

## International Law Policy on the Legal Protection of Migrant Workers



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**ABSTRACT:** The scarcity of job opportunities in the nation has driven many inhabitants try to seek employment abroad as migrant workers or foreign laborers. Legal protection for foreign laborers has been regulated in the ICMW and several national laws. This aims to ensure entitlements of foreign laborers and their relatives. However, in reality, violations of foreign laborers rights still occur. The case the author intends to analyze involves violence against Indonesian foreign laborers that took place in 2022. The research employs the normative legal method, incorporating both statutory and case approaches. The sources of legal materials used include primary legal materials in the form of basic legislation that are Law No. 6 of 2012 and Law No. 18 of 2017, ICMW, ILO, etc that are relevant to the material. In addition, secondary legal materials from (international) law books, scientific journals, research results, news from the internet, as well as tertiary materials such as legal dictionaries also support. As for the research results show that the international law policy on the legal protection of migrant workers have been well implemented, as evidenced by the presence of ICMW and the implementation of international law policy on the legal protection of migrant workers: a case study of violence against Indonesian migrant workers in Turkey have been well implemented, as evidenced by the presence of both international and national instruments. International instruments are regulated in the ICMW and Indonesian national law is regulated in Law No. 6 of 2012 and Law No. 8 of 2017. And for the resolution of acts of violence for Indonesian migrant workers has also been regulated in such a way in the Law No. 8 of 2017.

**KEYWORDS:** International Law, Legal Protection, Migrant Workers.

### INTRODUCTION

Labor plays a crucial role in both development and the economy, individually and collectively, significantly impacting national economic activities by boosting productivity and enhancing community welfare. In Indonesia, labor is a key driver of economic activity and is a plentiful resource. This is evident from the high unemployment rates and the limited job opportunities available in the nation. On the other hand, as Satjipto Rahardjo contends, the most accurate way to describe Indonesian society is to highlight its rapid and fundamental changes. Indonesia is transitioning structurally from an agricultural-based society to an industrial-based society. This change has accelerated since the use of technology has become the main mode of solving problems<sup>1</sup>, so that labor mobility is not only a movement from villages to cities. This is understandable, because industrial growth is stronger in urban areas, even to obtain a more adequate income, labor has crossed between nations. Crossing between nations. Many things influence the occurrence of migration between nations, but economic factors remain dominant.

The scarcity of jobs within the nation has driven many inhabitants to seek employment abroad in hopes of meeting their basic needs (clothing, food, and shelter) for themselves and their dependents<sup>2</sup>. Art 27, paragraph (2) The 1945 Constitution of the Republic of Indonesia, and its amendments support Indonesian citizens going abroad for work, stating that “every inhabitant has the entitlements to work and to a livelihood that upholds human dignity”. Additionally, Human Rights legislation, namely Law No. 39 of 1999 on Art 38, paragraph (2), affirms that citizens have the entitlements to freely choose their desired employment. Therefore, Indonesian citizens cannot be prohibited from working anywhere, including abroad. Sri Soemantri Martosoewignjo explains that civil liberties are fundamental, intrinsic to all human beings by nature, and universally bestowed by God Almighty, these rights serve to preserve the integrity of an individual's existence and are inalienable. These include the entitlements to

<sup>1</sup> Rahardjo, Satjipto, “The Utilization of Legal Sociology to Understand Processes in the Context of Development and Globalization”, (Journal of Law, No. 7 Vol. 4 Year 1997), 2.

<sup>2</sup> Khuana, J R, “Regulation And Legal Protection Of State-Covered Migrant Workers In The Perspective Of International Law”, (Kertha Semaya Journal, Vol. 8 No. 8 Year 2020), 1276.

