions of forced labor risk portraying temporary migrants as victims rather than knowledgeable agents, and it residualizes unfree labor relations instead of illuminating their connections to context-specific and contingent forms of capitalism and capital-state relations. *See* Ben Rogaly, "Migrant Workers in ILO's 'Global Alliance against Forced Labour'Report: A Critical Appraisal," *Third World Quarterly* 29, no. 7 (October 2008): 1431–47, https://doi.org/10.1080/01436590802386674.
[564] Donald K. Anton, "Protocol of 2014 to the Forced Labour Convention, 1930 (I.L.O.)," *International Legal Materials* 53, no. 6 (December 2014): 1227–35, https://doi.org/10.5305/intelegamate.53.6.1227; Jakovleski, Jerbi, and Biersteker, "The ILO's Role in Global Governance: Limits and Potential."
[565] Lubna Shahnaz, *Law and Practice: The Recruitment of Low-Skilled Pakistani Workers for Overseas Employment*, first (Geneva: International Labour Organization, 2016). Ibid.

and spiritual well-being in the most equitable manner possible, as stated in the 1944 Philadelphia declaration.[566]

Apart from the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Labour Organization has two conventions on migrant workers: Migration for Employment (Revised), 1949 (No. 97), and Migrant Workers (Supplemental Provisions), 1975. (No. 143). These instruments about migrant workers establish a comprehensive charter of migrant rights that serves as the foundation for national migrant worker policy and practice. These conventions contain significant provisions relating to equality of treatment and opportunity and the principle of non-discrimination.

The term "decent work" first appeared in the 2008 Social Justice for a Fair Globalisation Declaration. This declaration institutionalised this concept, elevating “decent work” to an arguably central policy area for the ILO. The term “decent work” emphasizes sustainable businesses' critical role in increasing everyone's employment and income opportunities. However, the computer age and technological advancements have resulted in the emergence of new terms and concepts. These expressions, such as “the world is a global village,” are directly related to recent electronic and technological advancements.[567]

All the above-mentioned legal instruments of the ILO are meant to respect workers' rights in general, which should be considered by all state members. Due to the nature of migrant workers' condition and risk, the ILO established several conventions designed to protect migrant workers during their migration, from their home countries to their destination countries and back again. The migrant workers standard of 2007 is a basic agreement that has a significant impact on the worldwide handling of migrant workers for all parties involved in the migrant workers’ cycle. Considering this standard, member states are obligated to modify their national labour laws to provide a higher level of protection for their Labourers.

a. The International Standard on Migrant Worker Legislation

In 1998, the International Labour Organization (ILO) declared the Fundamental Principles and Rights at Work, establishing a foundation of fundamental labour rights that apply to all workers, including undocumented migrant workers. Collective bargaining, freedom

[566] Ruhukya, “The Role of International Labour Standards in Decision-Making on the Rights of Vulnerable Groups in Botswana.”*at* 85.
[567] ILO, ‘Decent Work for Domestic Workers’, *Case*, 2011, 1–65; Conny Rijken, ‘Towards a Decent Labour Market for Low-Waged Migrant Workers’, 2022, 29; ‘ILO Convention on Decent Work for Domestic Workers: From Promise to Reality?’, 2022, 3. Ibid. *at* 86.

of association, freedom from all forms of forced and compulsory labour, freedom from child labour, and freedom from employment or occupation discrimination are all included in these fundamental rights.[568] Nearly a decade later, in 2007, the International Labour Organization (ILO) issued the International Labour Standards for migrant workers, establishing the minimum social requirements for working with freedom, safety, and dignity. The standards ensure that economic development is pursued not as an end in and of itself but to improve people's lives. By levelling the playing field in the global economy, they aid governments and businesses in resisting the temptation to reduce labour costs to gain a competitive edge in international trade.[569]

Since its inception, this standard has influenced the national legislation, policies, and practices of governments across the globe. Millions of workers have benefited from national laws that comply with international labour standards. However, only a tiny percentage of them may be aware of the connection between, for example, a poster on occupational safety and health standards in their factory or rules on rest periods and maternity leave and the relevant Convention. Consequently, the ILO standards influence millions of workers' lives and working conditions, including migrant Labourers.[570]

Through the Guidance, the ILO recommends that all workers, including migrant workers, have access to decent work under conditions of freedom, equity, safety, and human dignity. Consequently, migrant workers should have access to fundamental human rights at the workplace, such as the right to be protected from discrimination based on gender, race, ethnicity, social origin, religion, or political opinion. In addition, the ILO encourages migrant workers to engage in productive work as a means of income. Likewise, the rights of migrant workers in the workplace should be protected against accidents, injuries, and diseases. In addition, migrant workers must have social security, be socially integrated, and engage in social dialogue. Lastly, the right of migrant workers to organize and negotiate collectively must be safeguarded.[571] All these rights of migrant workers are outlined in several international labour human rights instruments. Universal human rights and fundamental labour rights universally apply to everyone, regardless of citizenship or immigration status.[572] In this instance, the state's sovereignty must yield to human rights.

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[568] Shahnaz, *Law, and Practice: The Recruitment of Low-Skilled Pakistani Workers for Overseas Employment*.
[569] ILO, *International Labour Standards on Migrant Workers*.
[570] ILO. Ibid.
[571] ILO. Ibid. *at* 9.
[572] Anne Peters, "Humanity as the A and Ω of Sovereignty," *European Journal of International Law* 20, no. 3 (2009): 513–44, https://doi.org/10.1093/ejil/chp026.

b. Other ILO Conventions on Migrant Workers

Apart from international instruments, migrant workers recruited legally are subject to all or substantially all international labour standards in their destination countries. Among them are employment conditions, social security, labour inspection, maternity protection, wage protection, workplace safety and health, and sector-specific standards.[573] For instance, the following three instruments are regarded as critical for migrant workers' rights protection:

1. The Convention on Private Employment Agencies No. 181 of 1997, and the corresponding Proposal No. 188

The International Labour Conference (ILC) adopted the Private Employment Agencies Convention (No. 181) in 1997, which was subsequently supplemented by the 1997 Private Employment Agencies Recommendation (No. 188). Both instruments provide legitimacy for private employment agencies to manage migrant worker recruitment in conjunction with public employment services.[574] The 1949 Convention on Fee-Charging Employment Agencies (revised) has been superseded by Convention No. 181. (No. 96). While the Convention recognizes the importance of private recruitment agencies in promoting migrant worker recruitment, the Convention's primary provisions address measures taken by ratifying States to regulate these agencies to protect migrant workers and prevent exploitation, including by minimizing migration costs. Article 8 protects migrant workers from abuses and fraudulent recruitment, placement, and employment practices.[575]

According to the Convention, a "private employment agency" is any natural or legal person or entity that is self-sufficient and provides one or more labour market services. To begin, services for matching job offers and applications, with no subsequent employment relationships involving the private employment agency. Second, services that employ people intending to assign and supervise their work to a third party, who may be a natural or legal

[573] International Labour Office, *International Labour Standards on Migrant Workers' Rights: Guide for Policymakers and Practitioners in Asia and the Pacific* (Bangkok: ILO, 2007), www.ilo.org/asia/library/pub15.htm.; Sengenberger, "International Labour Standards in the Globalized Economy: Obstacles and Opportunities for Achieving Progress"; Caroline Edwall, "The Legalisation of International Labour Standards in Trade Agreements: A Case Study of the Labour Provisions in the EU-Vietnam Free Trade Agreement" (Uppsala Universitet, 2020); ILO, *International Labour Standards on Migrant Workers*.

[574] Abdullah Z. Sheikh, "Political Economy of Agency Employment: Flexibility or Exploitation?" *World Review of Political Economy* 8, no. 2 (July 1, 2017), https://doi.org/10.13169/worlrevipoliecon.8.2.0162; Moch Faisal Karim, "Institutional Dynamics of Regulatory Actors in the Recruitment of Migrant Workers," *Asian Journal of Social Science* 45, no. 4–5 (2017): 440–64, https://doi.org/10.1163/15685314-04504004.

[575] Leah F. Vosko, "Temporary Work in Transnational Labor Regulation: SER-Centrism and the Risk of Exacerbating Gendered Precariousness," *Social Indicators Research* 88, no. 1 (August 2008): 131–45, https://doi.org/10.1007/s11205-007-9206-3.

person. Thirdly, other job-seeking services, as determined by the competent authority in consultation with the most representative employers' and workers' organizations, such as information provision, are not explicitly targeted at matching job offers and applications. In addition, The Private Employment Agencies Convention and its recommendations recognize the critical role of private recruitment agencies and their services in correctly matching the demand for and supply of migrant workers and establishing a balanced regulatory framework that protects workers from exploitation and abuse.[576] The convention acknowledges the significance of the employment agency. Yet, the convention addresses these essential considerations for protecting the rights and safety of migratory workers.

2. The 2011 Convention on Domestic Workers (No. 189)

Domestic Workers Convention, 2011 (No. 189) establishes the first global standard for domestic workers worldwide, the vast majority of whom are women and girls. Domestic workers face a range of severe abuses and labour exploitation, including excessive working hours without rest, wage theft, forced confinement, physical and sexual abuse, forced labour, and trafficking.[577] Domestic workers have the same rights as other workers under the treaty, including weekly days off, hourly limits, a minimum wage, and social security coverage.[578] Additionally, the Convention requires governments to safeguard domestic workers against violence and abuse and to prohibit child labour in domestic work.[579] Under Convention 189, the rights of domestic workers are safeguarded, and their work is recognized as a dignified occupation with all associated rights. In addition, Convention 189 eliminates the practice of enslaving domestic migrant workers, making them more humane and deserving of respect as workers on par with those of other occupations.[580] Consequently, all member states are obligated to adapt their labour laws to this ILO Convention.

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[576] Abdullah Z. Sheikh, "Political Economy of Agency Employment."
[577] Jeet Singh Mann, "Employment Rights Protection and Conditions of Domestic Workers: A Critical Appraisal," *Journal of the Indian Law Institute* 57, no. 2 (2015): 216–43; Adelle Blackett, "The Decent Work for Domestic Workers Convention and Recommendation, 2011," *The American Journal of International Law* 106, no. 4 (October 2012): 778–94, https://doi.org/10.5305/amerjintelaw.106.4.0778.
[578] Juanita Elias, "Making Migrant Domestic Work Visible: The Rights Based Approach to Migration and the 'Challenges of Social Reproduction,'" *Review of International Political Economy* 17, no. 5 (November 10, 2010): 840–59, https://doi.org/10.1080/09692290903573872.
[579] Adelle Blackett, "Introductory Note to the Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201)," *International Legal Materials* 53, no. 1 (February 2014): 250–66, https://doi.org/10.5305/intelegamate.53.1.0250.
[580] Eileen Boris and Jennifer N. Fish, "'Slaves No More': Making Global Labor Standards for Domestic Workers," *Feminist Studies* 40, no. 2 (2014): 411–43, https://doi.org/10.1353/fem.2014.0018.

c. ILO's Multilateral Framework on Labour Migration

The International Labour Organization (ILO) launched the Multilateral Framework on Labour Migration in 2006, which includes non-binding guidelines for member countries on how to approach labour migration from a rights-based perspective. The Framework builds on ILO and United Nations Conventions on migrant workers but responds to more recent global challenges and developments, such as the expansion of temporary labour migration programs, feminization of migration, a more significant role for the private sector in arranging cross-border migration, and the high incidence of irregular migration, including human trafficking and smuggling. Only 22 countries have ratified the Convention, none from the GCC and only the Philippines from Asia.[581]

The Framework establishes detailed guidelines for licensing and supervising the recruitment and contracting agencies for migrant workers under its principle. These guidelines, which apply to private recruitment agencies, address the prevention of unethical practices, the prohibition of document retention, respect for migrants' rights, the provision of understandable and enforceable employment contracts, and specific recruitment and placement services regulations.[582]

In summary, these ILO Conventions established internationally recognized labour standards and mandated applying universally recognized human rights standards to migrant workers and their families. By imposing subsequent obligations on signatories, the Convention protects the human rights of migrant workers at all stages of the migration process, including in their country of origin, transit country, and country of employment.[583] Hence, every state signatory to the ILO's conventions, both the general forms of workers protection and the specific forms for migrant workers, must consider them in their legislation pertaining to the protection of the rights of migratory workers. Yet, law of migrant workers from other regional models, such as the European Union, is also essential as additional sources for developing the migrant workers legislation in the home nation, in this case Indonesia, to improve the quality of its migrant workers legislation.

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[581] Graziano Battistella, "Multi-Level Policy Approach in the Governance of Labour Migration: Considerations from the Philippine Experience," *Asian Journal of Social Science* 40, no. 4 (2012): 419–46; Graeme Hugo, "International Labour Migration and Migration Policies in Southeast Asia," *Asian Journal of Social Science* 40, no. 4 (2012): 392–418, https://doi.org/10.1163/15685314-12341250.

[582] Marley S Weiss, "Ruminations on the Past, Present and Future of International Labor Standards: Empowering Law in the Brave New Economic World," *The Good Society* 16, no. 02 (2007): 73–81; Sankaran, "Human Rights and the World of Work"; Maul, "'Help Them Move the ILO Way.'"

[583] Adelle Blackett, 'The Decent Work for Domestic Workers Convention and Recommendation, 2011', *The American Journal of International Law* 106, no. 4 (October 2012): 778–94, https://doi.org/10.5305/amerjintelaw.106.4.0778.

5.1.2. Migrant Workers' Rights in the EU

The system of migrant worker legislation within the European Union is divided into two categories: legislation for migrant workers from EU member states and legislation for migrant workers from third countries. As discussed in the following section, this distinction has no bearing on migrant workers' rights to a decent standard of work protection. In addition, EU Migrant Worker provides stringent regulations for both posted and seasonal workers. Their rights as workers are guaranteed by EU Directive legislation, which each member state must go by when treating migrant workers of any category who work in EU member states with fairness, transparency, and equal rights.

a. The Legal Instrument for Migrant Workers

Article 39 (ex 48) of the EC Treaty establishes the legal basis for the free movement of workers within the EU member states. Several fundamental principles are ascribed to EU workers in this article, including:

a. the right to seek employment in another member state.
b. the right to work in another member state.
c. the right to reside there for that purpose.
d. the right to remain there; and
e. the right to equal treatment regarding access to employment, working conditions, and all other benefits may aid the worker's integration into the host member state.

Applying these European Community legal principles ensures the precondition for free worker mobility. As a result, transnational worker mobility within the EU's member states is accelerating.[584]Nonetheless, the EU legislation recognizes two distinct categories of migrant workers, each covered by separate legislation: posted workers and temporary agency workers. Directive[585] 96/71/EC on the Posting of Workers in the Provision of Services regulates posted workers. This Directive expressly recognizes the role of conflict of laws rules in protecting the

[584] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*. *at* 75-77.

[585] A directive is a legal act authorized by the EU Treaty. It is legally obligatory in its entirety, and Member States must transcribe it into national law within a stipulated timeframe. Article 153 of the Treaty on the Functioning of the European Union grants the EU the right to establish directives governing workplace health and safety. The Framework Directive, with its broad scope of application, and following directives focused on specific issues of safety and health in the workplace are the cornerstones of European safety and health legislation. Member States may adopt more stringent worker protection regulations when implementing EU directives into national law. Thus, legal standards for occupational safety and health can vary amongst EU Member States. *See* https://osha.europa.eu/en/safety-and-health-legislation/european-directives, <last visited March 22, 2023>.

rights of posted workers, as its Recitals state plainly that trans-nationalization of the employment relationship creates issues regarding the employment relationship's applicable legislation.[586] Meanwhile, protections for part-time workers are contained in clause 6, paragraph 2 of Directive 97/81/EC and clause 8, paragraph 3 of Directive 99/70/EC. Both clauses protect part-time workers by prohibiting reductions in the general level of protection afforded to these workers in the absence of a valid reason. As a result, these clauses insisted that posting agency workers by their temporary work agency would not imply a reduction in their level of protection.[587]

b. Migrant Worker Rights Protection

In September 2016, the EU Member States implemented the Seasonal Workers Directive, which established minimum standards for the entry and stays of third-country nationals (TCN) for employment as seasonal workers. The Directive's standards ensure that seasonal workers have decent working and living conditions by establishing fair and transparent rules for admission and stay and defining seasonal workers' rights to decent working conditions.[588] The EU's migration policy aims to ensure both efficient management of migration flows and a level playing field for TCNs legally residing in EU member states. In 2001, the Commission introduced the first proposal for a Directive on the entry and stay of TCNs engaged in paid employment or self-employed economic activities. This proposed Directive would have established a blanket regime treating all labour migrants equally.[589] In sum, the EU migrant workers legislation for both categories provided robust protection from the EU, and the member states for migrant workers working legally on EU territory. Since the EU's legislation mandates all its member states, their migrant worker legislation must conform to the EU's migrant worker legislation standard. Assessment of EU member states' compliance with the association norms is clearly defined and rigorously implemented.

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[586] Mijke Houwerzijl and Annette Schrauwen, "From Competing to Aligned Narratives on Posted and Other Mobile Workers within the EU?," in *Towards a Decent Labour Market for Low Waged Migrant Workers*, ed. Conny Rijken and Tesseltje de Lange (Amsterdam University Press, 2018), 81–108, https://doi.org/10.1515/9789048539253-004; E. Albin, "Union Responsibility to Migrant Workers: A Global Justice Approach," *Oxford Journal of Legal Studies* 34, no. 1 (March 1, 2014): 133–53, https://doi.org/10.1093/ojls/gqt026.

[587] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*. *at* 78.

