



## Evaluating on Adopting “Duty of Care” Model as an Instrument to Protect Indonesian Migrant Workers

Ariyanto Nugroho; Surwandono; Ali Maksum

Master Program in International Relations, Universitas Muhammadiyah Yogyakarta, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v10i1.4211>

---

### **Abstract**

Protection of Indonesian migrant workers abroad is an important issue for the Indonesian government in its efforts to fulfill its constitutional and humanitarian mandates. This work is an arduous task amid the complexity of the problems faced by Indonesian migrant workers. The article aims to evaluate the governance of Indonesian government in providing effective protection for Indonesian migrant workers through a Duty of Care approach. Data obtained from official Indonesian government documents in the form of the Indonesian Migrant Workers Protection Law, as well as the Minister of Foreign Affairs Regulation on the Protection of Indonesian Citizens and Business Entities abroad. This article finds that the governance of the protection of Indonesian migrant workers has a problem of designing protection orientations that are still inward looking so that it has implications for the pattern of protection for Indonesian migrant workers is still reactive and less simultaneous.

**Keywords:** *Protection Diplomacy; Indonesian Migrant Workers; Duty of Care*

### **Introduction**

Indonesia is one of the countries with the 5th largest diaspora population in the world, and the largest component of the Indonesian diaspora comes from Indonesian migrant worker's circles. Unfortunately, Indonesian migrant workers largest job structure is in the 3D: dirty, dangerous and degrade categories. A number of human security problems from Indonesian migrant workers often occur, from problems getting discriminatory treatment, not getting paid, being deported to imprisonment and getting the death penalty for being accused of having committed a number of criminal acts or even being a victim of trafficking (Plan, 2013) and smuggling (Mahardika & Wicaksono, 2020).

The issue of security protection for Indonesian migrant workers is one of the major issues that must be taken seriously by the Indonesian government. This is related to the destination countries of Indonesian migrant workers are countries that have not ratified the protection of migrant workers and their families, such as Malaysia, Saudi Arabia, Qatar and Brunai Darusalam (Dollah & Abdullah, 2018).

A number of analyzes show that the level of legal, economic and social violations against Indonesian migrant workers is closely related to two important variables (Taran, 2001)(Hune, 1991).

First, it relates to the position of the country where Indonesian migrant workers works, whether it has ratified the convention on the protection of migrant workers or not. The more a country has not ratified the convention, the more likely that country is to ignore the civil rights of migrant workers (Kristiana, 2020). This is related to the absence of legal products at the domestic level that will guarantee the protection of the civil rights of migrant workers systematically. The state does not have an obligation to fulfill a number of regulations mandated in conventions that have not been ratified.

Second, the variables related to the number of Indonesian migrant workers are not in the illegal category, migrant workers who enter a country without going through official procedures and are registered in the migrant worker administration system (Rogozhina, 2020). The greater the number of illegal migrant workers, the greater the problems that are likely to be experienced by these migrant workers. This is related to the absence of strong legal access that can be provided by the receiving country, as well as the country where the migrant worker originates. Illegal migrant workers will be vulnerable to social, economic, legal and cultural exploitation, and will be slow to get guaranteed protection of civil rights.

In the context of Indonesian migrant workers, Saudi Arabia and Malaysia are two countries that have the criteria for the two variables above. Neither of them has ratified the 1990 convention on the protection of migrant workers and families and so far, there is no sign that the two will soon ratify the convention. The large number of illegal Indonesian migrant workers in Saudi Arabia is related to the opportunity to work in Saudi Arabia through a simple and easy umrah visa, and then they stay in Saudi Arabia illegally (Bianchi, 2017). Likewise, in Malaysia, illegal Indonesian migrant workers is related to the proximity of geographical access between Indonesia and Malaysia, so that many Indonesian citizens cross into Malaysia via the rat route and there are a number of agents who facilitate Indonesian to become migrant workers in Malaysia at low and flexible costs (Wahyudi, 2018).

