

Legal implications of placement illegal Indonesian migrants

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Abstract

Purpose: The purpose of this study is to determine the legal implications associated with the illegal placement of Indonesian migrant workers in the context of human rights protection and the Indonesian government's role in addressing the illegal placement of migrant workers and protecting human rights.

Research methodology: The research method used in this study is a normative legal research method involving analysis of legal materials in the form of legal regulations, international conventions, policies, and legal instruments related to the illegal placement of Indonesian migrant workers.

Results: The results showed that the legal implications related to the illegal placement of Indonesian migrant workers differed from the upheld values of social justice, legal protection, humanity, equality, and equality in Pancasila.

Contribution: The government and the legal system must play active roles in ensuring equal human rights protection for migrant workers, preventing illegal placements, strengthening law enforcement, and ensuring fair access to legal services and protection for Indonesian migrant workers. The Indonesian government plays an important role in addressing the illegal placement of migrant workers and in protecting their human rights. Responsiveness to problems, responsibility for protection, responsiveness to diversity, collaborative governance, and prioritization of public values, governments strive to respond effectively and fairly to issues faced by illegal migrant workers and ensure equal protection of their human rights.

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1. Introduction

The legal implications for the placement of illegal Indonesian migrant workers (PMI) are already at a critical juncture. Indonesian Migrant Workers (PMI), foreign exchange heroes, family heroes, and economic warriors who are forced to fight in other countries willingly leave their families and hometowns but have not received proper legal protection, but often become illegal migrant workers.

In recent years, at least 657 migrant workers from East Nusa Tenggara have died abroad, most of whom have been illegal. From the beginning until June 1, 2023, 60 bodies were sent through EL Tari Kupang Airport. Similarly, Maryam, an Indonesian migrant worker (PMI), is suspected to be in the United Arab Emirates (UAE) and is not allowed to return to Indonesia. With the condition of unpaid salaries for seven months, data on the impact of illegal placement on Indonesian Migrant Workers who were still victims abroad were collected.

Indonesia's developing country continues to develop, and its economic progress is an example. Building a just, prosperous, and equitable society, as well as physical and inner prosperity, is the goal of state development, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. National progress will be ensured by meeting the needs of workers. The right to work is a human right of every

citizen, according to Article 27 paragraph 2 of the Constitution of the Republic of Indonesia Year 1945, which states that "Every citizen has the right to work and a decent living for humanity."

It is logical for Indonesian citizens' rights to be protected by the Indonesian government, including providing employment necessities to everyone who is able and willing to work. Many Indonesian workers choose to migrate, which means moving from one region or country to another with the intention of settling there. A migrant worker is an Indonesian citizen who will, is, or has worked for wages outside the territory of the Unitary State of the Republic of Indonesia ([A. S. Hamzah, 2016](#)).

Financial considerations drive most of the migrant workers. Since not much has changed in their home countries, especially when it comes to improving their family economy, they are motivated to work abroad. However, they can find many resources that can bring about social change in their home country. The growing number of Indonesian migrant workers indicates that the Republic of Indonesia has not succeeded in providing sufficient economic options for its citizens. The government increased the supply of migrant labor to increase employment opportunities and reduce unemployment. However, many individuals are not cautiously involved in recruiting illegal migrant workers from Indonesia, which harms them in the long run ([Prihatinah, Asyik, & Kartono, 2012](#)).

Article 69 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers contains a rule that individuals are prohibited from carrying out the placement of Indonesian migrant workers, and Article 81 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers contains a rule that there are sanctions against individuals who carry out the placement of Indonesian migrant workers abroad with a maximum penalty of 10 years imprisonment and a maximum fine of IDR 15,000,000,000.00 (15 billion rupiahs).

According to Article 69 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, an individual is a broker or person who does not have authority to place Indonesian migrant workers abroad. Article 49 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers stipulates that agencies and companies that place Indonesian migrant workers abroad are responsible for their placement of Indonesian migrant workers.