[588] Margarite Helena Zoeteweij, "The Seasonal Workers Directive Another Vicious Circle?" in *Towards a Decent Labour Market for Low-Waged Migrant Workers*, ed. Conny Rijken and Tesseltje Lange (Amsterdam: Amsterdam University Press, 2018), 129–48, https://doi.org/10.5117/9789462987555.

[589] Zoeteweij. Ibid.

5.1.3. ASEAN Multilateral Migrant Workers Protection

The mobility of labour migrants within ASEAN countries is quite intensive, with Singapore, Brunei Darussalam, and Malaysia as the three major destination countries.[590] Considering this issue, the association committed to implementing its vision to protect the ASEAN community vision by adopting a clear legal rule that may serve as the basis for establishing a mutually beneficial relationship between its member nations. Therefore, on January 13, 2007, the 12th ASEAN Summit in Cebu, Philippines, declared the Protection and Promotion of the Rights of Migrant Workers.[591]

Several the declaration's general provisions aim to strike a balance between the rights and responsibilities of sending and receiving migrant workers. In addition, both receiving and sending states shall strengthen the political, economic, and social pillars of the ASEAN Community by promoting the full potential and dignity of migrant workers in an environment of freedom, equity, and stability, under the laws, regulations, and policies of their respective ASEAN Member States. Moreover, for humanitarian reasons, the receiving and sending states should collaborate closely to resolve the cases of migrant workers who have become undocumented through no fault of their own. Additionally, the receiving and sending states shall consider the fundamental rights and dignity of migrant workers and their family members already residing with them without undermining the receiving states' application of their laws, regulations, and policies.[592]However, nothing in the Declaration should be interpreted as implying the legalization of the status of undocumented migrant workers.

a. Sending Countries' Obligation

The declaration requires countries in the region that are responsible for sending migrant workers to adhere to certain obligations. First, the sending countries must strengthen measures relating to promoting and protecting migrant workers' rights. In addition, they must provide employment and livelihood opportunities for their citizens as viable alternatives to labour migration. In addition, sending countries must establish policies and procedures to facilitate aspects of the migration of workers, such as recruitment, preparation for deployment overseas,

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[590] ASEAN Secretariat, *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers* (Jakarta: ASEAN Secretariat, 2018); Saidatul Nadia Abdul Aziz and Salawati Mat Basir, "Protection of Migrant Workers under the ICMW: Incompatibility with Malaysian Laws and Position in ASEAN," *Hasanuddin Law Review* 7, no. 3 (November 24, 2021): 150, https://doi.org/10.20956/halrev.v7i3.3066.
[591] ASEAN Secretariat, *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers*.
[592] Susan Kneebone, 'Introduction Migrant Workers Between States: In Search of Exit and Integration Strategies in Southeast Asia', *Asian Journal of Social Science* 40, no. 4 (2012): 367–91, https://doi.org/10.1163/15685314-12341246.

and protection of migrant workers while abroad, as well as repatriation and reintegration in the country of origin. They must establish and promote legal practices to regulate the recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices by migrant workers through a centralized database.

b. Receiving Countries' Obligation

Following their respective laws, regulations, and policies, the respective receiving states will be responsible for the responsibilities outlined below. Protect the fundamental human rights of migrant workers, promote their well-being, and uphold their humanity. Furthermore, they must work toward establishing peace and tolerance between receiving nations and migrant workers. To ensure the justice and welfare of migrant workers, receiving states must facilitate access to resources and remedies through information, training and education, justice, and social welfare services, as appropriate. In addition, justice and welfare of migrant workers should be created under the receiving state's legislation, bilateral agreements, and multilateral treaties. Moreover, they must promote equitable and adequate employment protection, wage payment, and access to decent working and living conditions for migrant workers. In addition, receiving countries must provide migrant workers with adequate access to receiving states' legal and judicial systems. Facilitate the exercise of consular functions by consular or diplomatic authorities of the state of origin when a migrant worker is detained following the laws and regulations of the receiving state and the Vienna Convention on Consular Relations 1963.

The ASEAN's legislation regarding migrant workers is inadequate when compared to the EU's, which requires all member states to comply with EU Directive provisions regarding posted or seasonal workers. In contrast, there is no defined protection for migrant workers in the ASEAN declaration on migrant worker protection. According to Susan Kneebone[593], the position of migrant workers under national, bilateral, and multilateral policies places them between the sending and receiving countries. But it is unclear where they can seek protection.

Marshall Clark[594] examines the ineffective legislation regarding migrant labor in the ASEAN region because of the divergent views of the member governments on the subject. For instance, the friction between Indonesia and Malaysia about migrant labor has thus far been

[593] Kneebone.
[594] Marshall Clark, "Labour Migration Flows and Regional Integration in Southeast Asia," in *Migration and Integration in Europe, Southeast Asia, and Australia*, ed. Juliet Pietsch and Marshall Clark (Amsterdam University Press, 2014), 99–114, https://doi.org/10.1515/9789048519071-008.

driven by their divergent perspectives on these issues. Being a democratic nation, Indonesia views migrant workers through the regional perspective of human rights. Malaysia, in contrast, views migrant labor through the lens of national security. As a result, migrant workers are imprisoned between the policies of the sending and receiving countries and do not know where to seek safety. Considering the inadequacy of regional protection for migrant workers, sending countries have only two options: increase their governance of migrant workers, or negotiate a robust agreement with receiving countries for the protection of migrant workers' rights.

c. The Shortcomings of the MoUs to Protect Migrant Workers' Human Rights

In the declaration, the obligations of both the sending and receiving countries are spelt out in detail. However, their implementation relies on the moral commitment of the parties rather than the legal obligation. Later in the bilateral legal framework used by the parties regarding the protection of migrant workers, it is a Memorandum of Understanding (MoU), a non-binding soft law instrument. According to Ida Susanti[595], the use of memorandums of understanding (MoUs) for cooperation has persisted because the region's countries prefer a more flexible form of cooperation to one that is more rigid. In many cases, a memorandum of understanding has a weaker binding effect than an agreement or treaty. Consequently, a memorandum of understanding is typically a form of ASEAN cooperation that heavily relies on the "good faith" of its member states for its enforcement. From this perspective, the MoU is treated more as a diplomatic than legal cooperation. As a result, any disputes arising from the interpretation and implementation of this MoU shall be settled amicably via diplomatic channels through so-called consultations or negotiations between both governments "without reference to a third party." In addition, there is no sanction for either government if it fails to fulfil its obligations, and there is no rule for enforcing the MoU.

In a broader context, the selection of the MoU as the bilateral 'legal instrument' for migrant worker protection cannot be divorced from the weaknesses of the region's human rights monitoring system as stipulated by the ASEAN Intergovernmental Commission on Human Rights (AICHR). As a result of the non-interference principle as the guiding value for regional cooperation, the implementation of human rights monitoring among association members is impeded in practice. The non-interference principle is the realization of sovereignty as a fundamental right for every independent state as guaranteed by international law. However,

[595] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*. *at* 146.

can this right be used to refuse an external force from interfering in a country's domestic affairs even if its citizens' human rights have been violated by their government?[596]

Since it was first formed on August 8, 1967, ASEAN has not changed much in the context of institutional democratization. The initial idea that underlies the formation of this organization was none other than to build regional stability after experiencing many turbulent wars over territorial power. In addition, there has been little progress in several economic, cultural, and social cooperation areas. Efforts to improve the status of the ASEAN organization to a more formal direction were carried out by forming the ASEAN Charter, which was signed at the 13th ASEAN Summit on November 20, 2007, in Singapore by 10 Heads of State/governments of ASEAN member countries. The ASEAN Charter came into effect or entered into force on December 15, 2008, 30 days after being ratified by 10 ASEAN member countries. The ASEAN Charter aims to transform ASEAN from a loose political association into an international organization with a robust legal basis (legal personality), clear rules, and an effective and efficient organizational structure.

The principle of non-interference establishes three critical codes of conduct for intra-ASEAN relations. To begin, it discourages member states from criticizing or interfering in the internal affairs of other members. Second, it commits members to refuse refuge and assistance to organizations attempting to undermine or overthrow member state governments. Third, the theory, especially in the 1960s and 1970s, prevented members from providing external forces with any assistance considered subversive to other members.[597]

In 2005, the eleventh ASEAN Summit marked a change in the conventional approach to relations between ASEAN members by relaxing the principle of non-interference. According to Ruukun Katanyuu,[598] this transition was precipitated by expanding economic and security cooperation. When combined with the exigencies of individual ASEAN members, foreign catalysts force ASEAN to continue to nudge Myanmar's junta toward democratic reform and political engagement with opposition and ethnic groups. According to Taku Yukawa,[599] these factors influence ASEAN's conservative stance on the non-interference principle as the basis for the Association's mutual ties.

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[596] Shaun Narine, "Human Rights Norms and the Evolution of ASEAN: Moving without Moving in a Changing Regional Environment," *Contemporary Southeast Asia* 34, no. 3 (2012): 365–88, https://doi.org/10.1355/cs34-3c.
[597] Ruukun Katanyuu, "BEYOND NON-INTERFERENCE IN ASEAN: The Association's Role in Myanmar's National Reconciliation and Democratization," *Asian Survey* 46, no. 6 (2006): 825–45.
[598] Katanyuu.
[599] Taku Yukawa, "The ASEAN Way as a Symbol: An Analysis of Discourses on the ASEAN Norms," *Pacific Review* 31, no. 3 (2018): 298–314, https://doi.org/10.1080/09512748.2017.1371211.

ASEAN does not need to hesitate or feel uneasy when confronted with the issue of protecting human rights when adhering to the concept of non-interference or state sovereignty. Anne Peters suggests that conflicts between state sovereignty and human rights should not be settled on an equal footing but should be resolved based on a presumption in favour of humanity. A humanized state sovereignty entails transparency for the state's enforcement of fundamental human rights. Additionally, the humanization of sovereignty implies a rethinking of humanitarian interference. Concerning sovereignty, non-intervention is an essential aspect of the international legal order and must be adhered to as a general law.[600]

According to Koffi Annan,[601] state sovereignty is being redefined in its most fundamental sense, owing in no small part to globalization and powers of international cooperation. States are often regarded as instruments in the hands of their populations rather than the other way around. Simultaneously, a resurgent and widespread recognition of individual rights has bolstered individual sovereignty—the fundamental freedom of everyone as enshrined in the United Nations Charter and subsequent international treaties. Additionally, Annan argues that in today's globalized world, the national interest as the essential pillar of the sovereignty notion must be expanded to encompass the common good and values, i.e., humanity. As a result, according to Annan, the collective interest is the national interest. That is, supporting national sovereignty at the expense of humanity is contrary to the collective interest.[602]

Indeed, ASEAN now has no justification for failing to openly implement a legal transition relating to the principle of non-interference. This principle is attributable to the mandate of the seventh ASEAN Summit in 2005, which compelled ASEAN to redefine the principle of non-interference to safeguard the ASEAN region's economic stability, security, and human rights. Another possibility is that when ASEAN ratified its Charter in 2008, the group already had a sizable U.N. membership. As a result, ASEAN is bound by U.N. legal products. For example, the United Nations Charter emphasizes that the [principle of non-interference] can be waived to maintain peace. This principle is expressed in the UN Charter's Article 2 provisions (7).[603] Concerning this Charter clause, Alex J. Bellamy, and Catherine

[600] Anne Peters, "Humanity as the A and Ω of Sovereignty," *European Journal of International Law* 20, no. 3 (2009): 513–44, https://doi.org/10.1093/ejil/chp026.
[601] Kofi Annan, "Two Concepts of Sovereignty," *The Economist*, September 18, 1999.
[602] Annan. Ibid.
[603] Eric Corthay, "The ASEAN Doctrine of Non-Interference in Light of the Fundamental Principle of Non-Intervention," *Asian-Pacific Law & Policy Journal* 17, no. 2 (2016): 1–39.

Drummond[604] maintain that the duty to protect (R2P) includes each state's obligation to safeguard its populations against genocide, war crimes, ethnic cleansing, and crimes against humanity, the international community's obligation to assist states in this effort, and the international community's obligation to take prompt and decisive action in situ[605]. Therefore, if ASEAN does not want to reinterpret its non-interference principle, harmonizing migrant workers' legal instruments among its members[606] to comply with international standards or to make the association more robust, like the European Union, is unlikely to be realized. As a result, the violation of migrant workers, especially in the receiving countries, will remain unresolved.

5.2. Countries with Stronger Legislation Regarding Migrant Workers

In this part, some countries' migrant worker legislation will be compared to Indonesia's. These countries were chosen based on an assessment or study conducted by the International Labour Organization (ILO) regarding their migrant worker policies or an evaluation of their existing migrant worker protection legislation. These countries include Nepal, Pakistan, and the Philippines, which have the region's strictest migrant worker laws and the best social security. This comparative analysis will examine the similarities and differences in migrant worker legislation between Indonesia and those countries. However, certain sections of this analysis will emphasize the differences between the comparing countries' migrant worker legislation and that of Indonesia, mainly what is considered critical in the context of migrant worker protection but is absent from Indonesian migrant worker legislation.

a. The Nepal Migrant Worker Legislation

Nepal is one of the largest sources of migrant workers in the Asian region, owing mainly to many Nepali youths. The Gulf Cooperation Council (GCC) economies' growth has been fueled by oil. In contrast, labour shortages in East and Southeast Asian countries such as Malaysia, Japan, and South Korea have increased employment opportunities for Nepali workers.[607] Additionally, because of advancements in transportation and telecommunications,

[604] Alex J. Bellamy and Catherine Drummond, "The Responsibility to Protect in Southeast Asia: Between Non-Interference and Sovereignty as Responsibility," *Pacific Review* 24, no. 2 (2011): 179–200, https://doi.org/10.1080/09512748.2011.560958.
[605] Bellamy and Drummond.
[606] Susanti, *The Conflict Rules on the Protection of the Rights of Migrant Workers: A Proposition for Indonesia and ASEAN*. *at* 228.
[607] Government of Nepal Ministry of Labor Employment and Social Security, *Nepal Labour Migration Report 2020* (Ministry of Labour, Employment and Social Security, Government of Nepal, 2020); Laxman Singh

mobility has become more affordable and convenient. As measured by financial and social remittances, the benefits of labour migration are evident in improved educational and health outcomes and higher living standards in Nepal.[608]

(1). The Act Philosophical Foundation

In 2007, in response to extensive international and domestic lobbying by civil society organizations, Nepal amended its Foreign Employment Act (FEA 2007), which serves as the primary law regulating migrant workers, in recognition of Nepal's large migrant workforce. This act repealed the 1985 Foreign Employment Act and any subsequent amendments. The 2008 Foreign Employment Regulations supplement the 2007 Foreign Employment Act.[609]

The FEA 2007's preamble states that its primary objective is to "ensure the safety, management, and decent conduct of foreign employment, as well as to protect the rights and interests of workers seeking foreign employment and [recruitment agencies]." The law establishes a new framework for regulating labour migration by defining various government agencies and private parties' roles and responsibilities.[610] It also establishes administrative requirements for recruiters and an oversight and monitoring system.

Kunwar, "Overview of Foreign Labour Migration in Nepal," *Journal of Population and Development* 7, no. 1 (2020): 123–34, https://doi.org/10.3126/pragya.v7i1.35114.

[608] Employment and Social Security, *Nepal Labour Migration Report 2020*.

[609] Sarah Paoletti et al., *Migrant Workers' Access to Justice at Home: Nepal* (New York: Open Society Foundation, 2014); Kunwar, "Overview of Foreign Labour Migration in Nepal."

[610] Migrant workers are a complicated issue in Nepal, involving a diverse range of public and private sector stakeholders. The Ministry of Labor, Employment, and Social Security (MOLES) is the apex labor migration governance body, charged with the responsibility of formulating policies, laws, and regulations governing and regulating labor migration. MOLES' primary regulatory agency is the Department of Foreign Employment (DoFE). It is responsible for a variety of management and regulatory functions, including the oversight and monitoring of private sector actors engaged in the recruitment process, labor approvals, the resolution of migrants' grievances, and the coordination of migrants' repatriation when necessary. The Foreign Employment Board (FEB), formerly the Foreign Employment Promotion Board, is responsible for welfare-related activities for migrant workers and their families, including death and injury compensation, as well as the management of various activities aimed at ensuring safe and productive migration, such as skill management, orientation, and returnee integration programs. Additionally, both DoFE and FEB contribute to policy reforms through implementation lessons. The Foreign Employment Tribunal (FET) is a quasi-judicial body dedicated to expediting justice for victims of fraudulent migrant practice. Under the auspices of the Labor and Occupational Safety Department, Labor and Employment Offices located throughout the provinces renew labor approvals for migrant workers. The Vocational and Skill Development Training Academy (VSDTA) is responsible for activities that assist young people in Nepal in becoming more employable in both their home country and abroad. Additionally, there are additional institutions involved in Nepal's migrant worker management. The Ministry of Foreign Affairs (MOFA) engages in migrant labor diplomacy with major destination countries as part of its foreign policy and assists migrant workers through its agencies in Nepal and the destination countries. The Department of Consular Support (DOCS) coordinates and facilitates search and rescue operations, as well as the repatriation of deceased persons, death and disability compensation, grievance handling, and insurance-related issues. The Department of Passports issues passports to Nepalese citizens (DOP). The Immigration Department records the departures and arrivals of Nepali migrant workers and regulates their departure and arrival activities. The Diplomatic Missions assist migrant workers in their destination countries and facilitate communication between migrant workers and employers, as well as between migrant workers and migration-related agencies in the destination countries and

(2). The General Provisions

Although the act is primarily concerned with regulating the foreign employment industry, it includes provisions to protect migrant workers from abuse and exploitation and ensure transparency in labour migration procedures. The law prohibits sending minors (those under 18)[611] to work for money abroad. Additionally, it prohibits discrimination based on gender in the process of "sending workers for foreign employment," except when an employer specifically requests a particular gender.[612] Furthermore, the law requires that foreign employment institutions "make reservations for women, Dalits (formerly known as "untouchables"), indigenous peoples, oppressed classes, backward areas and classes, and people from remote areas" in numbers determined by the government.[613]

Additionally, suppose the Act is implemented and enforced effectively. In that case, it could provide significant pre-departure protections for workers, including protection from personal document confiscation by Nepali recruitment agencies—recruitment agencies wishing to hold migrant workers' passports before their departure must obtain government approval[614]. There are no established standards for approval or rejection because it is only applicable in Nepal, and it does not preclude "employer institutions" from seizing a worker's documents upon arrival in a new country.