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personal development, freedom, life, procreation, security, welfare, and justice<sup>3</sup>. John Materson of the UN Human Rights Commission states civil liberties as the entitlements intrinsic in human beings, without which it is impossible to live as a human being<sup>4</sup>. The Republic of Indonesia, founded on Pancasila and the 1945 Constitution, respects and upholds human dignity. Consequently, civil liberties, including those of all migrant workers (henceforth referred to as the foreign laborers) and their relatives, must be upheld. These rights serve to preserve the integrity of an individual's existence and are inalienable. As a member of the international community, Indonesia respects, values, and adheres to the principles and goals of the United Nations Charter and the Universal Declaration of Human Rights. Indonesia affirmed this commitment by becoming a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (henceforth referred to as the ICMW) on September 22, 2004, in New York, and subsequently ratifying this ICMW as Law Number 6 of 2012. This demonstrates Indonesia's commitment to protecting, respecting, promoting, and fulfilling the entitlements of all foreign laborers and their dependents. This dedication aims to improve the welfare of foreign laborers and their dependents, addressing legal protection issues for Indonesian foreign laborers abroad. Additionally, it seeks to encourage the global ratification and implementation of international standards and norms for protecting the entitlements of all foreign laborers and their relatives. To safeguard, uphold, advance, and realize the entitlements of foreign laborers and their relatives, the Government of Indonesia has enacted various laws and regulations concerning labor protection, including the Protection of Indonesian Foreign Laborers legislation, namely Law No. 18/2017. With such expectations, of course, to guarantee the entitlements of foreign laborers and their dependents. But in reality, violations of the entitlements of foreign laborers cannot be avoided. One form of violation of the entitlements of foreign laborers is violence and torture while working. The case that the author wants to analyze is a case of violence against Indonesian foreign laborers that occurred in 2022. Foreign laborers from Indramayu named Asih was abused by her employer in Turkey. The reason Asih received violence in the form of beatings on the head was because Asih did not wear a mask. Asih admitted that in Turkey she was beaten by her employer just because she did not wear a mask while working. Meanwhile, Turkey which is a ratifying nation of the ICMW<sup>5</sup>, certainly knows the guarantee of the entitlements of foreign laborers. Departing from cases of violence against Indonesian foreign laborers, the author is interested in reviewing what happened, what factors caused violence against Indonesian foreign laborers, what actions Indonesia took, the actions of the nation where Indonesian foreign laborers work, namely Turkey (and moreover the nation is a ratifying nation of the ICMW).

This paper is an original scholarly work and is not identical to any previously published scientific papers. Here is one of papers by Josep Robert Khuana with the title Regulation And Legal Protection Cross-Border Foreign Laborers In International Law Perspective, Kertha Semaya Journal, Vol. 8 No. 8 of 2020. Josep's paper discusses legal protection in general which only refers to instruments, but with my writing it complements it by providing examples of cases that occur in the field. The hope is to provide an analysis and description of legal arrangements and protection of Indonesian foreign laborers. The purpose of this paper is to analyze and describe the international law policy on the legal protection of Indonesian foreign laborers working abroad which in this paper takes place in Turkey, which is also a ratifying nation of the ICMW. The research questions are how the international law policy on the legal protection of foreign laborers and how the implementation of international law policy on the legal protection of foreign laborers: a case study of violence against Indonesian foreign laborers in Turkey.

## METHODS

The research employs the normative legal method, incorporating both statutory and case approaches. It examines legal norms and rules relevant to the discussed issues and is supplemented by current case studies. According to Bahder Johan Nasution, normative legal research analyzes formally established and publicized legal standards<sup>6</sup>. The approach used includes a statutory approach and a case approach. The sources of legal materials used include primary legal materials in the form of basic legislation (national positive law, that are the Ratification legislation of the ICMW namely Law No. 6 of 2012 and the Protection of Indonesian Foreign Laborers legislation namely Law No. 18 of 2017) and universal legal rules such as conventions (such as International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), ILO, Declaration on the Human Rights of Migrant Workers and Members of Their Families, etc) that are relevant to the material. In addition, secondary legal materials from (international) law books, scientific journals, research results, news from the internet, as well as tertiary materials such as legal dictionaries and encyclopedias also support.

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<sup>3</sup> Martosoewignjo, S.S, "Reflection on Human Rights in Indonesia", Workshop Paper on Humanitarian Law and Human Rights Law, (Yogyakarta: UGM-ICRC, 1998), 12.

<sup>4</sup> Santoso, B., "Human Rights Insights in the Rule of Law", Human Rights Seminar Paper, (Surakarta: FHUNS, 2001), 3.