Based on a written agreement between the government and the government of the country where Indonesian migrant workers are employed or employers are incorporated in Indonesia, in accordance with the explanation of authority as the executor of migrant worker placement above, companies that place Indonesian migrant workers for their own business interests, destination countries for the placement of Indonesian migrant workers, and the placement of Indonesian migrant workers who have received approval.

The illegal placement of Indonesian migrant workers involves violations of migration laws, including the use of illegal routes to enter the destination country, lack of necessary documents, and non-compliance with immigration procedures established by the country. The illegal placement of migrant workers is often associated with abusive labor practices, such as unsafe working conditions, unfair wages, excessive working hours, and arbitrary termination. This violates the human rights of migrant workers and labor regulations in the destination country.

In addition, the illegal placement of migrant workers can exacerbate social and economic injustices. Illegal migrant workers are often vulnerable and not protected by law. They can be victims of exploitation, human trafficking, or violence. The illegal placement of migrant workers also involves humanitarian concerns, such as the separation of illegal migrant workers from their families, risk of identity defamation, and limited access to healthcare, education, and legal protection. Therefore, this study examines the legal implications of the illegal placement of Indonesian migrant workers in the context of human rights protection.

Based on the above background, the author is interested in researching and writing the results in a scientific journal entitled 'Legal Implications of Illegal Placement of Indonesian Migrant Workers.' Based on the problems described above, the problems discussed are as follows.

1. The legal implications of the illegal placement of Indonesian migrant workers in the context of human rights protection
2. What is the role of the Indonesian government in addressing the illegal placement of migrant workers and in protecting human rights?

2. Research methodology

The research method is an effort made by researchers to study, respond, and analyze problems. To produce an answer or solution to the problem to be studied. It was then compiled using the Ilmiah data ([Riduwan, 2011](#)). The research method used in this study is a normative research method involving analysis of legal regulations, international conventions, policies, and legal instruments related to the illegal placement of Indonesian migrant workers ([Suriasumantri, 2010](#)).

Legal Research Methods were also used in this study. The approach method used is the statute, case, and conceptual approaches, and the sources of legal materials used are primary, secondary, and tertiary legal materials. The technique of collecting legal materials is library research, and the analysis of legal materials used to collect primary, secondary, and tertiary legal materials is managed and analyzed qualitatively using a normative juridical approach typical of the *Denken* juridical style. The results are presented as an analytical descriptive in the form of an analysis of legal regulations, international conventions, policies, and legal instruments regarding the illegal placement of Indonesian migrant workers.

The data collected in this study include legal regulations, international conventions, policies, and legal instruments related to the illegal placement of Indonesian migrant workers. Further, refer to research reports and studies that have been conducted previously on the placement of illegal migrant workers and human rights protection.

The empirical juridical approach consists of field research conducted through a series of interviews with respondents and informants related to the object of research ([Suharsimi, 2012](#)). In addition, library research, which seeks to explore theories that have developed in the field of science related to a problem, methods, and research techniques that have been used by previous researchers, gains a broader orientation in the selected problem and avoids unwanted duplication by leading to the development of existing concepts and facts ([Muhammad & Djaali, 2015](#)).

The analysis of legal materials was conducted using a qualitative approach to analyze legal materials collected from documents, interviews, observations, and case studies. Legal materials were analyzed by formulating the main findings, identifying patterns, and drawing conclusions relevant to the legal issues studied. Furthermore, the findings can be linked to an applicable legal framework including legal regulations, international conventions, policies, and legal instruments related to the illegal placement of Indonesian migrant workers ([Parameshwara & Riza, 2023](#)).

Research as a series of activities systematically with various approaches, and is planned to study, study or investigate a problem, in order to obtain theoretical knowledge that can enrich the repertoire of knowledge to solve the problem at hand. After the data were obtained, they were analyzed to obtain a final conclusion ([Riza, Lubis, & Suwalla, 2022](#)). The theoretical framework used as an analytical knife in this article is the Pancasila Theory of Justice and the responsive legal theories of Philippe Nonet and Philip Selznick.