The following provision safeguards Nepalese migrant workers against delayed departures: recruitment agencies are required to send workers abroad within the period specified in the contract or within three months of obtaining government approval for departure if no period is specified. If the departure does not occur as described above, the agency must reimburse the worker within 30 days for any fees paid, plus interest at a rate of 20% per year.[615]

Nepal. The Nepal Rastra Bank (NRB) manages and regulates the money transfer industry, as well as keeping records and conducting research on various aspects of the industry. Additionally, the Foreign Employment Savings Bond program is administered by the Public Debt Department, which is affiliated with the NRB. Local governments also value migrant workers and their families, as they are in close proximity to them and their families. Nepal's parliament also plays a critical role in migrant worker governance, having established a special committee, the Parliamentary Committee on Industry, Commerce, Labor, and Consumer Interest, that advises and guides the government on a variety of issues, including labor migration. The National Human Rights Commission advances and protects the human rights of migrant workers in Nepal and selected destination countries through advocacy, research, and collaboration with international human rights organizations. The private sector, which includes a variety of agencies, plays an important role in recruiting migrant worker candidates. Development partners and intergovernmental organizations take a proactive approach to ensuring safe, dignified, and productive migration. Civil society is another critical stakeholder in migrant worker issues, working to improve the protection and welfare of migrant workers. *See* Employment and Social Security, *Nepal Labour Migration Report 2020*. *at* 45-76.

[611] *See* FEA 2007 Chapter 2 Section 7.

[612] *See* Section 8.

[613] *See* Section 9.

[614] *See* Section 18.

[615] *See* Section 20(2).

Additionally, it protects Nepali migrant workers from job changes before departure. Suppose the worker decides not to leave because the working conditions do not meet the recruitment agency and government standards. In that case, the recruitment agency must refund all fees, including the visa fee.[616] Additionally, suppose an unlicensed agent or agency sends a migrant worker abroad or fails to send them after collecting money. In that case, the person who did so must reimburse the worker for all costs incurred, plus 50% of the money taken from the worker. The protection, as mentioned earlier, does not apply if the worker has already departed.

Another necessary provision of Nepal's migrant worker legislation is the protection of workers' rights to employment and recruitment contracts in Nepali. Before departure, the worker must sign a contract with the employer or its representative outlining the worker's employment terms and conditions. Before signing the contract, the recruitment agency must translate it into Nepali and ensure that the worker understands the "terms and conditions and remuneration provisions."[617] Additionally, the recruitment agency must contract with the employee. Before obtaining approval to send workers to foreign employment[618] and permission for the individual worker(s) to travel,[619] the recruitment agency must submit to DoFE a "copy of the contract to be made between the employer institution and workers," as well as "a copy of the contract to be made between the licensee [recruitment agency] and workers." The recruitment agency must submit two copies to the Department of Labor and Employment, which is responsible for certifying them and returning one to the employee.[620]

Prior to the migrant worker's departure, the recruitment agency must purchase insurance for the worker that covers death or mutilation during the employment period[621]. Additional information on insurance protection is contained in Section 8.4. Furthermore, prior to departure, orientation training must be provided. A mandatory orientation training session is required of all prospective migrant workers.[622] This orientation must include information on occupational health and safety, Nepalese labour laws, and destination countries, as required by the 2008 regulations.

Excessive charges protection is also a critical component of Nepal's migrant worker legislation. If a recruitment agency charges fees over the government-mandated maximum, the

[616]See Section 20(3).
[617]*See* Section 25.
[618]*See* Sections 15(g) and (h).
[619]*See* Sections 19 (d) and (c).
[620]*See* Section 25(2).
[621]*See* Section 26.
[622]*See* Section 27.

agency must reimburse the migrant worker for the excess fees or face a fine.[623] Additionally, there is protection if employment in the destination country deviates from the terms of the contract; if employment in the destination country deviates from the terms of the contract, the worker may be eligible for a refund of recruitment fees[624]. If the worker establishes the recruitment agency's intent to deceive, he or she may recover the "deficiency in facilities or remuneration," and the recruitment agency may face criminal liability.[625] The final[626] Section, Department of Foreign Employment, goes into greater detail about these provisions.

(3). The Foreign Employment Worker's Fund (FEWF)

Nepal bolstered its social security system for migrant workers in 2008 when it established the Foreign Employment Worker's Fund (FEWF)[627]. The fund was established following the government's approval of over 40 million Nepalese workers' migrant status. Each migrant worker must pay the FEWF a membership fee of US$13. The FEWF benefit is initially allocated to deceased family members of migrant workers and is directly deposited into their account in the US $6,156. The Nepalese government changed its FEWF in 2017 so that Nepalis moving overseas for employment are now required to deposit up to Rs 2,500 into the Migrant Workers' Welfare Fund (MWWF), depending on the duration of their job. The deposit under this revision regulation, which increased the insurance premium for outbound migrants by approximately 60 percent, is anticipated to further increase the economic burden for the approximately 2.5 million Nepalese migrant workers who are already paying exorbitant fees to secure employment abroad.[628]

The FEWF benefit was expanded during its development to cover the cost of repatriating migrant workers who were stranded abroad in 2020 due to the COVID-19 pandemic, which rendered 120,000 Nepali workers ineligible for repatriation assistance. The Supreme Court ordered the fund to pay for their repatriation, but the fund's governing board stated that doing so would violate its rules. As a result, the Board intends to authorize the processing of membership renewals by embassies in destination countries by charging workers

[623] *See* Section 53.
[624] *See* Section 36.
[625] *See* Section 55.
[626] *See* Section 8.1.
[627] International Labour Organization, *Migrant Welfare Funds: Lessons for Myanmar from Nepal, Thailand and the Philippines*, First (Geneva: International Labour Organization, 2021); Employment and Social Security, *Nepal Labour Migration Report 2020*.
[628] myRepublica, "Migrant Workers Will Now Pay up to Rs 2,500 into Welfare Fund," August 1, 2017, https://myrepublica.nagariknetwork.com/news/migrant-workers-will-now-pay-up-to-rs-2-500-into-welfare-fund/.

an additional NPR 1,500 (the US $13). Additionally, the FEWF is used to hire local lawyers in the top ten destination countries to assist Nepali workers in labour disputes or employer-related legal violations. Nepal is also considering using the fund to support various reintegration initiatives, including business loans and counselling for people affected by COVID-19, and many Nepalis returned after their recovery from COVID-19.[629]

In general, Nepal's migrant workers legislation protects migrant workers from the beginning of their migratory journey, including their rights to a transparent job in the destination country and a Nepali-translated contract. At this stage, the migrant worker agency is the necessary party, and failure to cooperate will result in sanctions. To strengthen the protection of the rights of migrant workers, the Nepalese law on migrant workers calls for a strong government body to regulate and oversee the entire migrant workers' process. Moreover, a migrant workers fund is well-prepared to anticipate the migrant workers' emergency protection needs.

b. Pakistan Migrant Worker Legislation

Pakistan is one of the world's top ten emigration countries, with a predominantly young workforce.[630] For Pakistan, migration has remained a top priority for exploiting economic opportunities abroad over the last few decades. According to the United Nations Department of Economic and Social Affairs,[631] Pakistan has the seventh-largest diaspora in the world. Pakistanis frequently travel to the Middle East, North America, Europe, and Asia. Additionally, Pakistanis live in a variety of countries throughout Europe, including Italy, Greece, Spain, France, Germany, Norway, and Denmark. China, Malaysia, Hong Kong, and Thailand are Asian destinations. Over several decades, Pakistan has established a robust legal framework to encourage labour migration, generate remittances, and alleviate poverty and unemployment.[632] As a result, the government of Pakistan has swiftly devised a programme to regulate its migrant labour. The 1979 Emigration Ordinance establishes the overarching legal framework for all aspects of overseas labour recruitment and emigration in Pakistan. This Ordinance, along with

[629] International Labour Organization, *Migrant Welfare Funds: Lessons for Myanmar from Nepal, Thailand and the Philippines*.
[630] Dynamic Consulting Services, "Needs Assessment Study: Information Needs of Intending Migrants in Punjab and Khyber Pakhtunkhwa, Pakistan" (Vienna, 2019).
[631] United Nations Department of Economic and Social Affairs, *International Migration 2020: Highlights*, *International Migration 2020: Highlights* (New York: United Nations Department of Economic and Social Affairs, Population Division, 2020).
[632] Themrise Khan, "Labour Migration Governance in Pakistan: Protecting Pakistan's Overseas Labour Migrants," https://blogs.lse.ac.uk, 2020, https://blogs.lse.ac.uk/southasia/2020/06/03/labour-migration-governance-in-pakistan-protecting-pakistans-overseas-labour-migrants/; Shahnaz, *Law, and Practice: The Recruitment of Low-Skilled Pakistani Workers for Overseas Employment*.

its accompanying rules and regulations, establishes all aspects of the emigration process, including recruitment, emigration costs, redress mechanisms, and administrative boundaries.[633]

(1). The Migrant Worker Act

Since its inception in 1979, the Emigrant Rule has been significantly amended several times. The rule was updated for the first time in 2012, focusing on the role of employment recruitment agencies. In 2016, this rule was updated to focus on the section provision about overseas Pakistani status. The rule was updated again in 2021 to include several critical provisions, including the role of the Bureau of Emigration & Overseas Employment (BEOE), private recruiter licensing, attache roles, protector and monitoring migrant activities in both the home and destination countries and the establishment of the migrant welfare fund.

Although the Emigration Rules 1979 were updated, the rule's official title remained. Pakistan's government is only concerned with updating the rules' provisions to reflect global trends in the migrant labour market. As a result, the provisions of the Emigration Rule 1979 remain current, demonstrating the Pakistani government's responsiveness to recent global developments affecting migrant workers. Besides, the title accurately reflects an essential element of its identity and informs the public about the subject matter, the text's nature, and the rule type. Considering the 1979 Emigration Rule, the short title theoretically[634] serves a dual purpose: it specifies the legislative text's unique identity within the legal system while distinguishing it from other similar legislative texts. In practice, the abbreviated title of the legislation is most frequently used in Europe's Continental countries, particularly France, Belgium, and Spain.[635]

(2). Migrant Institutional Body

Pakistan established the Bureau of Emigration and Overseas Employment (BEOE) in 1972 through the presidential order. The Emigrant Ordinance of 1979 and the Emigrant Rules (1979) appoint the Director General of the Bureau of Emigration and Overseas Employment (BEOE) as the Protector of Emigrants, along with the Community Welfare Attaché and the Labour Attaché. They are responsible for all issues affecting Pakistani workers working

[633] Khan, "Labour Migration Governance in Pakistan: Protecting Pakistan's Overseas Labour Migrants."
[634] Jean-Pierre Duprat and Helen Xanthaki, "Legislative Drafting Techniques/Formal Legistics," in *Legislation in Europe a Comprehensive Guide for Scholars and Practioners*, ed. Ulrich Karpen and Helen Xanthaki, First (OXFORD and Portland, Oregon: Hart Publishing, 2017), 109–27.
[635] Duprat and Xanthaki. *at* 117-18.

abroad.[636] Additionally, the BEOE serves as Pakistan's supreme regulatory body for labour exports, authorizing the planned and systematic regulation of international employment and the protection of migrant workers' rights. Likewise, it is charged with two primary goals: reducing domestic unemployment and generating foreign currency through remittances from foreign workers. Additionally, the BEOE is expected to assist friendly neighbouring countries in completing critical development projects by providing unskilled, skilled, and highly skilled labour.[637]

(3). Migrant Worker Private Recruiter

In recognition of the critical role of private enterprise in migrant worker industrial activities, the Pakistani government imposes stringent licensing requirements on private recruiting agents and overseas employment promoters. Before a license can be issued, the applicant must complete several formalities, including obtaining a police clearance, verifying his or her character and experience, and obtaining certificates of financial soundness. Additionally, the applicant's criminal history is screened for evidence of possible criminal activity.[638]

Establishing stringent criteria for license issuance ensures that applicants have a clean criminal record and have not engaged in illegal or irregular financial activities. The security or guarantee the individual or firm provides ensures that the licensee's duties and obligations are faithfully performed throughout the license's duration. The Director General, BEOE, has the authority to forfeit the security in whole or part if an overseas employment promoter or agent has committed fraud, such as forgery, or violated emigration legislation. The Protector of Emigrants in the area closely monitors and supervises the activities of overseas employment promoters and agents. The Protector of Emigrants conducts routine inspections of licensees' offices to ensure proper maintenance. Guidance and advice are also available when necessary.[639] Visitors and employees of overseas employment promoters' offices may be interviewed to ascertain whether any complaints against the promoters or agents have been lodged. Promoters and agents are also informed of changes to host country legislation, procedures, or rules. Additionally, promoters and agents of overseas employment are

[636] Shahnaz, *Law, and Practice: The Recruitment of Low-Skilled Pakistani Workers for Overseas Employment*. *at* 15-17.
[637] Rashid Mughal and Luzvinda Padilla, *Labour Migration in Asia: Protection of Migrant Workers, Support Services and Enhancing Development Benefits*, first (Geneva: International Organization for Migration, 2005).
[638] Mughal and Padilla. *at* 23.
[639] Mughal and Padilla. Ibid.

encouraged to increase the export of the Pakistani workforce through legal channels. They are rewarded annually with trophies and awards for outstanding performance.[640]

(4). Fund for Migrant Workers' Welfare

The Migrant Worker Welfare Fund was established following the 1979 Emigration Rule, amended in 2021. Most funds come from migrant workers. According to Article 26(1), each migrant worker must contribute two thousand rupees to the Welfare Fund. On the other hand, contributions and donations may be made by the public, corporate bodies, welfare associations, societies, banks, and any other source.

The welfare funds will cover the following costs incurred by Pakistani migrant workers and their families: To begin identifying and resolving social problems faced by emigrants and their families in Pakistan and abroad. They established and maintained vocational training institutions that provide instruction in in-demand trades or assist such institutions. Additionally, the fund will be used to establish housing societies, colonial settlements, and townships for emigrants and their families in Pakistan. Additionally, the fund awards scholarships, stipends, and grants to children of emigrants to pursue studies in science, technology, art, and management in Pakistan and abroad. Establishment, administration, and distribution of funds to educational and religious institutions in Pakistan and abroad that educate emigrant children.

Additionally, the fund will support grants to emigrant societies and associations to establish community centres, libraries, and mosques and organise seminars and conferences in conjunction with significant national events. In addition, the fund will be used to create offices and branches of the overseas Pakistanis Foundation in any region of Pakistan and abroad for the convenience of emigrants. In addition, founding, managing, and investing in commercial, industrial, or service firms. Besides, the fund will be used to acquire or rent necessary land, buildings, or other property for the Welfare Fund's purposes. Additionally, the fund will be used to manage, improve, and develop the Overseas Pakistanis Foundation's property. Collecting and editing material for and carrying out the work of printing and publishing pamphlets, reports, journals, periodicals, dailies, or other such works may be necessary for the emigrants' interests. Finally, the fund is used to make other investments, as the Overseas Pakistanis'Foundation may determine from time to time, including investments in commercial, industrial, or other enterprises.

[640] Mughal and Padilla. *at* 24.

The Pakistan migrant worker welfare fund mentioned above is the most comprehensive among Asian countries such as Nepal and the Philippines. Additionally, the fund allocation demonstrates the rule's strong commitment to providing direct and indirect benefits to migrant workers and their families. Moreover, the management of Pakistani migrant workers and the implementation of the protective mechanisms that guarantee their migrant workers' rights are predicted to go well.

c. Philippine Migrant Worker Legislation

Filipino migrant workers legislation is the most comprehensive in the ASEAN region, covering all necessary protections for migrant workers at every step of their migration. In 1974, in response to the country's economic difficulties,[641] the Philippine government established the Overseas Employment Program to assist Filipinos in finding work abroad. Filipino migration has accelerated significantly since the program's inception, with Filipinos now migrating to an incredibly diverse range of destination countries. Most migration from the Philippines is temporary and legal, with licensed private recruitment agencies facilitating the process. Overseas temporary contract work is the primary means of emigration for Filipinos; similarly, an Overseas Filipino Worker (OFW) must have a job contract to leave the country.[642]

(1). The Act Philosophical Foundation

The Philippine migrant worker legislation was enacted for the first time in 1995 as the Migrant Workers and Overseas Filipinos Act. This Act was amended in 2010 to enhance further the standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress,[643] among other things. The Philippines' migrant worker legislation is among the most stringent in ASEAN. Graziano Battistella[644] insisted that due to the Philippines' strong migrant worker legislation, many other countries have emulated

[641] Semyonov and Gorodzeisky, "Labor Migration, Remittances and Household Income: A Comparison between Filipino and Filipina Overseas Workers."
[642] By David Mckenzie, Caroline Theoharides, and Dean Yang, "Distortions in the International Migrant Labor Market: Evidence from Filipino Migration and Wage Responses to Destination Country Economic Shocks," *American Economic Journal: Applied Economics* 6, no. 2 (2014): 49–75.
[643] Overseas Filipino in distress – refers to an Overseas Filipino who is experiencing a medical, psychosocial, or legal problem that requires treatment, hospitalization, counseling, legal representation, or any other type of intervention with the authorities in the country where he or she is located. See Rule I (ii) of Omnibus Rules and Regulations Implementing The Migrant Workers and Overseas Filipinos Act of 1995, as Amended by Republic Act No. 10022.
[644] Graziano Battistella, "Multi-Level Policy Approach in the Governance of Labour Migration: Considerations from the Philippine Experience," *Asian Journal of Social Science* 40, no. 4 (2012): 419–46.

the Philippines in establishing a system that accompanies migrants from the start to the finish of the process.