<sup>5</sup> UN Treaty Bodies Database, "The Ratification Status By Country", [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=82&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=82&Lang=EN), Accessed on May 23, 2024 at 9:54 pm.

<sup>6</sup> Nasution, B.J., *Legal Science Research Methods*, (Bandung: Mandar Maju Publisher, 2008), 83.

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### RESULTS AND DISCUSSION

#### A. The International Law Policy On The Legal Protection Of Migrant Workers

A convention is a formal agreement produced through significant conferences, often obligating nations to participate. Typically, conventions become part of international law, addressing crucial issues and having broad applicability. Convention is one of the terms in the nomenclature of international treaties. Seeing this means that the convention binds the state subject to it. In line with this understanding, international treaties are acknowledged by the global community as a source of international law, as specified in the Charter of the International Court of Justice on Art 38, paragraph 1. These treaties and international agreements also adhere to the Pacta Sunt Servanda Principle, which mandates that agreements entered into by the parties are binding and must be honored. The definition of an international agreement is provided in the 1969 Vienna Convention, Art 2, paragraph (1)(a) of which states that “a treaty is a formal document between nations, regulated by international law”. This can be contained in one or several documents, regardless of how it is specifically named<sup>7</sup>. Defines a treaty as a written international agreement governed by international law. The parties to these treaties can be (i) one or more states and one or more international organizations, or (ii) between international organizations themselves. These agreements may be contained within a single document or multiple related documents, regardless of the specific terms used to describe them<sup>8</sup>. The definition of international agreements is not only contained in the Vienna Conventions of 1969 and 1986, however, the definition of international agreements can also be found in Law Number 24 of 2000 on International Agreements on Art 1, paragraph 1. This law states that international agreements are formally and legally recognized documents under international law, written to establish specific rights and obligations in public law, irrespective of their specific form or title<sup>9</sup>. Some experts offer definitions of international agreements, such as Mochtar Kusumaatmadja, who states that international agreements are commitments made by members of the international community intended to produce specific legal effects<sup>10</sup>.

From the definitions provided above, it can be summarized as follows: i) International agreements must be documented in writing to serve as verifiable proof that the agreement truly exists and is the outcome of negotiations between state parties. Typically, the agreement is drafted in a language understandable to all parties involved, with English commonly used as it is almost universally recognized and serves as the lingua franca in international affairs<sup>11</sup>; ii) International agreements are subject to international law because they impose rights and obligations on the parties involved, thereby creating legal consequences. Therefore, these agreements must adhere to the principles of international law and, by extension, to the general rules of international treaty law<sup>12</sup>; iii) International agreements typically focus on specific subjects. Principally, every agreement should specify the object or subject matter it addresses. In the case of international agreements, this object often becomes the title of the agreement, especially as there is no systematic regulation for the use of names within such agreements<sup>13</sup>.

Additionally, the convention discussed in this paper focuses on human rights, specifically the ICMW.

The ICMW was adopted by the UN General Assembly and came into effect on July 1, 2003, following its ratification by 20 nations. In Indonesia, this ICMW was ratified by the House of Representatives and signed by the President on May 12, 2012. It was subsequently enacted into Law No. 6/2012, making Indonesia the 46th nation to ratify the ICMW. The purpose of the ICMW is to set standards that create a model for the laws administrative and judicial procedures of each state party. The ICMW's key innovation is its recognition of individuals who qualify as foreign laborers and their relatives, under the provisions of the ICMW, are entitled to enjoy human rights, regardless of their legal status. The obligation of the state to realize the entitlements enshrined in the ICMW is extended to all foreign laborers and members of their without discrimination.

The content of the ICMW stipulates that every foreign laborer and their relatives are entitled to various rights. These include protection from torture and slavery; the freedom to enter, leave, and stay in any nation; the entitlements to life; freedom of expression; privacy rights; protection from arbitrary arrest; freedom of thought, conscience, and religion; equal treatment in employment and contractual matters; rights to organize and assemble; access to healthcare and their children's education; respect for their cultural identity; equality before the law; freedom of movement; the ability to form associations; participation in their home nation's governmental affairs; and the entitlements to transfer income. Also encompasses extra rights for foreign laborers who fall into specific employment categories, such as cross-border workers, self-employed workers, project-tied workers, itinerant workers, and seasonal workers.