3. Results and discussions

3.1. Legal Implications Associated with the Illegal Placement of Indonesian Migrant Workers in the Context of Human Rights Protection

Immigration crimes include any act that violates immigration laws and regulations, be it a crime or criminal threat to immigration law enforcement. Immigration crime is not only a criminal offense committed around the world and carried out in an organized manner but is also very detrimental to society. Consequently, criminal threats to foreigners are necessary to provide deterrent effects. Law No. 6 of 2011 concerning immigration regulates criminal acts committed by Indonesian citizens and foreign nationals, and the sanctions related to them ([Wijayanti, 2011](#)).

Since May 5, 2011, Law Number 6 of 2011 concerning immigration, which is an amendment to Law Number 9 of 1992 concerning immigration, provides a new legal foundation in accordance with the progress of the times needed to support the implementation of immigration performance, both at the national and international levels.

The violation of the provisions of this article is categorized as a form of deliberate action in entering or leaving Indonesian territory that does not go through an immigration checkpoint with the threat of criminal sanctions in the form of imprisonment for a maximum of one year or a maximum fine of one hundred million rupiahs, which is further explained in Article 113 of Law Number 6 of 2011 concerning immigration ([A. Hamzah, 2008](#)).

In the second element, word supervision is the entire process of controlling activities or supervising the process of carrying out tasks, in accordance with predetermined rules. Thus, the supervision of foreigners contains an understanding of the entire series of activities aimed at controlling entry and exit, as well as the suitability of the purpose of the foreigner's existence in accordance with visas and applicable regulations.

Indonesian migrant workers are citizens who will, are, or have done work by receiving wages outside the Republic of Indonesia. Labor migration is defined as the movement of people across borders to obtain employment in a foreign country. The placement of migrant workers is essentially that of human services rather than goods. The government enacted Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers to replace Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad to demonstrate the government's strong commitment to improving protection for Indonesian migrant workers while they work abroad ([Pratiwi, 2021](#)).

Based on Article 49 of Law Number 18 of 2017, concerning the Protection of Indonesian Migrant Workers, the implementation of Indonesian migrant workers abroad consists of agencies and companies that place Indonesian migrant workers for the benefit of their own companies.

The Crime of Individuals Placing Indonesian Migrant Workers is regulated in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Based on this law, everyone who places Indonesian Migrant Workers abroad must obtain a permit for the Placement of Overseas Workers from the Minister of Manpower and Transmigration. If someone violates these provisions, they can be subject to criminal sanctions in the form of imprisonment for a maximum of five years or a maximum fine of IDR 500 million.

In addition, entrepreneurs who perform these actions may also be subject to administrative sanctions in the form of the revocation of business licenses and/or other sanctions stipulated in laws and regulations. Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad also regulates criminal sanctions for employers who commit illegal acts during the placement of Indonesian workers abroad. Businessmen who violate these provisions may be subject to criminal sanctions in the form of imprisonment for a maximum of five years or a maximum fine of IDR 500 million.

The legal implications of Indonesian migrant workers' illegal placement in the context of human rights protection may include several aspects.

a. Human Rights Violations.

The illegal placement of Indonesian migrant workers may leave them vulnerable to exploitation by employers or third parties. This violates their human rights to be free from forms of exploitation, including forced labor, human trafficking, or enslaved labor. Many illegal migrant workers face inadequate working conditions, including low wages, excessive working hours, lack of social security, and lack of access to health services and job security. This violates their right to humane standards of work.

b. Limited Access to Services and Legal Protection

Illegally placed Indonesian migrant workers tend to have limited access to the legal systems of their destination countries. This makes it difficult for them to obtain legal protection in case of violations of their rights, such as unpaid wages or workplace violence. The illegal placement of migrant workers often hinders their access to public services such as adequate housing, education, health care, and social security. This violates their human right to obtain public services on par with the local population.