The evidence for the strength of Philippine migrant worker legislation is viewed through the lens of the legislation's philosophical underpinnings concerning its constituents. As a philosophical stance for the migrant worker legislation, the preamble expressly states that the management approach for the Philippine migrant worker legislation is centred on the migrant workers' human dignity and human rights. Even though the Philippines' government has historically prioritized job creation, recruiters sought profit, and the government was pleased to see money flowing in via remittances, according to Battistella.[645] However, the government in charge is expressly prohibited by the Act 2010 preamble from pursuing the goal of collecting remittances through the deployment of migrant workers abroad. Likewise, Filipino migrant workers are an integral part of the state's sovereignty and integrity, which must be respected, as well as their dignity and human rights, protected.

The legislation's preamble further states that the government shall deploy only skilled Filipino workers to ensure comprehensive protection for Filipino migrant workers. As a result, the most effective tool for empowering Filipino migrant workers is for them to acquire skills.[646] The government shall provide them with free and readily accessible programs for skill development and enhancement. To accomplish this goal, the State must recognize that non-governmental organizations, trade unions, workers' associations, stakeholders, and similar entities that have been duly recognized as legitimate are partners with the State in protecting and promoting the welfare of Filipino migrant workers. The Act requires the State to cooperate with them in an atmosphere of mutual trust and respect. Additionally, this partnership will benefit significantly from the contributions of recruitment and staffing agencies.

(2). The General Provisions

The provisions of the Act 2010 are entirely consistent with the preamble's philosophical foundation. Several critical provisions demonstrate the robust protection of migrant workers' dignity and human rights. In addition, the promotion of migrant workers' welfare, such as the deployment of legal certainty, protection of Filipino migrant workers from illegal recruitment, legal assistance for migrant workers who face legal issues while working abroad, and oversight

[645] Battistella. *at* 444.
[646] This Philippine policy of preparing skilled migrants rewarded them with a competitive edge in the global labor market due to their adequate education and English proficiency. *See* Pei Chia Lan, "Maid or Madam? Filipino, Migrant Workers and the Continuity of Domestic Labor," *Gender and Society* 17, no. 2 (2003): 187–208, https://doi.org/10.1177/0891243202250730.

of the Act implementation. The following section will provide a brief description of these provisions.

(i). Migrant Workers' Deployment

Section 4 of the Act 2010 provides that the State shall permit the deployment of overseas Filipino workers only in countries that protect the rights of Filipino migrant workers. It is unambiguously stated that the government agency responsible for migrant worker deployment must take the conditions specified in this section very seriously. As a strategic protection mechanism for its migrant workers, the Philippine government required that the receiving countries guarantee the following conditions:[647]

(a) It has existing labour and social laws protecting workers' rights, including migrant workers.
(b) It is a signatory to and/or ratifier of multilateral conventions, declarations, or resolutions relating to the protection of workers, including migrant workers; and
(c) It has concluded a bilateral agreement.

Without a clear demonstration that any of the guarantees mentioned earlier exist in the country of destination of the migrant workers, the Philippine Overseas Employment Administration (POEA) shall not issue a permit for deployment. To ensure compliance with the required receiving country criteria, the Department of Foreign Affairs must certify to the POEA the relevant provisions of the receiving country's labour or social law or the convention, declaration, resolution, or bilateral agreement or arrangement protecting the rights of migrant workers. Additionally, concerning the deployment of Filipino migrant workers on vessels navigating foreign seas or offshore or high seas installations whose owners/employers comply with international laws and standards protecting migrant workers' rights. Furthermore, the State shall permit the deployment of overseas Filipino workers to companies and contractors with international operations, if they adhere to the standards, conditions, and requirements outlined in the POEA's employment contracts and meet internationally recognized standards.[648]

[647] Graziano Battistella, "Multi-Level Policy Approach in the Governance of Labour Migration: Considerations from the Philippine Experience," *Asian Journal of Social Science* 40, no. 4 (2012): 419–46, https://doi.org/10.1163/15685314-12341243; Robyn Magalit Rodriguez, "Philippine Migrant Workers' Transnationalism in the Middle East," *International Labor and Working-Class History* 79, no. 1 (2011): 48–61, https://doi.org/10.1017/S0147547910000384.

[648] Olivia Swift, 'Seafaring Citizenship: What Being Filipino Means at Sea and What Seafaring Means for the Philippines', *Southeast Asia Research* 19, no. 2 (June 2011): 273–91, https://doi.org/10.5367/sear.2011.0046; VALENTIN M MENDOZA, 'Filipino Maritime Students and Seafarers: Defying Dominant Social Imaginaries', *Philippine Sociological Review* 63, no. May (2015): 33–59, http://www.jstor.org/stable/24717159.

It suggests that the Philippine's migrant workers legislation provides robust protection for their migrant workers from the moment they leave the country.

(ii). Illegal Recruitment

As stated in the Act, Section 5 expressly prohibits the illegal recruitment of Filipino migrant workers. Anyone violating this provision will face criminal charges and be sentenced accordingly[649]. To carry out this provision, the Department of Justice's public prosecutors shall collaborate with the POEA's anti-illegal recruitment branch[650] and, in certain instances, allow POEA lawyers to lead the prosecution. POEA attorneys who serve as prosecutors in these cases receive additional compensation from the POEA Administrator.

(iii). Legal Aid

The Act of 2010 established a legal assistance fund to supplement legal aid for Filipino Migrant Workers. Section 25 expressly provides for establishing a Legal Assistance Fund (LAF) for migrant workers for one hundred million pesos (P100,000,000.00) to be derived from three distinct sources: fifty million pesos (50,000,000.00) from the President's Contingency Fund; thirty million pesos (30,000,000.00) from the Social Contingency Fund of the President's Social Fund; and twenty million pesos (20,000,000.00) from the Welfare Fund for Overseas Workers established according to Letter of Instructions No. 537 as amended by Presidential Decree Nos. 1694 and 1809." Furthermore, the General Appropriations Act allocates fewer than thirty million pesos (30,000,000.00) per year (GAA). The LAF balance for the fiscal year, including the amount appropriated, shall not be less than one hundred million pesos (P100,000,000.00). If the fund is in the National Treasury, it will be treated as a special

[649] Section 7 emphasizes the following criminal sanctions and/or fines imposed on parties engaging in illegal recruitment: "(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) nor more than Two million pesos (P2,000,000.00). "(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein. The maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non- licensee or non-holder of authority. "(c) Any person found guilty of any of the prohibited acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Five hundred thousand pesos (P500,000.00) nor more than One million pesos (P1,000,000.00).

[650] The anti-illegal recruitment branch of POEA is also responsible for providing legal protection to victims of illegal recruitment. This provision stated explicitly in Article 13 that "The POEA's anti-illegal recruitment branch, including its regional offices, shall establish a mechanism for victims of illegal recruitment to receive free legal assistance. This mechanism shall be coordinated and cooperated with the Department of Justice, the Integrated Bar of the Philippines, and other non-governmental organizations and volunteer organizations."

fund, and the money in it, including money from the GAA, will not be returned to the General Fund.[651]

The Legal Assistance Fund established in the preceding section shall be used solely to provide legal services to migrant workers and overseas Filipinos in need, following the guidelines, criteria, and procedures promulgated under Section 24 (a) hereof. Fees for foreign lawyers hired by the Legal Assistant for Migrant Workers Affairs to represent migrant workers facing charges or filing cases against erring or abusive employers abroad, bail bonds to secure temporary releases, and other litigation expenses will be charged against the Fund. At the end of each fiscal year, the Department of Foreign Affairs shall include in its report to Congress, as Section 33 of this Act, the status of the Legal Assistance Fund, including expenditures from the fund that the Commission has duly audited on Audit (COA). When circumstances necessitate immediate action, hiring foreign legal counsel is exempt from Republic Act No. 9184 or the Government Procurement Act."

(iv). Oversights for Act Implementation

Additionally, the Act establishes a Joint Congressional Oversight Committee comprised of five (5) Senators and five (5) representatives appointed by the Senate President and House Speaker to oversee the Act's implementation. Senate Labor and Employment and House Committee on Overseas Workers' Affairs will co-chair the Oversight Committee. The Oversight Committee shall be charged with the following responsibilities and functions: "(a) To establish guidelines and an overarching framework for monitoring and ensuring compliance with Republic Act No. 8042, as amended, and all programs, projects, and activities involving overseas employment;" (b) To promote transparency and to require concerned government agencies to submit reports on how Republic Act No. 8042, as amended, is being implemented through the conduct of programs, projects, and policies;" (c) To approve the budget for the Oversight Committee's programs and all associated expenditures, including compensation for all personnel; (d) To report on a periodic basis to the President of the Philippines and Congress on the implementation of Republic Act No. 8042, as amended; "They should also look for legal flaws and recommend legislative or executive action to correct them; and they should perform any other duties, functions, or responsibilities necessary for the organization to achieve its goals.

[651] International Labour Organization, *Migrant Welfare Funds: Lessons for Myanmar from Nepal, Thailand and the Philippines*, first (Geneva: International Labour Organization, 2021).

The Oversight Committee will establish procedures and hold hearings on its own. Additionally, it has the authority to obtain testimony and technical advice, as well as to invite or summon any public official or private citizen to testify before it via subpoena ad testificandum or to compel anyone to produce documents or other materials as it deems fit. It is just one instance of it being able to do whatever it pleases. Correspondingly, the Oversight Committee will organize its staff and technical panel, hire them on a temporary, contractual, or consulting basis, and compensate them consistent with applicable civil service laws, rules, and regulations. Therefore, the Oversight Committee's secretariat must be capable and efficient. Members of the Oversight Committee will not be compensated additional compensation for their work, except for travel, extraordinary, and other expenses incurred in carrying out the Oversight Committee's mission and objectives.

5.3. Proposition for Enhancing the Migrant Worker Legislation Substance

Based on a review of comparative migrant worker legislation in international, regional, and selected individual countries, some relevant substance laws, ranging from the philosophical basis to certain critical substances, such as deployment, institutions in charge, social security, legal aid, migrant welfare fund, oversights, and domestic workers, are likely to be incorporated into future Indonesian migrant worker legislation. These selected material sources, as shown in Table 4, constitute a crucial topic given the absence of Indonesian laws governing migrant workers.

a. Philoshopical foundation

The philosophical basis of a law reflects the fundamental purpose of a regulation. In its current migrant workers legislation, Indonesia has successfully transformed its migrant workers' philosophical lens from a "coolie" feature that does not respect the dignity of labor, to remittance, and finally to the human rights of labour. However, unlike the Philippine's migrant workers legislation, which prohibits the state from focusing on migrant workers' remittances in migrant workers governance, the primary objective of the legislation must be the migrant workers' right to find a job to improve their prosperity and the the right at work to strengthen their security.

b. Deployment

Deployment is the most crucial phase of migratory cycles due to its implications for the human rights of migrant Labourers. Therefore, the deployment requirement must be rigorously

evaluated considering everything that could compromise the human rights of migrant employees. The Indonesian Act of 2017 has literally considered this provision, but its implementation has not changed, as evidenced by the numerous human rights issues affecting migrant Labourers to date. In contrast, the Philippines consistently applies a rigorous examination to the required destination country of migrant workers, followed by a robust contract and the necessary legal action when the human rights of their migrant workers are violated.

c. Institutions in Charge

Governance of institutions in charge of migrant employees is also crucial. Considering this institution, the 2017 Act has shifted the migratory governance from private actor involvement to government involvement. However, their responsibilities are primarily limited to the administration of migrant workers, as opposed to the robust protection provided by Philippine and Nepalese migrant institutions throughout all phases of migration.

d. Social Security

The social security of migrant employees protects them and their families during the migration process, which is fundamentally distinct from regular social security in terms of their risk. The 2017 Act has maintained the same level of social security for migrant Labourers as for regular workers. The Philippines, on the other hand, established a specific social security system for their migrant workers with clear provisions that make them feel at ease when departing their country for employment in the destination nation.

e. *Legal Aids*

Legal aid is essential to protecting the human rights of migrant Labourers during their migration. Act of 2017 provides legal aid for migrant workers, which has been utilised in a small number of cases involving migrant workers primarily in their destination country. The Philippine legal aids system is more comprehensive and effective in all cases involving migrant workers, as provided by the Philippine government through a contract with the country's attorney where the migrant workers labour.

f. Welfare Fund

Welfare funds are essential for protecting migrant Labourers if they encounter dire circumstances during their migration. As well as legal aids, migrant welfare can be used to

return migrant employees or their families to their home country when they are in critical condition. In this case, the Philippines, Nepal, and Pakistan are in the lead, while Indonesia lacks a welfare fund for their migrant employees.

g. Special Oversight Body

To ensure that migrant employees have access to everything they require during the migration cycle, it is vital that the migration process undergoes extensive oversight. In this scenario, a special oversight authority like that of the Philippines is required. This special oversight body is comprised of all parties involved in the governance of migrant Labourers. Act of 2017 lacks this special body and instead relies solely on the BP2MI body, whose responsibility is restricted.

h. Domestic Workers and Vulnerable group of migrants

Domestic work is no longer classified as a "second-class" occupation by the International Labor Organization; it is now on par with conventional employment. Consequently, ratification is necessary. In addition, the rights of vulnerable migrant groups, such as fishing workers and women migrant workers, should be adequately protected in migrant workers legislation.

Table 4 Selected Sources Proposal for Improving the Quality of Indonesian Migrant Worker Legislation

Subject Matters	Applicable substances	Chosen Sources
Philosophical Foundation	Balancing the human rights approach with state responsibility in a more straightforward sense to protect the human dignity and prosperity of migrant workers while putting aside the government's desire to receive remittances	Philippine Act of Migrant Workers and Philipino
Deployment	Strictly selecting destination countries for migrant workers that meet all the following criteria: (a) having labour and social laws protecting workers' rights, including migrant workers. (b) signed and/or ratified multilateral conventions, declarations, or resolutions concerning the protection of workers, including migrant workers; and (c) concluded a bilateral agreement."	Philippine Act of Migrant Workers and Philipino
Institutions in Charge	Establishing a single entity with solid authority to manage the interests of migrant workers at all stages involves several other institutions.	Philippine Act of Migrant Worker and Philipino Pakistan Act of Migrant Worker Nepal Act of Migrant Worker
Social Security	Establish a unique social security system for migrant workers, distinct from the general security system, covering all phases of application and execution of the migrant workers' interests. Additionally, social security for migrants is overseen transparently and efficiently.	Philippine Act of Migrant Worker and Philipino Pakistan Act of Migrant Worker Nepal Act of Migrant Worker
Legal Aid	Establish a legal aid program specifically for migrant workers and their families, with robust financial support covering legal aid in both the country of origin and destination.	Philippine Act of Migrant Worker and Philipino

Migrant Welfare Fund	Establish a welfare fund for migrant workers and their families within a distinct organization distinct from the general welfare fund.	Nepal, Philippines, and Pakistan
Oversights	Establish a special task force to supervise the implementation of the migrant worker legislation and to provide recommendations for developing a management system and improving the legislation.	Philippine and Nepal
Domestic Workers	Because most Indonesian migrant workers are domestic workers, this group must be adequately prepared by implementing the ILO's Domestic worker provisions.	Ratification of the ILO Convention on the Domestic Worker is critical
Other Provisions	Expanding protections for migrant workers to vulnerable groups, including women and fishermen. Additionally, the strict selection and dispatch of migrant workers to nations with no diplomatic ties with Indonesia.	International law

5.4. Methods for Adoption of International Migrant Law into Indonesian Law

After a decade of Migrant workers researchers and NGOs questioning the country's minimum of ILO's conventions ratification concerning migrant workers,[652] Indonesia is now progressing in ratifying the ILO's conventions. It is expected that the quality of migrant workers legislation meets the ILO's minimum standard for international migrant workers. ILO Conventions are negotiated by representatives of the government, employers, and workers. They are divided into three categories:[653]

1. Fundamental Conventions, which address child labor, forced labor, workplace discrimination, the right to organize, and collective bargaining;
2. Governance Conventions, which strengthen social dialogue, labor inspection, and policies for full, productive, and freely chosen employment; and
3. Technical Conventions, which address a range of issues including specific worker categories, minimum wages, pensions, occupational safety and health.

As shown in Table 5, Indonesia ratified the core and governance conventions of the ILO at the same rate as the Philippines, Pakistan, and Nepal. Nonetheless, the country, along with Nepal, has ratified few technical conventions, whereas the Philippines has ratified the most. The ratifications of these international conventions take place as a result of significant legislative reform in Indonesia aimed at upgrading and updating the nation's labor and social legislation[654]. Moreover, the ratification of the conventions would considerably promote the improvement of the nation's migrant workers legislation.