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<sup>7</sup> Aust, Anthony, *Handbook of International Law*, (New York: Cambridge University Press, 2010), 50.

<sup>8</sup> Parthiana, I Wayan, *International Treaty Law Part I*, (Bandung: Mandar Maju Publisher, 2002), 15.

<sup>9</sup> Article 1 Paragraph 1 of Law of the Republic of Indonesia Number 24 of 2000 Concerning International Agreements International, <https://www.komisiinformasi.go.id/regulasi/download/id/138>, 79. Accessed May 24, 2024.

<sup>10</sup> Pratomo, Eddy, “International Treaty Law (Definition, Legal Status, and Ratification)”, (Bandung: Publisher of PT Alumni Bandung, 2011), 46.

<sup>11</sup> Aust, Anthony, *Op. Cit.*, 51.

<sup>12</sup> Anthony Aust, *Ibid.*

<sup>13</sup> Parthiana, I Wayan, *Op. Cit.*, 17.

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The ICMW outlines guidelines for international collaboration and coordination in managing legal migration and in the prevention or reduction of illegal (irregular) migration.

The protection of foreign laborers is an important global issue, and there are various international instruments that have been adopted to protect the entitlements of foreign laborers by the international community. The following authors describe the most important international instruments in the context of foreign laborer protection include:

1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)
  - a. Adoption: Adopted by the United Nations (UN) in 1990.
  - b. Objective: To ensure thorough protection of the entitlements of foreign laborers and their relatives, including their rights related to employment, income, and fair treatment.

In the ICMW, the term “migrant worker” refers to a person who will engage, is engaging, or has engaged in paid work in a nation where they are not a national<sup>14</sup>. Internationally, the legal framework for protecting foreign laborers is the ICMW. The ICMW was declared in New York on December 18, 1990 and came into force as law on July 1, 2003. As a member of the UN, Indonesia signed the ICMW on September 22, 2004. Foreign laborers have an important position because foreign laborers have contributed to the national interest in the form of foreign exchange contributions or commonly referred to as remittances. The ICMW opposes torture and other forms of cruel, inhuman, or degrading treatment or punishment. The legal umbrella of foreign laborers who work across nations wherever the destination nation for foreign laborers to work remains subject to international conventions issued by the UN, through the world labor organization section, namely the ILO. Each foreign laborer sending nation must respect and have the entitlements to apply the principle of exclusive internal and external territorial sovereignty equally<sup>15</sup>.

The entitlements of all foreign laborers and all their relatives as stipulated in the ICMW are as follows:

- a. The entitlements to depart from any nation, including one's own, and the entitlements to return to one's home nation (Art 8).
- b. Legal protections uphold the entitlements to life (Art 9).
- c. Not to be subjected to torture and cruel, inhuman and degrading legal treatment (Art 10).
- d. The entitlements not to be enslaved or subjected to forced labor (Art 11).
- e. The entitlements to freedom of thought, conscience, and religion (Art 12).
- f. The entitlements to freedom of expression, both spoken and written (Art 13).
- g. The entitlements to freely communicate regarding relatives matters and personal affairs (Art 14).
- h. The entitlements to their property (Art 15).
- i. The entitlements to personal freedom and security (Art 16).
- j. Entitled to humane treatment if his/her freedom is deprived (Art 17).
- k. Have equal rights before courts and tribunals with nationals of the State of destination (Art 18).
- l. May not be sentenced to a heavier penalty than that applicable to a criminal offense because of acts or omissions that did not constitute a criminal offense under national and international law at the time they were committed (Art 19).
- m. The entitlements not to be imprisoned for failing to fulfill a contractual obligation (Art 20).
- n. The entitlements to have their documents protected from confiscation or destruction, except by authorized government officials. (Art 21).
- o. Not to be subjected to mass expulsion (Art 22).
- p. The entitlements to request protection and assistance from consular or diplomatic officials of their home nation or from a nation representing the interests of their home nation (Art 23).
- q. Be recognized before the law (Art 24).
- r. The entitlements to receive the same salary as citizens of the destination nation (Art 25).
- s. The entitlements to fair working conditions, including reasonable work hours, overtime compensation, weekly rest days, paid holidays, occupational safety and health measures, protections in case of dismissal, a minimum working age, and other employment conditions in line with national laws and practices (Art 26).
- t. Enjoy equal treatment with nationals of the nation of employment in terms of social security (Art 27).
- u. Entitled to urgent health care for survival (Art 28).
- v. Children of foreign laborers are entitled to have a name, to be registered at birth, and to obtain citizenship (Art 29).
- w. Children of foreign laborers are entitled to access basic education (Art 30).