c. Sovereignty and Identity Risk

The illegal placement of Indonesian migrant workers can cause them to lose their sovereignty as citizens. They may lose protection from their home country and may be unable to access consular or diplomatic assistance in the case of problems in the destination country. Illegal placement of migrant workers often involves falsifying their identities or using false documents. This can taint migrant workers' identities and make it difficult for them to obtain recognition and protection from authorities.

d. Legal Consequences for Employers and Involved Parties

The placement of Indonesian migrant workers can also have legal implications for employers that employ them illegally. Employers may be subject to sanctions or lawsuits to violate labor regulations and immigration laws. When illegally placed Indonesian migrant workers experience termination, they may not receive proper compensation or have access to legal channels to protect their rights.

These legal implications suggest that Indonesian migrant workers' illegal placement violates their human rights and creates a situation that is vulnerable to exploitation and abuse. To protect migrant workers' rights, cooperation between countries, better protection policies, strong law enforcement, protection of access to services, and fair legal protection are needed.

In the context of human rights protection, the analysis of legal implications related to the illegal placement of Indonesian migrant workers using the Pancasila Theory of Justice can involve several relevant aspects. The legal implications of illegally placing Indonesian migrant workers show a discrepancy with the values of social justice, legal protection, humanity, equality, and equality upheld in Pancasila.

The illegal placement of Indonesian migrant workers violated the principles of social justice in Pancasila. Illegal migrant workers often face unfair working conditions, low wages, and inequalities in access to legal services and protection. This is incompatible with the ideals of social justice mandated by the Pancasila.

The illegal placement of Indonesian migrant workers hinders access to fair legal protections. In the context of Pancasila, every individual, including illegal migrant workers, has a right to equal legal protection. However, this often makes it difficult for them to obtain legal protection and justice.

The illegal placement of Indonesian migrant workers involves humanitarian concerns such as the risk of exploitation, inhumane working conditions, and limited access to public services. From the perspective of Pancasila, humanitarian justice is an important principle that emphasizes the fair and humane treatment of all individuals, including illegal migrant workers.

The illegal placement of Indonesian migrant workers involves inequality and discrimination in their treatment of migrant workers. The principle of equality in Pancasila emphasizes that every individual has equal rights and must be treated fairly without discrimination. However, illegal placement often violates these principles.

Therefore, to achieve true justice, legal measures are required to ensure the protection of migrant workers' human rights, fair law enforcement, and increased equality in the treatment of all individuals including Indonesian migrant workers.

3.2. The Government of Indonesia's Role in Addressing Illegal Placement of Migrant Workers and Protecting Human Rights

The Indonesian government plays an important role in addressing the illegal placement of migrant workers and in protecting their human rights. Some of the roles played by the Indonesian government in this context are as follows.

a. Migrant Workers Protection Policy

The Indonesian government has developed policies to protect migrant workers, including ensuring their safety and legal placement. They have established institutions such as the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) to regulate the official placement of migrant workers.

b. Bilateral and Regional Agreements

The Government of Indonesia has established bilateral and regional agreements with migration destination countries to ensure the protection of migrant workers' human rights. Such agreements cover important aspects such as the guarantee of fair wages, humane working hours, health protection, and access to dispute resolution mechanisms.

c. Surveillance and Law Enforcement

The Indonesian government monitors the illegal placement of migrant workers. They need to intensify law enforcement efforts against employers or parties involved in illegal placements, including efforts to prevent trafficking and exploitation of migrant workers.

d. Diplomacy and International Cooperation

The Indonesian government has played a role in diplomacy and international cooperation to strengthen the protection of migrant workers' rights. They work with migration destination countries and relevant international organizations to improve working conditions, address the problem of illegal placement, and ensure the protection of migrant workers' human rights.

e. Education and Information

The Indonesian government provides education and information to prospective migrant workers regarding their risks and rights. This includes training, counseling, and socialization campaigns related to migrant workers' rights and ways to avoid illegal placement.

f. Assistance and Protection for Migrant Workers

The Indonesian government should provide assistance and protection to Indonesian migrant workers who are in difficult situations or entangled in illegal placement. This includes access to consular services, legal assistance, and protection in cases of exploitation or human rights violation.