Tabel 5 Ratification of ILO Conventions by Indonesia, the Philippines, and Nepal

No.	Countries	Conventions		
		Fundamental	Governance	Technical
1	Indonesia	9 of 10	2 of 4	9 of 176
2	Philippine	8 of 10	2 of 4	28 of 176
3	Nepal	7 of 10	1 of 4	3 of 176
4	Pakistan	8 of 10	2 of 4	26 of 176

Source: https://www.ilo.org/dyn/normlex/en/f?p=1000:11001:::NO:::<las visited March 26, 2023>.

[652] Iskandar, *Standar Internasional Migrasi Ketenagakerjaan Berbasis HAM*.
[653] ILO, "Countries Urged to Ratify Labour Conventions," February 18, 2019, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_672146/lang--ja/index.htm.
[654] ILO. Ibid.

In this circumstances, incorporating international migrant laws into Indonesian law in light of the import law notion[655] is vital. Theoretically, Indonesia has three primary options for adopting international migrant laws into Indonesian law: formal ratification, legal transplant or vernacularization as an informal method. The first approach is founded on the international treaty mechanism governed by the Vienna Convention on the Law of Treaties of 1969 (VCLT 1969). The second method, meanwhile, is founded on the legal transplant theory. The vernacularization approach is the next alternative for relevant legal adoption. This section will compare and contrast the effectiveness and benefits of both approaches to demonstrate their differences.

5.4.1. The Ratification of the International Law

The applicability of international law rules within national jurisdiction can be determined in two different ways.[656] The doctrine of transformation has been a manifestation of the positivist-dualist perspective. This doctrine is based on the perception of two distinct systems of law that operate independently, and it holds that before any rule or principle of international law. To have an effect within the domestic jurisdiction, it must be 'transformed' into municipal law by using the appropriate constitutional machinery, such as an Act of Parliament. This doctrine arose from the procedure by which international agreements are made effective in municipal law through ratification by the sovereign and the concept that any rule of international law must be transformed or explicitly adopted to be valid within the internal legal order. Another theory, the doctrine of incorporation, maintains that international law is automatically incorporated into municipal law without needing a constitutional ratification procedure.[657]

There are, however, differences in the application of international law rules or international customary law within domestic jurisdiction, according to Malcolm N. Shaw,[658] for excellent political and historical reasons. Customary law evolves as a result of state practice, whereas international conventions take the form of legally enforceable contracts. In the meantime, it is customary, though not always required, for several states to act in a particular manner because they believe it follows the law. Consequently, under typical

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[655] Yasuda, "Law and Development in ASEAN Countries."
[656] Noor Sidharta, "Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy," *Constitutional Review* 3, no. 2 (August 21, 2018): 171, https://doi.org/10.31078/consrev322.
[657] Shaw *at* 128-129.
[658] Malcolm N Shaw, *International Law*, *Cambridge University Press*, Fifth (California: Cambridge University Press, 2009), https://doi.org/10.5860/choice.47-2257. Ibid. *at* 135-136.

conditions, the influence of a single nation is rarely decisive. In the case of treaties, according to Shaw,[659] the signatory states may enact new laws that bind them regardless of their past or current practices. The executive's influence on treaty law is typically greater than its influence on customary law. If treaties were directly applicable within the state without any intermediate stage between signature and ratification and before the domestic operation, then the executive could legislate without the legislature. In light of this, any incorporation theory approach to treaty law has been ruled out. Suppose a nation wishes to adhere to the principle of state sovereignty. In that case, it must decide how international legal obligations and rights fit into its legal system and "what status and rank to accord them in the hierarchy of municipal sources of law."

Although Indonesia has actively signed and ratified numerous international agreements, many international scholars[660] have criticized Indonesia for its inconsistent attitudes toward the international conventions' operation in its domestic jurisdiction. Most Indonesian laws governing international agreements are devoted to treaty initiation and negotiation. For example, the Indonesian Constitution of 1945 is silent regarding the status of international law within Indonesian law. Article 11 of the Constitution of 1945 stipulates that the President is the only official authorized to negotiate international treaties. However, the President must obtain the approval of the National Parliament prior to concluding international agreements that have far-reaching and fundamental effects on the lives of the people, impose financial burdens on the State, or require amendments to existing laws or the enactment of new laws. A particular statute governs additional clauses of international agreements. The 2000 Indonesian Law on International Agreements governs who can negotiate and sign treaties on behalf of Indonesia and how treaties are ratified following Indonesian law.

Indonesia has thus far applied the monism and dualism principles of international law[661] to domestic law in different instances. While Indonesia appears to be dualist in practice, there are indications of monism, particularly in the decisions of Indonesia's Constitutional and Supreme Courts, according to Simon Butt.[662] Regardless, the uncertainty

[659] Shaw. Ibid.
[660] Butt, "The Position of International Law within the Indonesian Legal System."*at* 3-4.
[661] Damos Dumoli Agusman has thoroughly analyzed both principles in their practical context. He demonstrates that the concept of dualism in international law is not always comparable to treaties that are not self-executing. Similarly, it is possible that even in dualist states, treaties may be self-executing. *See* Agusman, "Self Executing and Non Self Executing Treaties What Does It Mean?".
[662] Butt, "The Position of International Law within the Indonesian Legal System." Ibid. *at* 1.

has allowed the Indonesian government, on the one hand, to leave the international community under the impression that ratified treaties have automatic application. On the other hand, to refuse to grant rights to citizens that these international treaties seek to provide, claiming that treaties have no domestic application until incorporated by an Indonesian legal instrument. Edi Pratomo,[663] an Indonesian international law scholar, has a different opinion on this argument. He asserted that when Indonesia ratified an international agreement, such as the ASEAN Charter, it became immediately applicable as municipal law with all its consequences. This viewpoint is comparable to that of those[664] who, several years ago, petitioned the Constitutional Court to review several international treaties ratified by Indonesia. They believe that the international treaty has attained the status of a law. As a result, the international law position is the same as that of a national law enacted by the legislature, which can be challenged before the Constitutional Court. However, due to international law's lack of status within the national legal hierarchy, the Constitutional Court's decision to review international law was inconsistent.[665]

Due to its ambiguous stance, Indonesia makes less use of international law for its international diplomatic interests, whether for international action[666] or to protect its citizens abroad, mainly migrant workers. In addition, Indonesia's ambiguous stance is reflected in its practice of ratifying the ILO Convention on the Protection of Migrant Workers and Their Families. However, their application in domestic law is subordinate to the 'origin' Act passed by Parliament. As a result, the provisions of the Migrant Worker Protection Act of 2017 that cite the ILO convention in a limited capacity provide inadequate protection for Indonesian migrant workers.[667] Consequently, the Indonesian approach to amending the Migrant Worker Act of 2017 tends to follow the legal transplant method instead of the ratification method.

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[663] Eddy Pratomo, "Prospek Dan Tantangan Hukum Internasional Di ASEAN Dan Indonesia Pasca Piagam ASEAN Dari Sisi Perjanjian Internasional," *Jurnal Hukum Ius Quia Iustum* 16, no. 1 (2009): 60–72, https://doi.org/10.20885/iustum.vol16.iss1.art4.*at* 69. See also Wisnu Aryo Dewanto, "Status Hukum Internasional Dalam Sistem Hukum Di Indonesia," *Mimbar Hukum* 21, no. 2 (2009): 325–40.

[664] Sidharta, "Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy," 2018; Dinata, "The Dynamics of Ratification Acts of International Treaty Under Indonesian Legal System."

[665] Kama Sukarno, "Penerapan Perjanjian Internasional Di Pengadilan Nasional Indonesia: Studi Terhadap Putusan-Putusan Mahkamah Konstitusi," *PADJADJARAN Jurnal Ilmu Hukum* 3, no. 3 (2017): 587–608, https://doi.org/10.22304/pjih.v3.n3.a8.

[666] Hikmahanto Juwana, "International Law As Political Instrument: Several of Indonesia'S Experiences As a Case Study," *Indonesian Journal of International Law* 1, no. 1 (2021), https://doi.org/10.17304/ijil.vol1.1.198.

[667] See Chapter IV.

In light of the ambiguous Indonesian stance on international law, Ari Wirya Dinata[668] suggests that Indonesia should strengthen its position in recognizing international treaties in constitutional law. Whether it embraces monism with the primacy of international law, monism with the primacy of national law, or international law dualism, with this clarification, there will be legal certainty regarding the behaviour of any international agreements ratified in Indonesia. Thus, this does not lead to unending polemics and discussions. In addition, a firm stance will respond to every international agreement that the government will make to be better and more cautious.[669] Regardless of this ambiguity, according to Article 26 of the Vienna Convention on the Law of Treaties of 1969, Indonesia should consider that all ratified international law binds the state following the Pacta Sunt Servanda principle.[670]

5.4.2. Legal Transplant Method

Legal transplantation, the movement of a rule or system law from one country to another, is a time-honored process in the evolution of law, especially in colonised nations.[671] Nobuyuki Yusada[672] referred to the legal transplant in ASEAN countries as imported law, which was established or "installed" by Western powers during their colonial era. During the earliest phase of colonisation, only disagreements between Western peoples were subject to Western law and its adaptations. As colonial power solidified and normalised, these rules were extended to indigenous people through the courts and local administrations established as the colonial state's apparatus. These countries are in the process of updating their legal systems transplanted from former colonial states, the bulk of which are based on western law. Today, these laws and institutions are essential components of the legal systems of all nations. In its practical approach, legal transplant was performed through its substance, its form, or both.[673] Technically, a country that transplants a legal system has three choices. It

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[668] Dinata, "The Dynamics of Ratification Acts of International Treaty Under Indonesian Legal System."*at* 216.
[669] *See* also Sidharta, "Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy," 2018.*at* 186-187.
[670] Damos Dumoli Agusman, "Status Hukum Perjanjian Internasional Dalam Hukum Nasional RI Tinjauan Dari Perspektif Praktek Indonesia," *Indonesian Journal of International Law* 5, no. 3 (2008), https://doi.org/10.17304/ijil.vol5.3.178; Dina Sunyowati, "Hukum Internasional Sebagai Sumber Hukum Dalam Hukum Nasional (Dalam Perspektif Hubungan Hukum Internasional Dan Hukum Nasional Di Indonesia)," *Jurnal Hukum Dan Peradilan* 2, no. 1 (2013): 67, https://doi.org/10.25216/jhp.2.1.2013.67-84.
[671] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Athens and London: The University of Georgia Press, 1993).
[672] Yasuda, "Law and Development in ASEAN Countries."
[673] Watson, *Legal Transplants: An Approach to Comparative Law*. *at* 26.

adopts the entire legal system of the country of origin, regardless of how close or unlike their cultures are. The other incorporates the laws of a substantial chunk of the country of origin into its own legal system.[674]

Considering these theoretical frameworks, the legal substance of other nations with robust migrant worker laws, such as the Philippines, Nepal, and Pakistan, is applicable to the Indonesian migrant worker legislation. Based on a review of comparative migrant worker legislation with these countries, it would be beneficial to incorporate some pertinent substance laws, such as its philosophical basis and certain critical substances, such as deployment, institutions in charge, social security, legal aid, migrant welfare fund, oversights, and domestic workers, to improve the Indonesian migrant worker legislation. Alan Watson[675] emphasised that a successful legal transplant, like a human organ transplant, will grow in its new body and become an integral part of that body, just as the rule or institution would have continued to develop in its parent system. Regarding this legal transplant method, Indonesia's National Legal Development Agency (*Badan Pembangunan Hukum Nasional*-BPHN) acknowledges its openness toward the globalization advancement that affects Indonesia's legal development, while preserving the national value contents[676]. As a result, the development of migrant worker legislation in other countries should not be overlooked as a potential source for improving Indonesian migrant worker legislation in the future. Yet, the selection of foreign legal norms is necessary because Indonesia has its own legal philosophical foundation based on *Pancasila* (the five pillars) as the nation's ideology. In addition, the country's legal system is distinct from that of other nations and must be adapted accordingly.

In the academic draft[677] research of the Act No.18 of 2017 pertaining to the Protection of Migrant Workers, the selection of foreign legal standards has been implemented. In this instance, a portion of the Philippine Migrant Workers Act has been incorporated into the Act of 2017. This fact illustrates the Indonesian legal system's willingness to accept comparable legislation in other nations. Nevertheless, adjustments to Indonesia's legal culture and infrastructure are required.

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[674] Watson. *a*t 29-30.
[675] Watson. *at* 27.
[676] BPHN, *Dokumen Pembangunan Hukum Nasional* (Jakarta: BPHN-Kementerian Hukum dan HAM, 2020).
[677] Juwana et al., "Naskah Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri."

5.4.3. Vernacularization Method

Vernacularization is predicted to result in a country rejecting human rights language outright, while others filled the term with their own meaning, resulting in a variety of hybridized views of human rights that sometimes supported, rather than disputed, the concept[678]. Daniel Huizenga's[679] research in Africa demonstrates the efficacy of the vernacularization process in promoting the development of local norms based on international human rights norms. Similarly, international norms regarding human trafficking and women's human rights become vernacularized into anti-prostitution policies in South Korea and Sealing Cheng[680] has extensively studied how such universal concepts facilitate the rearticulation of authentic national culture and Korean womanhood.

Following more than half a century of authoritarian control since the country's independence in 1945, Indonesia's democratic era began in 1998. Hence, the democratic components of the nation's constitution and rules were effectively adopted. In addition, the legislative system has remained democratic up until this time. In the case of specific legislation formation, such as migrant worker legislation and others, the vernacular method is preferable if the legislative feels apprehensive about directly adopting similar legislation from others.

5.5. Improving Quality of Migrant Worker Law-Making

The quality of legislation is impacted not only by its subject matter but also by its level of parliamentary democracy. Moh. Mahfud MD[681] asserted that responsive laws would be spawned by a democratic political configuration (facilitating public participation). In contrast, the authoritarian political system will produce conservative laws. In a similar context, Time Drinoczi[682] also emphasizes that the level of politics in a nation affects the quality of its legislation. Drinoczi[683] provides three arguments in support of her claim.

> 'In addition to the low level of institutional trust, the political decision-maker perceives participation and involvement as an impediment to the efficient governance required by the

[678] Amy Doffegnies and Tamas Wells, "The Vernacularisation of Human Rights Discourse in Myanmar: Rejection, Hybridisation and Strategic Avoidance," *Journal of Contemporary Asia* 52, no. 2 (March 15, 2022): 247–66, https://doi.org/10.1080/00472336.2020.1865432.
[679] Daniel Huizenga, "The Right to Say No to Imposed Development: Human Rights Vernacularization in Reverse in South Africa," *Journal of Human Rights Practice* 13, no. 2 (2021): 205–24.
[680] Cheng Sealing, "The Paradox of Vernacularization: Women's Human Rights and the Gendering of Nationhood," *Antropological Quarterly* 84, no. 2 (2011): 475–505.
[681] Mahfud MD, *Politik Hukum Di Indonesia*, first (Jakarta: Rajawali Press, 2009).
[682] Drinóczi, "Concept of Quality in Legislation-Revisited: Matter of Perspective and a General Overview."at 211.
[683] Drinóczi. Ibid. *at* 215.

> newly developed 'guided democracy.' Thus, state efficiency appears to be more crucial than participation. Second, as guided democracy requires, the legislation merely exploits the constitutional and legislative power of political forces with an overwhelming majority in the parliament to shape the political image and dependence on other power branches and independent centres. Third, the intermediary structure of constitutional democracy, the exchange of viewpoints, and the consensus-based basis of democracy. As a result, the material conditions of excellent legislation in some states deteriorate, signifying a shift and evolution of the principles that have been thought essential to constitutional democracy.

In light of these theoretical frameworks, this section will examine the lawmaking of migrant worker legislation through the lens of the practice of parliamentary democracy in Indonesia, as well as propose the future strengthening of migrant worker legislation. Commence with a historical account of the legislation practice in the Indonesian parliament during the Sukarno (1945-1967) and Suharto (1967-1998) regimes, and then continue with the legislation practice under the amended 1945 Constitution.

5.5.1. The Degree of Democracy and Its Influence on Legislative Characteristics

Throughout history, Indonesia's legislative system has experienced ups and downs in lockstep with the dynamics of political development. Accordingly, Indonesian legislation has evolved through three distinct epochs: the Old Order (*'Orde Lama'*) during Sukarno's administration (1945–1967), the New Order (*'Orde Baru'*) during Suharto's regime (1967–1998), and the Reformation Era (*'Era Reformasi'*) since 1998. The Old and New Orders portray an undemocratic system characterized by undemocratic legislative processes. However, once the 1945 Constitution was updated in 1999, for the first time in Indonesian legislative history, a democratic parliamentary system was established. The work of Indonesia's legislation during the two eras of government, Sukarno and Suharto, will be evident in this section, primarily in terms of its timeliness and cost-effectiveness, but the legislation was of poor quality. From 1999 to the present, the quality of Indonesian legislation has gradually improved. However, it is much time consumed and high cost.

a. Legislation Work During Sukarno (1945-1967)

Sukarno was the first President of Indonesia, serving from 1945 to 1967. His presidency was founded on the Constitution of 1945, which has no term limits for presidents. During his presidency, Indonesia faced multiple challenges to its integrity from external powers, notably the colonial Dutch, and from political parties with differing ideologies and

perspectives on the future of Indonesia. Consequently, the political instability of the time had a significant impact on the legislative work of the parliament.