<sup>14</sup> International Convention on the Protection of the Rights All Migrant Workers and Members of Their Families

<sup>15</sup> Florea, D., “Sovereign State The Classic Basic Subject of Public International Law”, The USV, Analyst of Economic and Public Administration University of Succava Romania, Volume 12, 2012, 1.

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- x. Transfer their earnings and personal belongings in compliance with the legal requirements of the relevant states (Art 32).
- y. Information regarding the entitlements and responsibilities of foreign laborers and their relatives (Art 33).

The ICMW is the broadest international legal framework covering protection for people who plan to become foreign laborers, are currently working abroad, or have finished working abroad and are returning home. The ICMW establishes globally recognized definitions for various types of foreign laborers, such as seasonal workers, seafarers, frontier workers, itinerant workers, project workers, offshore installation workers, self-employed workers and workers in specified occupations. The aim of the ICMW is to protect the interests of foreign laborers while working in other nations. The ICMW emphasizes the importance of legal documents for foreign laborers, which ensure that there are no violations in the labor migration process, such as violations of the age limit of foreign laborers. Legal documents also help minimize human trafficking and smuggling practices.

### 2. ILO Convention

ILO Convention on Migrant Workers (Convention No. 97)

- a. Adoption: Adopted by the International Labor Organization (ILO) In 1949.
- b. Objective: To protect the entitlements of foreign laborers by regulating aspects such as recruitment, labor contracts, and workplace protection.

And the definition for foreign laborers according to the ILO Convention on Migrant Workers of 1949 (No. 97) in Art 11, are individuals who move from one nation to another for the purpose of working. According to the Indonesian Ministry of Social Affairs, foreign laborers are individuals who relocate to different regions, either domestically or internationally (legally or illegally), to engage in employment for a specified duration<sup>16</sup>.

### 3. Declaration on the Human Rights of Migrant Workers and Members of Their Families

- a. Adoption: Adopted by the UN General Assembly in 1990.
- b. Objective: To acknowledge and safeguard the human rights of foreign laborers and their relatives, which include the entitlements to not be separated from relatives, the entitlements to equal compensation, and the entitlements to file a complaint.

### 4. ILO Convention on Placement Services (Convention No. 181)

- a. Adoption: Adopted by the ILO in 1997.
- b. Objective: To promote safe, fair and effective placement practices for foreign laborers and create a sound framework for the organization of placement services.

### 5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of their Families (Cairo International Convention)

- a. Adoption: Adopted by the League of Arab States in 1990.
- b. Objective: To establish the basic principles and rights for the protection of foreign laborers in the nations of the League of Arab States.

### 6. UN Framework for the Protection of Migrant Workers (Global Compact on Migration)

- a. Adoption: Adopted by the UN General Assembly in 2018.
- b. Objective: To formulate guiding principles and a collaborative framework for the protection of foreign laborers at the global level, including efforts to prevent violations of their human rights.

These instruments are part of international efforts to improve the protection and welfare of foreign laborers around the world. However, effective implementation and monitoring of these instruments remains a challenge, and cooperation between nations and organizations is needed to safeguard the entitlements of foreign laborers.

## **B. The Implementation of International Law Policy on The Legal Protection of Migrant Workers: A Case Study of Violence Against Indonesian Migrant Workers in Turkey**

### 1. Indonesia's National Law Policy On The Legal Protection Of Migrant Workers

After looking at the regulation of the legal protection of foreign laborers in the perspective of international law, the legal protection of foreign laborers in the perspective of Indonesian national law is described next.