Through these roles, the Indonesian government sought to protect migrant workers' human rights and address illegal placements. However, complex and multidimensional challenges require continuous efforts to strengthen policies, law enforcement, and international cooperation to protect the rights of Indonesian migrant workers.

In the context of responsive legal theory Philippe Nonet and Philip Selznick ([Nonet & Selznick, 2008](#)), The Indonesian government has a leading role to play in addressing the illegal placement of migrant workers and protecting their human rights. The following is a detailed explanation of the Indonesian government's role in responsive legal theory:

1. *Responsiveness*: The Indonesian government must address the problem of illegal placement of migrant workers and related human rights violations. This responsiveness involves a deep recognition and understanding of the problems faced by illegal migrant workers. Governments need

- to listen to their aspirations and needs and adapt legal policies and practices according to evolving contexts.
2. *Responsibility*: The Indonesian government is responsible for protecting the human rights of migrant workers and addressing their illegal placement. These responsibilities include formulating policies to prevent and address illegal placements, providing effective legal protection, and enforcing laws against parties involved in illegal placements. Governments should also provide fair and equal access to justice systems for illegal migrant workers who have experienced human rights abuses.
 3. *Responsiveness to Diversity*: The Indonesian government should recognize the diversity and complexity of the situation of illegal migrant workers and take responsive measures according to individual needs and conditions. This includes providing special protection for migrant workers in vulnerable conditions such as women, children, and other vulnerable groups. Governments must adopt approaches that consider this diversity in the policies, programs, and services provided.
 4. *Collaborative Governance*: The Government of Indonesia needs to establish cooperation and partnership with various relevant stakeholders, including civil society organizations, migrant workers' associations, and other parties involved in protecting the human rights of migrant workers. Through collaborative governance, governments can gain a more comprehensive understanding of the issues faced by illegal migrant workers, and work together to develop sustainable solutions.
 5. *Public Values*: The Indonesian government should prioritize public values to address the placement of illegal migrant workers and protect human rights. Values, such as justice, equality, freedom, and humanity, should be reflected in policies, legal practices, and the implementation of programs dealing with illegal migrant workers. Governments must maintain integrity, transparency, and accountability in carrying out their duties and ensuring that their policies and actions are of public interest.

Through the application of responsive legal theory of Philippe Nonet and Philip Selznick, the Indonesian government is expected to play an effective role in addressing the illegal placement of migrant workers and protecting their human rights. Responsiveness, responsibility, responsiveness to diversity, collaborative governance, and public values are important cornerstones for carrying out these roles and ensuring fair protection of illegal migrant workers in Indonesia.

4. Conclusion

Based on the discussions related to this problem, the following conclusions can be drawn:

1. Based on Pancasila's theory of justice, the legal implications related to the illegal placement of Indonesian migrant workers indicate a discrepancy between the values of social justice, legal protection, humanity, equality, and equality upheld in Pancasila. The government and the legal system must play active roles in ensuring equal human rights protection for migrant workers, preventing illegal placements, strengthening law enforcement, and ensuring equitable access to legal services and protection for Indonesian migrant workers.
2. In the context of the responsive legal theories of Philippe Nonet and Philip Selznick, the Indonesian government plays an important role in addressing the illegal placement of migrant workers and protecting their human rights. Responsiveness to problems, responsibility for protection, responsiveness to diversity, collaborative governance, and prioritization of public values, governments strive to respond effectively and fairly to issues faced by illegal migrant workers and ensure equal protection of their human rights.

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