According to its historical development, the Indonesian legislation system is linked to the political system. As a result of the political configuration, Mahfud MD identified three distinct types of Indonesian legislation in this context. During Sukarno's early regime, Indonesian legislation was democratic (1945-1959).[684] At the time, the pattern of legislative democracy was populist, with flourishing political parties free to pursue their political agendas[685]. In addition, members of Parliament were actively involved in the legislation process, with the primary goal of repealing all colonial laws.[686]

Additionally, Indonesia's Parliament actively sought the best form of government and state ideology to adopt during this period. The 1945 Constitution did not satisfy them due to its hasty adoption following independence. As a result, between 1945 and 1959, political instability persisted in Indonesia. Consequently, the Indonesian Constitution underwent three significant revisions, beginning with the 1945 Constitution and continuing with the 1949 Federal Constitution and the 1950 Temporary Constitution. However, legislative work remained democratic until President Sukarno issued a decree on July 5, 1959, declaring that the Parliament had failed to form a new constitution to replace the 1950 Temporary Constitution. Sukarno's decree reinstated the 1945 Constitution in Indonesia, and as a result, Sukarno commanded a powerful government, including legislative authority. For example, one of the primary legislative issues addressed in the 1945 Constitution vests sole legislation authority in the President or executive branch.[687] Members of Parliament may introduce legislation; however, the President must approve it.[688]

The 1945 Constitution, drafted during the final days of Japanese occupation, is a succinct government outline, with 37 articles outlining the division of powers and indicating that legislative initiative should be shared between the President and Parliament. It is similar to the American Constitution in that executive power is concentrated in the President and a cabinet he appoints that is not accountable to Parliament. However, the People's Consultative Assembly (*'Madjelis Permusjawaratan Rakjat'*), which meets every five years

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[684] Mahfud MD, *Hukum Dan Pilar-Pilar Demokrasi*, first (Yogyakarta: Gama Media, 1999).
[685] Andreas Ufen, 'From Aliran to Dealignment: Political Parties in Post-Suharto Indonesia', *Southeast Asia Research* 16, no. 1 (2008): 5–41, https://doi.org/10.5367/000000008784108149; MD, *Hukum Dan Pilar-Pilar Demokrasi*.
[686] MD, *Politik Hukum Di Indonesia*.
[687] *See* Article 5.
[688] *See* Article 21.

to elect the President and Vice-President, has the authority to amend the Constitution by a two-thirds majority vote.[689] The 1945 Constitution also empowered Sukarno to exercise complete control over the political party and all government actions until 1967 [690]. He coined 'guided democracy' (*'democracy terpimpin*'),[691] accurately describing his vast authority.

The goal of constructing a "*Negara Hukum*" (state based on the rule of law) failed throughout Sukarno's two decades in office. Sukarno did not place a high premium on legal reform to achieve the "*Negara Hukum*" envisioned in the 1945 Constitution. In his 1961 statement before the Indonesian BAR Association, it was apparent that he expressed his scepticism about the Lawyers' potential to execute a revolution.[692] As a result, during Sukarno's presidency, Indonesia's '*Machstaat*' system was known as "*Negara Kekuasaan*" (a state based on power). Additionally, laws were enacted systematically during Sukarno's legislative era, implying that new laws were enacted in response to Sukarno's objectives. Accordingly, no clear statute governing law-making was adopted during this period. Sukarno's first legislative Act as President was Presidential Regulation No. 1 Concerning the Official Commencement of Laws and Government Regulations in 1945. According to this Presidential regulation, an Act or government regulation may be displayed on the wall in front of the National Committee's Central Office to inform the public about the new law. A newspaper, radio, or another medium could disseminate the new law.

On the other hand, President Sukarno retained considerable authority to initiate and sign new laws until he issued President Decree No. 234 of 1960, delegating authority to initiate new laws to the state secretary. Accordingly, legislative work during the Sukarno era was concentrated in Parliament and Sukarno's offices. Legislative work during this period does not require a significant investment of time or cost. However, the legislative quality that resulted in this model of legislation was substandard and undemocratic. Despite the presence of Indonesian migrant workers in a number of foreign countries, particularly the Middle East, such as Saudi Arabia, Sukarno issued no legislation on migrant Labourers. From 1945 to 1967, his development program was dominated by politics, with no regard for economic development. As a result, poverty was prevalent throughout the country.

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[689] Irene Tinker and Millidge Walker, "Indonesia's Panacea: 1959 Model," *Far Eastern Survey* 28, no. 12 (1959): 177–82.
[690] Denis Warner, 'Sukarno'sS Grand Design', *Challenge*, November 1963; Peter Christian Hauswedell, 'Sukarno: Radical or Conservative? Indonesian Politics 1964-5', *Indonesia* 15, no. April (1973): 109–43.
[691] Frederick P Bunnell, 'Guided Democracy Foreign Policy: 1960-1965 President Sukarno Moves from Non-Alignment to Confrontation', *Indonesia* 2, no. 2 (1966): 37–76.
[692] Katz and Katz, "Law Reform in Post-Sukarno Indonesia."

b. The Age of Undemocratic Legislation (Suharto, 1967-1998)

Suharto, who succeeded President Sukarno in 1967 and ruled from 1967 to 1998, exercised authoritarian rule. Parliament lacks legislative authority but has the authority to approve any government-sponsored legislation. The New Order ('*Orde Baru'*) era legislative system received 'legitimacy' from the 1945 constitution, and Indonesia has been re-appointed since 1959. Suharto's government continues to govern under the 1945 Constitution. However, the constitutional interpretation was modified to accommodate his objective. In this context, the legislative authority remains with the executive, as specified in Articles 5 and 21. However, the right of MPs to propose any bill was complicated by the requirement that at least 25 members of Parliament from various party alliances sign on as supporters of the proposed bill, as specified in Article 134 of Parliament's 1982/1983 regulation. This requirement stems from a previous Parliament's regulation from 1971/1972, specifically Article 99, which required MPs to sign a letter of support from a minimum of 30 other members. As a result, the right of MPs to introduce legislation was rarely exercised. As a result, only 12 bills proposed by Parliament during Suharto's administration were approved.[693] However, Soemarsono refuted this assertion.[694] She stated that the MPs' right to propose legislation was never exercised during the Sukarno and Suharto regimes, owing to the President's decisive intervention. Accordingly, Mahfud MD asserts that the legislation developed tends to be authoritarian.[695] Parliament was not fully empowered to propose a draft law, and MPs were only authorized to vote on government-sponsored legislation. If a member of Parliament objects to the government's proposal, he will be recalled and replaced by another Suharto-approved candidate.[696] Suharto promulgated Act No. 10 of 1966, authorizing the recall of members of Parliament. The legalization of recall for parliament members was ostensibly intended to purge the legislature of Sukarno's loyalists. On the other hand, Suharto used to recall to force the resignation of every member of Parliament who opposed his policies as the system developed.[697]

Suharto enacted Act No. 15 of 1969 on General Elections and Act No. 16 of 1969 on the Organization and Positioning of the People's Consultative Assembly, national and

[693] Soehino, *Hukum Tata Negara: Teknik Perundang-Undangan*, Third (Yogyakarta: Liberty, 2003).
[694] Maleha Soemarsono, "Penerapan Hak Inisiatif Dewan Perwakilan Rakyat Dalam Praktek Penyelenggaraan Negera Indonesia," *Jurnal Hukum Dan Pembangunan* 26, no. 5 (1996): 408–19.
[695] MD, *Politik Hukum Di Indonesia*.
[696] MD, *Hukum Dan Pilar-Pilar Demokrasi*.
[697] Nike K Rumokoy, "Kajian Yuridis Tentang Hak Recall Partai Politikdalam Sistem Ketatanegaraan Indonesia," *Jurnal Hukum Unsrat* 20, no. 1 (2012): Blass, Eddie, 'The Rise and Rise of the Corporate.

local legislatures, to bolster his bastion of power in Parliament. Suharto retains sole authority under these two Acts to appoint one-third of the Peoples' Consultative Assembly members and one-fifth of the members of Parliament. This 'exclusive right' exemplified the undemocratic legislative trend, allowing easy control of each legislative agenda.[698] Indeed, there were two non-government parties, the Development Unity Party (*'Partai Persatuan Pembangunan* or PPP') and the Indonesian Democratic Party (*'Partai Demokrasi Indonesia* or PDI'), but their parliamentary representation was limited. As a result, they found it challenging to secure a debate in the parliament body on a specific government-drafted bill. However, such legislation was more efficient in terms of time and cost. The entire legislative process took place in the office, with an unbalanced debate between parliament members and no public discussion. The government determined the substance of the legislation. As a result, the legislative outcome was anti-democratic.[699]

c. The Democratic Era of Legislation: Doubts about Its Quality

Suharto's harsh regime was ousted in May 1998 by a popular uprising. This period is known as the reform era ('*era reformasi*').[700] The amendment of the 1945 Constitution was one of the reform movement's primary objectives. Restoring Parliament's legislative authority was one of the primary issues on the 1945 Constitution amendment's agenda. Additionally, Indonesian legislation gained a democratic character under the amended 1945 Constitution, as evidenced by the return of legislative authority to Parliament. In 2004, a law governing the establishment of laws was revised several times, the most recent being in 2022. However, because this Act recognizes public participation in the law-making process, it significantly increases the time and cost of the legislation because parliament members must travel across Indonesia's vast territory from west to east. Nevertheless, although Indonesian legislation is expanding, the quality remains low.

According to Figure 8, from Indonesia's independence on August 17, 1945, until the end of 2020, 43,934 laws and regulations have been enacted. Acts, Government Regulations ('PP') in Place of Laws ('Pereppu'), Presidential Regulations ('Perpres'), Ministerial Regulations ('Permen'), Non-Ministerial Government Institutions Regulations and Regional

[698] MD, *Hukum Dan Pilar-Pilar Demokrasi*.
[699] MD, *Politik Hukum Di Indonesia*.
[700] Diani et.al Sadiawati, *Kajian Reformasi Regulasi Di Indonesia: Pokok Permasalahan Dan Strategi Penanganannya*, *Kementerian PPN/Bappenas*, first (Jakarta: Yayasan Studi Hukum dan Kebijakan Indonesia (YSHK), 2019).

Regulations (Provincial and Regency / City 'Perda') are the types of laws and regulations referred. Ministerial Regulations occupy the most space among these laws and regulations, accounting for 15,350. 182 Government Regulations in Place of Law, on the other hand, are the least promulgated type of regulation.

Source: peraturan.go.id, 2020.

Figure 8. Number of Indonesian Regulations (Period of 1945-2020)

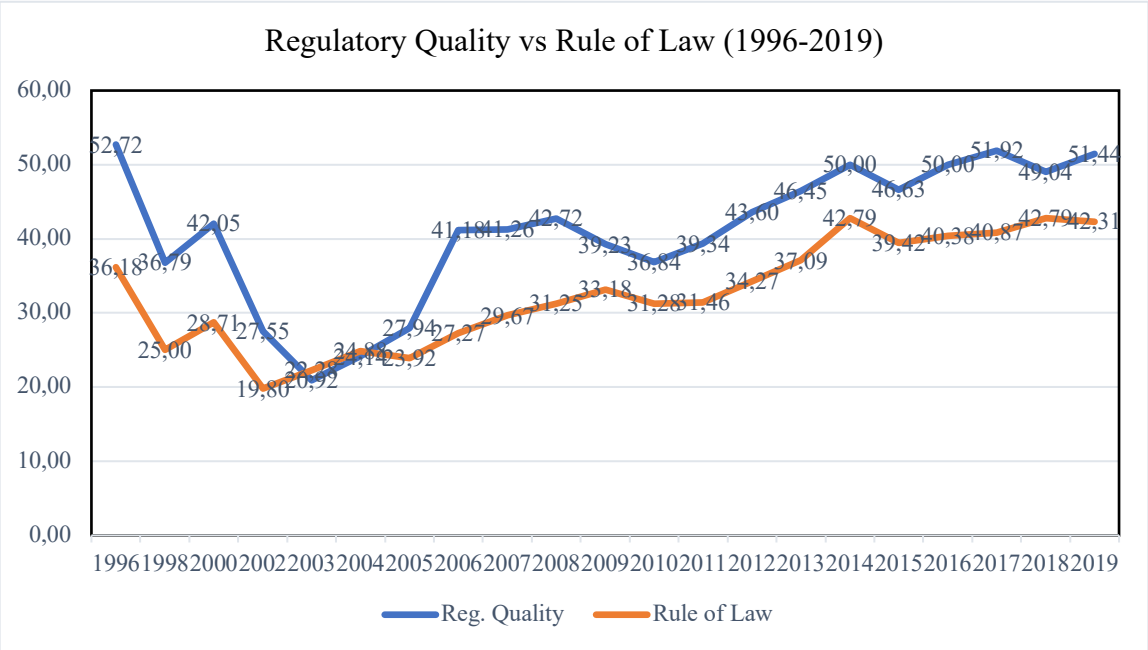
Abbreviation:

UU [Undang-Undang -*Act*]; Pereppu [Peraturan Pemerintah Pengganti Undang-Undang-*Government Regulation in Lieu of Law*]; PP [Peraturan Pemerintah-*Government Regulation*]; Perpres [Peraturan Presiden-*Presidential Regulation*]; Permen [Peraturan Menteri-*Ministerial Regulation*]; PLNK [Peraturan Lembaga Negara Non Kementerian-*Non-Ministerial State Institution Regulations*]; Perda [Peraturan Daerah-*Local Government Regulation*].

Many existing regulations in Indonesia exhibit hyper-regulation or regulatory obesity, which has consequences for their quality.[701] The Organization for Economic Co-operation and Development (OECD) has expressed concern about the quality of Indonesian legislation. Beginning in 2012, the OECD conducted a study on the quality of Indonesian law. According to the findings of the OECD study, Indonesian legislation is of low quality and impacts people's economic and social lives.[702] According to Figure 9, the OECD study confirmed the Worldwide Government Index (2020) that the quality of Indonesian regulations has not significantly improved between 1996 and 2019. It has even dropped to

[701] Ibnu Sina Chandranegara, "Bentuk-Bentuk Perampingan Dan Harmonisasi Regulasi," *Jurnal Hukum Ius Quia Iustum* 26, no. 3 (2019): 435–57, https://doi.org/10.20885/iustum.vol26.iss3.art1.
[702] OECD, *OECD Reviews of Regulatory Reform Indonesia*, 2012.

51.92 per cent, the lowest score in the range. It is nearly identical to the score at the end of Suharto's presidency. The low quality of Indonesian regulations is mirrored by low community compliance with the rule of law, with the highest score of 42.79 per cent.



Source: Worldwide Government Index (2020).

Figure 9. Regulatory Quality Vs. Rule of Law (1996-2019)

Diani Sadiawati et al[703]. insisted that Indonesia's regulatory difficulties indicate that specific provisions of Indonesian regulations conflict with other provisions. For instance, consider the inconsistency of two regulations on the same subject found in Agrarian Law and Investment Law. According to Article 29, paragraph (2) and (3) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, the maximum duration of Land Use for Business Rights (HGU) is 60 years. It is less than what is specified in Article 22 paragraph (1) of the letter of law No. 25 of 2007 concerning Investment granted for a maximum of 95 years. Additionally, Article 35, paragraphs (1) and (2) of the Agrarian Law limit the duration of Building Use Rights (HGB) to a maximum of 50 years. However, under the Investment Law's Article 22, paragraph (1) letter b, Building Use Rights (HGB) may be granted for a maximum of 80 years.

[703] Sadiawati, *Kajian Reformasi Regulasi Di Indonesia: Pokok Permasalahan Dan Strategi Penanganannya*.

Second, the regulation's content is inconsistent with related regulations, resulting in uncertainty about implementation.[704] For instance, the definition of Investment in Article 1(1) of Law No. 25 of 2007 on Investment includes all investment activities conducted by domestic and foreign investors. The definition of Investment in Article 1(1) of Government Regulation (PP) No. 1 of 2007 and Government Regulation No. 62 of 2008 are inconsistent with each other. Investment under Government Regulation No. 62 of 2008 is defined as Investment in tangible fixed assets, including land used for primary business activities, for both new Investment and expansion of existing businesses.

Third, the Act allows for multiple interpretations, as evidenced by the ambiguous object and subject being regulated, resulting in ambiguous language formulas. For example, article 14 of Law Number 25 of the Year 2007 Concerning Investment states that "every investor is entitled to the certainty of rights, law, and protection." Meanwhile, letter (a) of Article 14 states that certainty of rights guarantees investors will be granted as long as some prescribed obligations are fulfilled. It demonstrates that the article's formulation and explanation do not answer "any right," implying that multiple interpretations are possible. Fourth, it is not operational, but the regulation remains in effect, or the Act lacks an implementing or technical regulation.