The Republic of Indonesia, founded on Pancasila and the 1945 Constitution, respects and upholds human dignity. Consequently, human rights, including those of all foreign laborers and their relatives, must be protected, respected, and defended. These rights must not be ignored, diminished, or taken away by anyone. As part of the international community, the Indonesian nation respects, values, and upholds the principles and objectives of the UN Charter and the Universal Declaration of Human Rights. Indonesia demonstrated this commitment by signing the International

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<sup>16</sup> Khuana, J R, *Op. Cit*, 1278.



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Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) on September 22, 2004, in New York, and subsequently ratifying this ICMW as Law Number 6 of 2012.

This demonstrates Indonesia's commitment to protecting, respecting, promoting, and fulfilling the entitlements of all foreign laborers and their relatives. This dedication aims to improve the welfare of foreign laborers and their relatives, addressing legal protection issues for Indonesian foreign laborers abroad. Additionally, it seeks to encourage the global ratification and implementation of international standards and norms for protecting the entitlements of all foreign laborers and their relatives. To protect, respect, promote, and fulfill the entitlements of foreign laborers and their relatives, the Government of Indonesia has enacted various laws and regulations concerning labor protection, including Law No. 18/2017 on the Protection of Indonesian foreign laborers. With such expectations, of course, to guarantee the entitlements of foreign laborers and their relatives.

To safeguard, honor, enhance, and uphold the entitlements of foreign laborers and their relatives, the Indonesian Government has implemented a range of laws and regulations concerning labor protection, including:

1. Law No. 4 of 1979 on Child Welfare
2. Law No. 39 of 1999 on Human Rights
3. Law No. 23 of 2002 on Child Protection
4. Law No. 13 of 2003 on Manpower
5. Law No. 20 of 2003 on the National Education System
6. Law No. 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad
7. Law No. 40 of 2004 on the National Social Security System
8. Law No. 12 of 2006 on Citizenship of the Republic of Indonesia
9. Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons.
10. Law Number 11 of 2009 on Social Welfare
11. Law No. 36 of 2009 on Health
12. Law Number 6 of 2011 on Immigration<sup>17</sup>.

The author outlines the national legal instruments that govern the protection of Indonesian foreign laborers:

1. Law No. 6 of 2012 on the Ratification of the International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families  
This law represents Indonesia's further progress in ratifying the ICMW. It incorporates the ICMW's goal of establishing standards that serve as a model for the legal, administrative, and judicial procedures of each state party. The ICMW's primary innovation is that it grants foreign laborers and their relatives the entitlements to enjoy human rights, irrespective of their legal status.  
This law mandates the state to ensure that the entitlements outlined in the ICMW are provided to all foreign laborers and their relatives without discrimination. It includes provisions for international cooperation and coordination in managing legal migration and preventing or reducing illegal (irregular) migration. The law also addresses the State Party Report and the role of the Committee for the Protection of the Entitlements of All Foreign Laborers and Members of Their relatives, requiring states to submit a report on the implementation of the ICMW within one year of the ICMW's entry into force, with subsequent reports every five years, or as requested by the Committee through the Secretary-General of the UN. The Committee reviews these reports, explores ways to enhance national capacity to implement the ICMW, and engages in international cooperation with the International Labour Organization, UN agencies, intergovernmental organizations, and other relevant bodies.
2. Law No. 18 of 2017 on The Protection of Indonesian Migrant Workers  
Law No. 18 of 2017 on the Protection of Indonesian Foreign Laborers is law that revokes the Law No. 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad. As Law No. 39 of 2004 does not adequately address the protection needs of Indonesian foreign laborers and fails to proportionally outline the distribution of responsibilities and authorities between the Central Government, Local Government, and the private sector.  
Law No. 18 of 2017 defines prospective Indonesian foreign laborers as any Indonesian job seeker registered with the district or city government manpower agency who is planning to work abroad. It defines Indonesian foreign laborers as any Indonesian citizen who will work, is working, or has worked outside the Republic of Indonesia for wages.