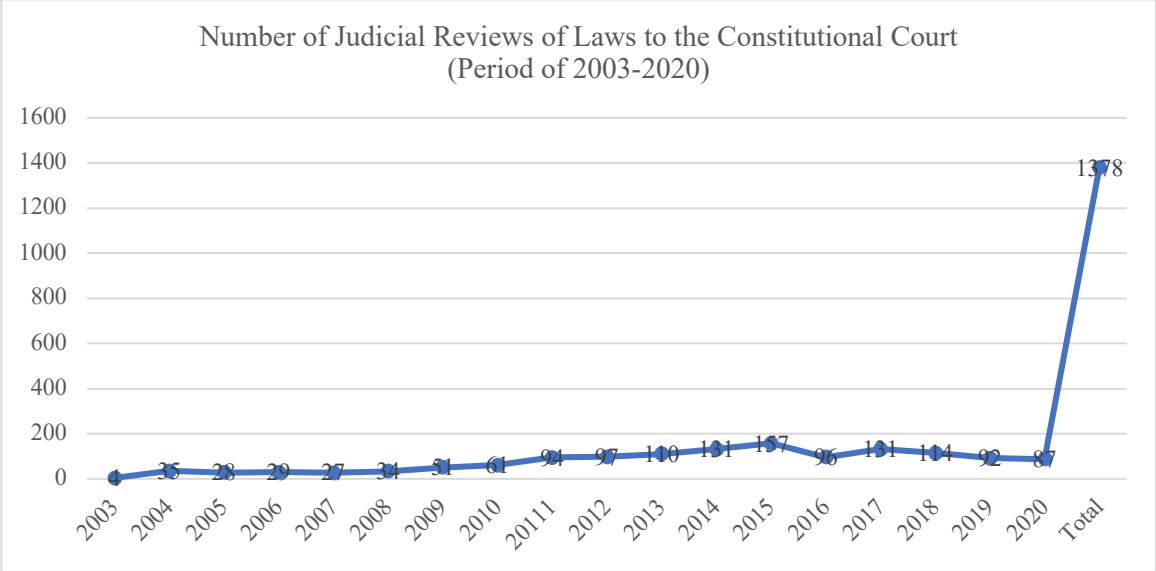
Apart from a few Acts, this indicates that a democratic legislative process occurred, but the contents of the Acts are problematic. As a result, Indonesia's Burden of Government Regulation Index was ranked third in 2017 among ASEAN's neighbouring countries, such as Singapore, Malaysia, Thailand, and the Philippines, according to the World Economic Forum's Global Competitiveness Index (WEFGCI). Between 2007 and 2017, the WEFGCI reports that the growth rate of government regulation in Indonesia averaged 0.64 per cent. The Philippines had the highest burden of government regulation growth of the four neighbouring countries. Thailand placed bottom, with an average increase of -0.5% in the government regulatory score burden index over the same time.

The data from World Economic Forum Global Competitiveness Index, 2017 demonstrate that Indonesian regulations burden the government bureaucracy, resulting in decreased government performance in the economic sector and ease of business due to lengthy and protracted licensing.[705] The United States of America faced a similar situation

[704] Hossein Jalilian, Colin Kirkpatrick, and David Parker, "The Impact of Regulation on Economic Growth in Developing Countries: A Cross-Country Analysis," *World Development* 35, no. 1 (2007): 87–103, https://doi.org/10.1016/j.worlddev.2006.09.005.
[705] Jalilian, Kirkpatrick, and Parker.

in 2005 when high regulatory burdens caused the country's competitiveness index to decline relative to other OECD countries.[706]

The large number of laws referred to the Constitutional Court for judicial review is another indication of the poor quality of Indonesian legislation. From 2003 to 2020, as shown in Figure 10, the Constitutional Court heard 1378 law judicial review cases involving alleged violations of the Constitution from 1945. The highest number of judicial review lawsuits was filed in 2015, with 157, while the lowest number was filed in 2003. Specific laws are subject to judicial review because their formal procedures are opaque, and the substance of their regulations is deemed to violate the Constitution.



Source: https://mkri.id/index.php?page=web.RekapPUU&menu=4

Figure 10. Judicial Reviews of Laws to the Constitutional Court (Period of 2003-2020)

The government has attempted two ways to improve the quality of Indonesian legislation, both substantive and institutional. The government improves the substance of regulations by using the Omnibus Lawmethod to synchronize the content of regulations on a particular subject[707]. It is not excessively regulated and does not conflict with one another. Meanwhile, legislative management is being improved following the OECD recommendation by establishing a body that explicitly synchronizes and harmonizes laws and regulations.[708] This institutional strengthening effort is consistent with Law No. 15 of

[706] Mercatus Center, "The Growing Regulatory Burden: Is It Harming U.S. Competitiveness?" 2011.
[707] Saru Arifin, "Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation," *Theory and Practice of Legislation* 0, no. 3 (2021): 1–18, https://doi.org/10.1080/20508840.2021.1942374.
[708] OECD, *OECD Reviews of Regulatory Reform Indonesia*.

2019, amending Law No. 12 of 2011 on the Formation of Laws. This law expressly requires the government to establish a single agency to manage regulations, dubbed "ministries or agencies that carry out government affairs in the field of law and regulation formation." Article 99A of the 2019 Law stipulates that the Ministry of Law Office has the authority to draft legislation without an official legislative drafting body.

The Ministry of Law and Human Rights also improves legislative governance by creating an online database of statutes and regulations on the peraturan.go.id website. This effort is the first step toward compiling a database of regulatory postures to streamline regulations in specific fields and ensure legal certainty. Simplifying regulations begins with an inventory, followed by identification, analysis, and recommendations. This procedure will determine whether regulation can be maintained harmonized or repealed immediately by the Ministry of Law and Human Rights recommendation. Due to many regulations, their simplification must be mass and rapid, necessitating the formulation of simple criteria for carrying out these stages of simplification.[709]

Concerning this legislative administration, two Indonesian migrant worker Acts, the Act of 2004 and the Act of 2018, had been enacted from the beginning in accordance with this framework. In addition, democratic elements were incorporated into the formulation of the 2018 Act, which includes the participation of academics, NGOs, and stakeholders in the drafting process. Moreover, throughout the legislative drafting process, the drafter team incorporated certain sections of the Philippine migrant worker law and enriched the draft with international migrant worker laws[710].

5.4.2. Public Participation

Apart from being a means of information and transparency, public participation also strengthens the law.[711] With this low public participation, consequently, the significance of the intermediary system of constitutional democracy, the importance of exchanging opinions, the consensual nature of democracy, and the material conditions of quality

[709] Chandranegara, "Bentuk-Bentuk Perampingan Dan Harmonisasi Regulasi."
[710] Juwana et al., "Naskah Akademik RUU Tentang Perubahan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia Di Luar Negeri."
[711] Uhlmann, Felix; Konrath, "Participation."

legislation decreases[712]. According to Uhlmann and Konrath[713], participation enhances the legislative process's transparency and helps (slightly) prevent corruption through interest groups. Accordingly, public participation in the formation of laws has two essential elements: process and substance. In the aspect of the process, forming laws must be carried out transparently so that the community can participate by providing input in regulating a problem in the nation and the state's life. Meanwhile, in substance, it emphasizes that the material to be regulated must be aimed at the broader community's interests to produce a democratic law and has a responsive or populist character.[714]

Additionally, participation, transparency, and democracy in forming laws constitute an integral and inseparable unity in a democratic country. Apart from that, from the sociological point of view of the law, forming laws that have been carried out in a participatory, transparent, and democratic manner, it is hoped that the public can accept the resulting laws with full awareness. Even if viewed from a political point of view, public participation is not binding. In the end, the decision remains in the hands of the legislative body, so that sometimes community participation is insignificant. In a broader spectrum, a country that adopts a democratic system in issuing legal policies cannot be determined and applied unilaterally by and/or only for the authorities' interests by opposing democratic principles. The law does not intend only to guarantee a few people's interests in power but to guarantee the interests of justice for all without exception. Thus, the rule of law developed was not an absolute *Rechtstaat*, but a democratic rule of law. In other words, every rule of law that is nomocratic in nature must guarantee the existence of democracy, just as in every democratic country, the administration must be guaranteed based on the law. Thus, the Indonesian's development will not be trapped in being just rule-driven, but still mission-driven, but mission-driven, based on rules.[715]

Regardless of whether public participation in the formation of laws is placed strategically or not by the legislative body, as previously explained, public participation has an essential meaning in strengthening the quality of the substance of the laws made by the legislative body. Moh. Mahfud MD[716]shows that the presence or absence of public

[712] Drinóczi, "Concept of Quality in Legislation-Revisited: Matter of Perspective and a General Overview"; Elena Griglio, "Parliamentary Oversight under the Covid-19 Emergency: Striving against Executive Dominance," *Theory and Practice of Legislation* 8, no. 1–2 (2020): 49–70, https://doi.org/10.1080/20508840.2020.1789935.
[713] Uhlmann, Felix; Konrath, "Participation."*at* 77.
[714] Rahardjo, "Penyusunan Perundang-Undangan Yang Demokratis."
[715] Jimly Assidiqie, *Perihal Undang-Undang*, ed. Jimly Assidiqie, first (Jakarta: Rajawali Press, 2011).
[716] MD, *Demokrasi Dan Konstitusi Di Indonesia*.

participation will affect the legislature's products' characteristics. The basic assumption can explain this causal relationship that public law is related to power relations. A democratic political configuration (by opening spaces for public participation) will give birth to responsive laws. In contrast, the authoritarian political configuration will give birth to orthodox laws.

Mahfud MD's[717]synthesis is increasingly finding its relevance in the amendments of the 1945 Constitution through Article 24 paragraph (2), the third amendment created the Constitutional Court, which can examine the law against the 1945 Constitution. In this regard, public participation is increasingly meaningful. People whose interests are ignored or even harmed by this law can file a review of the law.[718] The Constitutional Court considers that public participation is part of the constitutional rights of citizens. Public participation in the formulation of regulations is a manifestation of society's role in a democratic country, whose government is based on the people as the primary goal of political life, both in enacted public policies and government objectives.[719]

The Indonesian democracy that was successfully built is intended to better the quality of political affairs and the legislative system at the national and local levels. The characteristic of democracy embedded in the legislative practice lies in Article 96 of Law Number 12 of 2011 concerning the Formation of Law. The provision in this article states: "the public has the right to provide input orally and in writing in the Formation of Law." Furthermore, this provision remained in the amendment to this law, which was enacted in 2019. Even democracy in the legislation also starts from preparing the National Legislation Program, which requires massive socialization to get input from the broader community on the legislative plan. Accordingly, public discourse and debate should be carried out through various forms of participation, such as public hearings, seminars, or hearings with representatives of community groups before a law is passed,[720] not after as is currently being done by the government, which is busy explaining and clarifying to the public about the omnibus law's substance and urgency. The public will continue to read it as the government's defensive effort, not socialization in the context of legislative democracy. The socialization targeted mostly the layman who in the legislative process does not have 'time' or are not

[717] MD, *Politik Hukum Di Indonesia*.
[718] Assidiqie, *Perihal Undang-Undang*.
[719] MD, *Hukum Dan Pilar-Pilar Demokrasi*.
[720] Uhlmann, Felix; Konrath, "Participation."

'competent' to voice their aspirations in the draft omnibus law or law-making process[721]. Therefore, the more material rules included in an omnibus law require a longer time to give enough time for doing all these democratic elements included in the legislative process. Otherwise, the law will less legitimate from the public, as what VCRAC Crabbe[722]stated, that:

> "Where laws are passed as a matter of formality with little or no debate, the chances are that the laws will be largely unknown to the ultimate audience. This, in general, has a negative impact on the efficacy of the laws themselves as well as on the efficiency of the government. The attainment of goals becomes difficult by reason of the absence of co-operation between the government and the governed".

Furthermore, Crabbe[723]said that "well-measured laws will be of little effect if resisted, directly or indirectly, by those for whom they are made. Passive obedience cannot lead to good legislative maximum effect. In such circumstances therefore legislation is not a *sine qua non* for government. It only serves as a catalyst or midwife. Laws are passed but with little or no effect".

This theoretical analysis demonstrates that the quality of legislation is determined not only by its substance, but also by its legislative process. Public participation is crucial in this circumstance. Denying public participation in lawmaking, on the other hand, would undermine parliamentary democracy, which would have repercussions for the quality of the resulting legislation.

5.6. Concluding Remarks

This chapter has elaborated on the quality of law and its approach to improve the quality of Indonesian migrant workers, based on the theory of legislation. The objective (efficacy) of the Indonesian legislation on migrant workers is to safeguard the migrant workers' rights during the entire migration process. To accomplish this objective, Indonesia enacted the migrant worker Act in 2004 and subsequently modified it in 2017. The continual violation of the human rights of the country's migrant workers while they are working abroad and, in some instances, when they are returning home demonstrates that the most recent legislation has certain faults. Nonetheless, the substance of the existing law (Act of 2017) is

[721] Uhlmann, Felix; Konrath.
[722] Vcrac Crabbe, *Legislative Drafting*, *Meta: Journal Des Traducteurs*, Second, vol. 25 (London: Cavendish Publishing Limited, 1994).
[723] Crabbe. *at* 4.

strengthened, as indicated by the government's involvement in migration governance, which was previously dominated by private entities.

In general, however, the government's involvement in migration governance occurred mostly during the initial stages of migration in the origin country. In contrast, the government's engagement in protecting migrant workers overseas has remained unchanged until the present day. In this regard, the 2017 Act does not regulate the government's role to ensure that migrant workers' rights are adequately protected. Hence, the international norm of migrant worker legislation supplied by the ILO was insufficiently elaborated in the current rule. In contrast, the legislation controlling migrant workers in Nepal, Pakistan, and the Philippines governs migration in all its stages, including the institution in charge, the well-being fund, and legal assistance for migrant employees. Thus, adoption of some provisions of these nations' migrant workers legislation as well as regional agreements such as EU and ASEAN are critical to enhancing the substance quality of Indonesian migrant workers. Relevant to use are the technical approaches of legal development, such as legal transplant and vernacular.

In the meantime, the ratification of ILO conventions should be continued, particularly regarding the technical conventions whose ratification rate is still low. In addition to improving the quality of the legislation's substance by incorporating foreign legislation, the lawmaking process is essential for improving the quality of the legislation, particularly as it pertains to migrant workers, and of the legislation in general. Important to examine in this context is the public's participation. Legislation in a democratic nation should involve public engagement in a natural, rather than formal, manner. Because of this, the acceptance or rejection of the resulting legislation by those impacted by the legislation will be influenced.

CHAPTER 6

Strengthening Indonesia's Migrant Worker Laws: Concluding Remarks

This concluding chapter provides a general summary of some legal issues that were previously explored in greater depth. It will answer the fundamental research question: *'Why is Indonesian migrant worker legislation insufficient to safeguard the rights of migrant workers?'* Through this main question, the primary objective of this study has been attained. The objective is to propose more robust legislation on Indonesia's migrant workers based on multiple international, regional, and country-specific migrant worker legislation that is more robust in protecting the migrant worker. This primary question is enlarged to encompass the following legal issues, which will help us choose the most effective method for enhancing the quality of Indonesian legislation governing migrant workers. These legal questions are:

1. Is the feature of colonial migrant worker legislation influencing the character of the substance of post-independence Indonesian migrant worker legislation?
2. How does the substance of the existing Indonesian legislation on migrant workers affect the protection of their human rights?
3. How might incorporating various foreign migrant worker legislation contribute to increasing the quality of Indonesian migrant worker legislation?

6.1. Why is Indonesian migrant worker legislation insufficient to safeguard the rights of migrant workers?

6.1.1. Is the feature of colonial migrant worker legislation influencing the character of the substance of post-independence Indonesian migrant worker legislation?

This exhaustive analysis of the colonial and post-colonial origins of Indonesia's legislation regarding migrant workers reveals that the preservation of migrant workers' rights was not the major objective. In contrast, the major issue mentioned in migrant worker legislation is the government's aim in expelling migrant workers. In the colonial period, two bonded laws known as "coolie law" under the Dutch colonial government and "romusha law" under the Japanese emperor had a significant impact on the present Indonesian migrant worker legislation. Both 'migrant workers legislation' viewed migrant workers as a strategic tool to further state interests in the plantation industry, railway construction, and military

services, primarily in the Dutch and Japanese colonialists' occupied territories. Coolie and romusha were ascribed to the indigenous people of East Indies (now Indonesia) and were viewed as employees who were hired for unskilled or dirty labour without regard for their rights or appropriate working conditions. As a result, they were viewed as slaves whose rights were contingent on the favour of their master.

However, *coolie* as the Dutch colonial legal term has a greater impact on Indonesian labour practises in the post-colonial era than *romusha* under Japanese labour law. Coolie was officially acknowledged in the Indonesian Big Dictionary *('Kamus Besar Bahasa Indonesia'*) as the 'lowest job' that relates to unskilled and unclean work, or the type of job that does not provide equal rights to the employee and the employer. Since more than half a century of Indonesian independence, this word has been widely used, particularly under Sukarno and Suharto's Old and New Orders.

As noted previously, the purpose of both coolie and romusha law was to grab the colonial government's economic and political interest. The enforcement of the coolie rule, on the other hand, exemplified the economic objective. The Dutch government recruited many indigenous Labourers from villages, with the cooperation of the Village head or '*Lurah*' and the '*Manduur*' (foreman) and dispatched them to work in plantation industries both domestically and in Dutch-occupied territory abroad, such as Suriname. The Dutch mobilised a huge number of Labourers because of an investment deal with foreign investors who requested Labourers for their plantation enterprises. The implementation of the employment contract between "coolie" or Labourers and businesses was, in essence, a private contract; but, in its implementation, a penalty was imposed on those who violated the agreement. This type of contract provision was subsequently known as the indentured contract or the colonialist method to circumvent the ban on slavery.

In the post-colonial era, coolie was utilised as a method to establish economic dominance, particularly by the administration of Suharto. During his administration, the law governing migrant workers was never enacted in the form of a statute, but rather through technical policies such as the President Regulation or President Instruction, as well as ministerial rules. The objective of these instrument policies was to accomplish the government's objective, which was systematically managed utilising the five-year development plan ('*Rencana Pembangunan Lima Tahun*-Repelita'). State remittances and poverty reduction were two of the government's primary objectives in mobilising the vast Indonesian migrant labour force in the Middle East. Suharto, who inherited the debt and

severe economic problems from Sukarno, considered sending migrant workers abroad to earn remittances as a major economic potential for the country's income. In addition, this remittance aids in alleviating poverty throughout the country's villages. Consequently, the legal term used to manage migrant workers was "migrant worker mobilisation" (*'pengerahan tenaga kerja Indonesia'*), which literally translates to "mass deployment of migrant Labourers." In addition, to recognise the remittance services provided by migrant workers, the government refers to them as foreign exchange heroes (‘*Pahlawan devisa’*).

After Suharto's ouster in 1998, however, subsequent presidents adopted his stance on migrant workers. NGOs and academics encouraged the government to enact legislation to protect the human rights of migrant workers in response to the harsh conditions migrant workers face in other countries. In 2004, in response to their demand, the Indonesian Parliament enacted the first Migrant Worker Act, which was later revised in 2017. The part that follows will summarise how and to what extent this migrant worker Act strengthens the protection of migrant worker rights.

6.1.2. How does existing Indonesian legislation on migrant workers fall short of protecting the human rights of migrant workers?

The law governing migrant workers in Indonesia shifted from coolies and romusha during the Dutch and Japanese colonial periods to a remittance regime for more than half a century, and finally to laws based on human rights in recent years. Prior to the most current migrant worker legislation (2004 and 2017), the primary objective of the legislation was remittance, not the protection of migrant workers' rights. As a result, the legal instruments employed to regulate migrant labour mobility were technical laws produced by government bodies. The legal status of migrant employees has been recast as a 2004 Act that was updated in 2017. Act No. 39 of 2004 was Indonesia's first migrant worker law, signifying a modest increase in the protection of migrant workers' rights, which had been governed by technical regulations since the country's independence in 1945. However, the Act of 2004 does not adequately guarantee the rights of migrant workers on a few significant fronts.

To begin with, most of the provisions in the 2004 Act concerned placement, while only eight percent dealt with the protection of migrant workers. However, the state has a weaker responsibility than private companies that have a part in the placement of Indonesian migrant workers for employee protection overseas. The protection-related articles, beginning with Article 77, have a broad reach and need the implementation of technical law.

Consequently, inadequate protection for Indonesian migrant workers constitutes the second concern. Since at least seven institutions are responsible for managing Indonesian migrant labour, another shortcoming of the Act of 2004 is that the institutions that handle migrant labour lack a clear understanding of their respective tasks and responsibilities.

The difficulty of locating Indonesian migrant workers is the fourth concern. Additionally, issues Regarding Oversight Article 92 of Law No. 39 of 2004 sets a vague and overly expansive oversight legislation. Sixth, administrative sanctions[724] are less harsh; individuals who violate them within the Indonesian Manpower Service Company, including government officials, should be subject to penalties and activity limits. In addition, criminal provisions focus primarily on placement difficulties[725], whereas those relating to negligence in protection responsibilities (other than insurance) do not. Regarding administrative and criminal violations affecting the management of migrant employees, there is little legal enforcement. After a lengthy debate between the government, legislators, NGOs, and academics, the Act of 2004 was replaced in 2017 with Act No. 18.

In overall, Act No. 18 of 2017 on the Protection of Indonesian Migrant Workers is vastly superior to the prior Act of 2004. In addition, it was evolved democratically through participation of the public in academic study, legal drafting, and hearings. Substantively, the 2017 Act signified a sea change in the management of migrant workers by placing government agencies at the forefront of aiding migrant workers' interests throughout the migration process, from pre-departure to placement in destination countries' and return to Indonesia. In addition, the Act of 2017 protects the family members of migrant workers, based on the Migrant Worker Convention (MWC) that Indonesia adopted in 2012.

Nonetheless, this research uncovered some faults in Act 2017's provisions that are essential for judging whether the law's execution was effective or unsuccessful. The key evidence for this thesis is the absence of provisions in present legislation that address these crucial issues that have a substantial influence on the protection of the rights of migrant workers. First, the government's policy for migrant worker placement did not take destination countries into account, principally due to a lack of protection for the rights of migrant workers. The criteria for receiving nations are established in a discretionary standard, which encourages candidates for migrant worker visas to select a country designated in the 2017 Act. Ideally, the country destination criterion would be enshrined in

[724] Article 100.
[725] Articles 102-104.

law, and the government would be prevented from sending migrant workers to nations that do not meet Act 2017's requirements.

Second, the Indonesian government uses a Memorandum of Understanding (MoU) as an agreement instrument with its international counterpart, which is not legally binding on the foreign party. Consequently, countries that accept migrant labour cannot be held accountable for violations of the MoU. Thirdly, the government continues to send migrant workers to nations with no diplomatic ties to Indonesia. Consequently, the protection of migrant workers is much more difficult to achieve; on the other hand, the potential for violations of migrant workers' human rights on the job is much greater than for migrant workers in countries with diplomatic relations with Indonesia. As a result, migrant workers in these two countries face a significantly higher risk of human rights violations and a lack of protection under Indonesia's migrant labour laws.

A further problem of the Act of 2017 is that it provides insufficient protection for sailors, putting their human rights at danger, particularly on the lawless high seas. In addition, there is no mention of gender in the affirmative provisions of the Act of 2017, which largely assist women in domestic employment. In this instance, the Act of 2017 is less compatible with other pertinent legislation, such as the Act of 2007 Concerning the Prevention of Human Trafficking and the ILO Domestic Workers Convention of 2011. The government and legislature's dedication to domestic worker protection legislation is likewise waning, as indicated by the fact that the issue's legislative agenda has been unresolved since 2004.

Some faults in the Act of 2004 were remedied by the Act of 2017, although the human rights protection for migrant workers was not significantly strengthened by this legislation. As reported by national and international media, several human rights violations against Indonesian migrant workers remain unaddressed. Nonetheless, the administration of migrant workers has altered dramatically, most notably in their pre-departure, where the Act of 2017 stipulates a more muscular role for the government than the Act of 2004, which emphasised the dominance of private businesses. In accordance with the Act of 2017, the tasks, and responsibilities for managing migrant workers are delineated at both the national and local levels of government. Nevertheless, the protection framework for migrant workers in the host country remains unchanged under the Act of 2017. As a result, the mistreatment of migrant workers overseas has not been fully addressed.

As depicted in Figure 11, the development of Indonesian migrant workers legislation began with the Dutch coolie ordinance of 1880, which inflicted punitive sanctions on those who violated the law regarding both domestic Labourers and deployed Labourers in foreign countries (now known as migrant workers). During this time, the Dutch colonial government exploited Labourers for its economic interests, resulting in forced labour. Under Japan's romusha labour regime (1942-1945), compelled labour became more severe, resulting in slavery. Sukarno (1945-1967) abolished the 'coolie' system in the post-colonial government to preserve the nation's dignity following a protracted war for state independence, thereby precipitating the country's economic collapse. Suharto's (1967-1998) economic development programme significantly relied on the remittances of migrant workers, without providing adequate protection for their human rights, thereby harming the human rights of migrant workers. The first legislation on migrant Labourers was enacted in 2004, with a focus on placement management and providing migrant employees with minimal protection of their human rights. Remittances from migrant Labourers remain an indication of the effectiveness of the legislation. Since 2017, the second migrant workers act has prioritised the protection of migrant workers' fundamental rights. As a result of flaws in the 2017 Act, the necessary protective instruments remain unchanged.

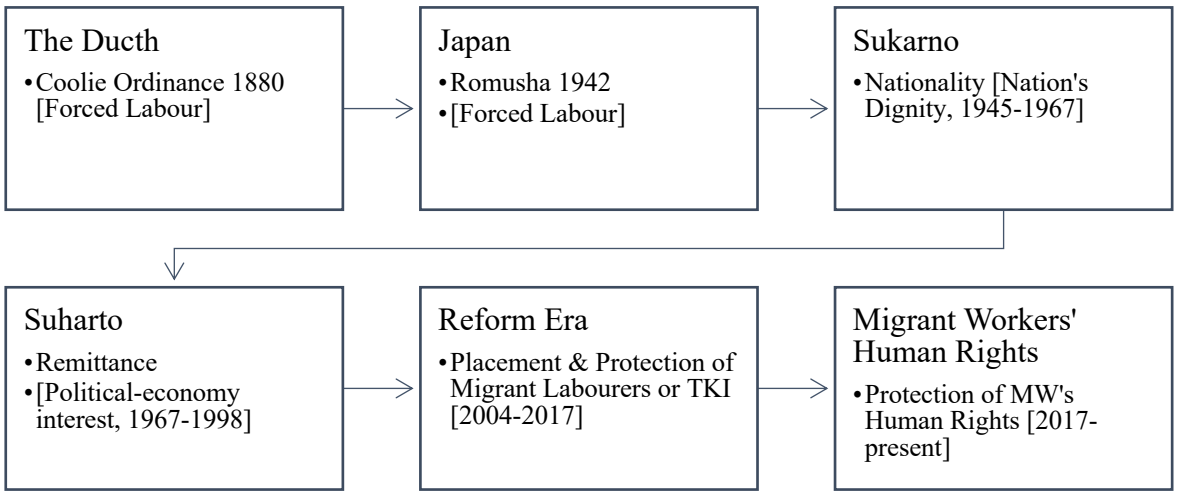


Figure 11 The Evolution of the Indonesia's Migrant Workers Legislation

A review of comparative migrant worker legislation in international, regional, and selected individual countries indicates that future Indonesian migrant worker legislation is likely to include the relevant substance laws depicted, ranging from the philosophical basis

to critical substances such as deployment, institutions in charge, social security, legal aid, migrant welfare fund, oversights, and domestic workers.

6.1.3. How might incorporating various foreign migrant worker legislation contribute to increasing the quality of Indonesian migrant worker legislation?

As described in Chapter 5, there is no single criterion for assessing the quality of legislation; however, the scholars' ideas regarding the quality of legislation provide a clear guidance for evaluating the quality of Indonesia's migrant worker legislation in terms of its content and structure. Significantly, the quality of migrant worker legislation will always be concerned with the degree to which legislation corresponds to universally accepted norms of legislative excellence. These standards are not universally applicable. Their nature and structure vary according on the legal system to which they belong. These provisions can be constitutional, legal, political, social, or administrative. In lieu of the appendix to Act No. 12 of 211, which defines technical requirements for creating Indonesian laws and regulations, the metrics proposed by earlier scholars will be utilised to evaluate the quality of Indonesia's legislation. Therefore, even though Indonesia retains entire sovereignty over how and to what extent it governs migrant workers, it is essential to evaluate the adequacy of its present migrant worker legislation.

Based on a comprehensive analysis of the substance of the provisions in both the Act of 2004 and the Act of 2017, these migrant worker laws did not effectively protect the human rights of migrant workers, particularly when they were working in the host country. In general, the 2017 Act focuses exclusively on internal management of migrant worker difficulties. Although the business of migrant workers is not an exclusively Indonesian concern, it connects with the interests of regional and worldwide countries. The indirect element that contributes to the low quality of Indonesian migrant workers is the ILO-requested minimum standard of the protection provisions in that Act. The low quality of Indonesian migrant workers was caused by a lack of collecting raw materials as specified in the bill during the migrant worker Act's legislative process. However, as stated in the academic draught, the Act of 2017 provisions have taken some ILO provisions and the Philippine migrant worker Act. However, the Act of 2017 omits some critical provisions that have a significant impact on migrant workers' human rights protection, such as legal aid, a special agency to protect migrant workers' rights in a foreign country, the host country's requirements, and the placement legal agreement, as well as insurance.

Adoption of several international migrant worker provisions and legislation from a particular country that provides greater protection for migrant workers will considerably enhance the quality of Indonesian migrant worker legislation. ILO has established various conventions for the protection of migrant workers' rights, the most recent being the Domestic Workers Convention, which establishes defined criteria for sending and receiving countries of migrant workers. Individual nations such as the Philippines, Nepal, and Pakistan have robust migrant worker regulations that Indonesia would do well to mimic. The fundamental purpose of these nations' migrant worker laws is to protect the human rights of their migrant employees. State, on the other hand, provides services and protection for migrant workers, while remittances are only the result of the movement of migrant workers.

Based on a review of comparative migrant worker legislation in international, regional, and selected individual countries, several pertinent substance laws that would improve the quality of the Indonesian migrant worker legislation are likely to be incorporated into future Indonesian legislation. These include deployment, institutions in charge, social security, legal aid, migrant welfare fund, oversights, and domestic workers. In addition, one of the most important provisions is that the legal agreement covering the deployment of migrant workers with the receiving country must be changed from a memorandum of understanding to a legally enforceable statute.

6.2. Step to enhance the quality of Indonesia's migrant worker Legislation

Theoretically, Indonesia has two basic possibilities for incorporating international migrant laws into domestic law: formal ratification or informal legal transplantation or vernacularization. The first strategy is predicated on the international treaty procedure defined by the 1969 Vienna Convention on the Law of Treaties (VCLT 1969). In contrast, the second strategy is predicated on the legal transplant principle. In accordance with Article 9 of the Act of 2009 Concerning International Agreement, the formal ratification of international law in Indonesia relied on two legal bases: a parliamentary act or a presidential decree. Ratification legal instruments differ based on several parameters. Article 10 of the 2009 Law states that international agreements are ratified by law when they pertain to: a. political, peace, defence, and state security issues; b. change of territory or determination of the boundaries of the Republic of Indonesia; c. sovereignty or sovereign rights of the state; d. human rights and the environment; e. establishment of new legal rules; f. foreign loans and/or grants. In contrast, the ratification of an international agreement whose content does

not include the content specified in Article 10 is accomplished by presidential decree. As the substance of ILO agreements pertaining to migratory workers is close to the conditions outlined in Article 10 of Act 2009, ratification by an Act is consequently required. In the meantime, the President's Decree approved the bilateral agreement on migrant labour placement.

In view of the uncertain Indonesian position on international law, however, scholars suggest that Indonesia should reinforce its position in constitutional law regarding the recognition of international treaties. Regardless of whether Indonesia adopts monism with the supremacy of international law, monism with the primacy of national law, or international law dualism, this explanation will provide legal certainty about the conduct of any international agreements approved in Indonesia. Therefore, this does not result in unending polemics and arguments. In addition, a tough attitude will drive the government to negotiate better and more careful international agreements in response to every international pact it enters. Despite this ambiguity, Article 26 of the Vienna Convention on the Law of Treaties of 1969 requires Indonesia to assume that all approved international law binds the state in accordance with the Pacta Sunt Servanda concept.

In the meantime, with respect to the improvement of the legislative process, the parliament should view public engagement as a crucial component of the democratic legislation mandated by the 1945 Constitution and the 2011 Law and Regulations Act. Citizen participation in the legislative process serves to strengthen the law, in addition to providing information and enhancing accountability. In contrast, the low degree of public participation, the value of the liberal democracy's intermediary structure, the significance of sharing perspectives, the consensual character of democracy, and the material prerequisites for quality legislation all decline. Therefore, public participation improves the legislative process's openness and (to a certain extent) helps to prevent corruption by interest groups.

Citizen interest in the legislative process consists of two essential components: method and content. In this sense, the process of enacting legislation must be transparent, allowing the community to participate by submitting ideas for fixing a problem in the nation's and state's existence. To develop a democratic law that is sensitive or populist in nature, public participation in the legislation's substance requires that the controlled content be geared toward the interests of the greater community. Furthermore, in a democratic nation, participation, transparency, and democracy are intrinsically related to the formulation of legislation. It is hoped, from a sociological viewpoint on the law, that by

drafting laws in a democratic, open, and participatory manner, the people will accept the emerging laws wholeheartedly. Moreover, when viewed from a political perspective, civic engagement is optional. The choice is ultimately taken by the legislative body, meaning that group participation is frequently minimal. In a broader sense, a society that adopts a democratic legal system cannot pick and apply it only for the benefit of the authorities, as this would contravene democratic norms. In addition, the purpose of the law is not to safeguard the interests of a handful of powerful individuals, but rather to protect the interests of all people equally.

In consideration of public engagement in the legislative process, the Indonesian parliament can now use a hybrid technique consisting of either direct hearings or internet channels. Using an Information and Communication Technology (ICT) platform for legislative activities in Indonesia during the pandemic delivered a clear message about the future viability of this medium as a legislative option. Multiple reasons exist for incorporating ICT into the future legislative process of Indonesia. With the lessons learnt from the use of information and communication technologies during the epidemic, the Parliament's work has become more efficient, transparent, and publically available. Consequently, this impetus should be carried over into the post-pandemic period with a greater emphasis on legal and technical difficulties.

Indonesia has adopted a systematic national plan for adopting ICT to support government operations since 2001 and reinforced this commitment by developing the governance-technology based (*"Sistem Pemerintahan Berbasis Elektronik* -SPBE*"*) as an ICT framework in 2018. In 2020, the Indonesian government invested somewhat more than a billion dollars in ICT infrastructure to demonstrate its commitment to implementing this ICT for governance supporting system. During the examined period, the Indonesian government's expenditures on ICT infrastructure surged by a factor of about five. This indicates the Indonesian government's dedication to incorporating ICT into its administrative structure. In this scenario, the legislature should participate in the shift from its old business practises to a technology-based approach.

Indonesia may have one of the largest online populations in the world, as the number of internet users has expanded significantly in recent years. Most Indonesians currently have access to the internet, and they spend an average of roughly eight hours every day online. Much of their time is devoted to online media. Internet users in Indonesia committed nearly three hours daily to their favourite social media platforms. In addition, most of Indonesian

always having access to mobile internet and in any location was of the biggest significance. The ease with which residents can access the internet and social media may be a factor in the prevalence of internet usage. It has been demonstrated that internet-based media are displacing conventional Indonesian communication channels. Therefore, if the legislature continues to maintain the conventional work style for carrying out its legislative, financial, and oversight obligations, it will not be acceptable to the public due to its high cost and time consumption. Several advantages resulting from the use of a virtual platform during the pandemic, relating to plenary sessions, the discussion of bill draughts, oversights, and public engagement, indicate the effectiveness and efficiency of the Parliament's operations.

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