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<sup>17</sup> Law Number 6 of 2012 on the Ratification of the International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families.

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Protection of Indonesian foreign laborers encompasses all efforts to safeguard the interests of prospective and current foreign laborers, as well as their relatives, ensuring their rights are upheld in all activities before, during, and after employment, across legal, economic, and social aspects.

As for the arrangements regarding legal protection for foreign laborers in the law are:

- a) Pre-Employment Protection is the overall activities to provide protection from registration until departure.
- b) Protection During Employment is the overall activities to provide protection during Indonesian foreign laborers and their relatives are abroad.
- c) Protection After Employment is the overall activities to provide protection since Indonesian foreign laborers and their relatives arrive at debarkation in Indonesia until they return to their origin area, including follow-up services to become productive workers.

The aim of protecting Indonesian foreign laborers is to ensure the fulfillment and upholding of their human rights as inhabitants, and to provide legal, economic, and social protection for both the laborers and their relatives.

The entitlements of prospective/Indonesian foreign laborers are regulated in Art 6 paragraph (1) of Law No.18/2017, namely:

- a. Secure employment overseas and select a position that matches their skills
- b. Gaining opportunities for personal development via educational and vocational training
- c. Gathering precise details regarding employment opportunities, recruitment processes, and labor conditions abroad.
- d. Obtaining respectful, fair, and professional treatment throughout the employment lifecycle.
- e. Exercising their religious practices and beliefs freely.
- f. Receiving wages that align with the prevailing wage standards in the destination nation, the bilateral agreements between the two nations, and/or the labor contract.
- g. Being safeguarded and supported legally from actions that undermine their dignity, as stipulated by the laws of both Indonesia and the receiving nation.
- h. Obtain access to communication.
- i. Managing travel documents while employed.
- j. Organize and gather in the host nation in accordance with its prevailing laws and regulations.
- k. Obtain guarantee of protection of safety and security of return of Indonesian foreign laborers to the area of origin.
- l. Securing necessary paperwork and employment contracts for potential and current Indonesian foreign laborers.

Rights for every relatives of Indonesian foreign laborers are regulated in the provisions of Law No.18/2017 Art 6 paragraph (3), namely:

- a. Obtaining information about the conditions, problems, and return of Indonesian foreign laborers.
- b. Receive the entire property of Indonesian foreign laborers who died abroad.
- c. Obtaining copies of documents and work agreements for both potential and existing Indonesian foreign laborers.
- d. Obtaining access to communication.

Law 18/2017 clearly mandates that Indonesian foreign laborers must be safeguarded against human trafficking, enslavement, involuntary servitude, abuse, unjust actions, offenses against personal integrity, and additional breaches of human rights.

3. Regulation of the Minister of Manpower No. 4 of 2023 on the Social Security for Indonesian foreign laborers  
Indonesian foreign laborers are entitled to social security health and labor insurance. For social security social security, candidates or Indonesian foreign laborers must be registered in the Work Accident Insurance program and the Death Insurance program. Candidates or Indonesian foreign laborers can also participate in the Old Age Security program although it is not required. The programs are administered by Employment Social Security Agency.

According to Surtees, some of the problems associated with foreign laborers include violence, abuse, falsification of documents, and misinformation. For Indonesian foreign laborers, problems that often arise include:

1. Lack of protection.
2. Violence and torture against foreign laborers.
3. Threats of imprisonment up to the death penalty.
4. The high number of foreign laborers who die.

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5. The employment and safeguarding framework of foreign laborers sending nations is not in accordance with international agreements.
  6. Abroad, employers have absolute power, often keeping documents to suppress foreign laborers. If foreign laborers run away from their employers, they are considered illegal and breaking the law.
  7. The large number of foreign laborers gives receiving nations many options to hire cheap foreign laborers who are less demanding of their rights.
  8. Indonesia has difficulty influencing other nations to protect foreign laborers.
  9. Lack of government attention to human rights violations against Indonesian foreign laborers.
  10. Existing policies place foreign laborers as traded commodities, which is the beginning of many human rights violations against foreign laborers<sup>18</sup>.
2. The Implementation Of International Law Policy On The Legal Protection Of Migrant Workers: A Case Study Of Violence Against Indonesian Migrant Workers In Turkey

With such legal arrangements have ensured legal protection for foreign laborers and with the hope that there will be no violations of the entitlements of foreign laborers. With such expectations, of course, to guarantee the entitlements of foreign laborers and their relatives. But in reality, violations of the entitlements of foreign laborers cannot be avoided.

One form of violation of the entitlements of foreign laborers is violence and torture while working. The case that the author wants to analyze is a case of violence against Indonesian foreign laborers that occurred in 2022. Indonesian foreign laborers from Indramayu named Asih was abused by her employer in Turkey. The reason Asih received violence in the form of beatings on the head was because Asih did not wear a mask. Asih claimed that in Turkey she was beaten by her employer just because she did not wear a mask while working. Turkey, which is a ratifying nation of the ICMW, certainly knows the guarantee of the entitlements of foreign laborers.

According to ICMW Article 16, paragraph (2), Indonesian foreign laborers and their families have the right to state-guaranteed protection against any form of violence, harm, threats, or intimidation, whether from public authorities or private entities.

Furthermore, Art 68 paragraph (1) letter (c) of the ICMW requires that State Parties, including transit States, work together to stop and eradicate clandestine or unlawful migration and employment of migrant workers in unauthorized circumstances. The policies established for this purpose, falling under the jurisdiction of each respective State, should enforce effective sanctions on individuals, groups, or entities that subject foreign laborers and their relatives in irregular situations to violence, threats, or intimidation.

By looking at the clauses contained in the ICMW that the entitlements to protection for foreign laborers should be important, and must be upheld.

Additionally, the ICMW mandates that State Parties to file a report on the implementation of this ICMW no later than one year after it comes into effect, followed by subsequent reports every five years or upon request by the Committee for the Protection of the Entitlements of All Foreign Laborers and Members of Their relatives through the Secretary-General of the UN. This Committee reviews the reports from State Parties and provides recommendations on how to improve national capabilities to enforce this ICMW. The Committee also engages in international cooperation and coordination with the International Labour Organization, specialized bodies and units of the UN, international governmental agencies, and other relevant entities. This activity reflects the ongoing implementation of the ICMW and underscores the commitment of ratifying nations to ensure legal protection for foreign laborers.

Regarding national measures, Indonesian foreign laborers require protection from human trafficking, enslavement, involuntary servitude, violence, unjust treatment, assaults on their dignity, and additional human rights abuses. Safeguarding Indonesian overseas workers demands a coordinated effort from national, regional authorities, and local communities. The protection of Indonesian foreign laborers encompasses institutional safeguards that define the roles and powers of the ministry as the regulator/policy maker and the Agency as the operator/policy implementer. This clarification helps address issues arising from the previously overlapping authorities between the two bodies. The Special Committee for the protection of Indonesian foreign laborers, set up by the president, is executed by the Agency. Effective protection of Indonesian foreign laborers also demands rigorous oversight and enforcement of laws.

Supervision extends to protection before employment, during employment, and post-employment. Law enforcement involves both administrative and criminal penalties. Law 18/2017 specifically mandates protection for Indonesian foreign laborers from human trafficking, enslavement, involuntary servitude, violence, unjust treatment, assaults on their dignity, and additional human rights abuses. Action taken according to law 18/2017 Art 27 paragraph (1) letter (e) that Indonesian foreign laborers can undergo the process of returning due to persecution or violence.

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<sup>18</sup> Florea, D., *Op. Cit.*, 1.



## International Law Policy on the Legal Protection of Migrant Workers

### CONCLUSIONS

The international law policy on the legal protection of migrant workers have been well implemented, as evidenced by the presence of ICMW which regulates the legal protection of migrant workers. The implementation of international law policy on the legal protection of migrant workers: a case study of violence against Indonesian migrant workers in Turkey have been well implemented, as evidenced by the presence of both international and national instruments. International instruments are regulated in the ICMW and Indonesian national law is regulated in Law No. 6 of 2012 and Law No. 8 of 2017. And for the resolution of acts of violence for Indonesian migrant workers has also been regulated in such a way in the Law No. 8 of 2017

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