Duty of Care, is a discourse that has begun to resonate in the context of protecting International Migrant Workers, in various countries, especially the West. Countries such as the United States, Canada, China, Britain, France, and Germany have begun to develop regulations to support and protect migrant workers from these countries. Indonesia is not left behind in developing this regulation, although the author mentions that it is still far from significant. As is known, the presence of Indonesian citizens abroad is very large. Those who work as migrant workers alone reach 9 million people (Natalia, 2021), if you add those with illegal status, it will reach 13-15 million people. On the one hand, the existence of this migrant workers will increase the flow of foreign exchange. However, with the risk of many legal and social problems that must be experienced by Indonesian citizens abroad, especially those who are illegal.

Data from BP2MI in 2022 shows that there were complaints of violence experienced by Indonesian migrant workers: 47 times in Saudi Arabia, 28 times in Malaysia, 20 times in Taiwan, 14 times in Hong Kong, and 10 times in the United Arab Emirates (BP2MI, 2022). Data on the return of troubled Indonesian Migrant Workers also occurred as many as 30,661 people, from 201,779 returning in 2021 or 15.1% (Nola, 2021). Not to mention those who have received violence from international terrorist organizations, such as in Somalia and Mindanao. The condition of international terrorism, also mentions that more than 6,000 million Indonesian diaspora are affiliated with terrorism. Data from the Ministry of Foreign Affairs in 2021 also shows that 5.9 million Indonesian citizens are not known to be abroad (Raharjo, 2022). Most of them are trafficking survivors, which cannot be handled significantly yet.

### ***Critical Literature Review***

The study of the protection to Indonesian migrant worker is more dominated by studies on the legal aspects of Indonesian citizen protection. The Nugrahaningsih study (et.al) discusses how to use paradiplomacy instruments in providing assistance to Indonesian migrant worker during the Covid19 pandemic period. This study shows that Indonesian migrant worker management at the border requires more space for local governments at the border to be more active in relation to Indonesian migrant to government policies at the central level (Nugrahaningsih et al., 2022).

The study from Elisabeth (et.al) addresses the theme of protection by mainstreaming the role of public diplomacy in the context of the role of the Seruni Association. Paguyupan is an organizational format that relies on solidarity based on kinship ties, which then builds strong emotional bonds. The role of this solidarity bond is an important pillar for the process of protecting migrant workers who are experiencing problems (Dewi & Yazid, 2017).

Studies from Aziz and Basir show that PMI, especially those in Malaysia, are experiencing a serious protection dilemma. This is related to the incompatibility of migrant worker protection regulations in Malaysia with the migrant worker protection conventions in ASEAN (Aziz & Basir, 2021). Moreover, Malaysia has not ratified the convention on the protection of migrant workers and their families. This study further reinforces that the Indonesian government must be more proactive and not reactive in managing PMI protection.

The duty of care approach formulates 3 models of protection that the state can provide to its overseas residents such as the social contract, intermediaries, and advance care model. First, "Social Contract Care". This model is the basic theoretical basis of the protection of citizens. Citizens have given their rights to freedom to the state and have provided opportunities for the state to do a number of things that can protect their basic rights. In the context of international relations, the concrete form of efforts to provide protection is to build diplomatic relations with a number of countries, and on the basis of this relationship, the state can have a representative office that can facilitate the protection of citizens. In addition, the state has ratified a number of conventions protecting the rights of citizens so that the state will be bound to carry out what it agrees on legally and formally.

Second, "Intermediaries of Care". It is a further innovation from the state to provide protection to its citizens by inviting and funding private individuals or institutions to carry out a protective role for their citizens. This choice is a step from the state to be able to provide professional protection against the complaints of its citizens in a country. In the practice of international relations, the state will appoint a legal and security service company to provide legal protection to its citizens.

Third, "Extension of Care". Is a form of consular-based protection, where the state will mobilize protection by using official diplomats, or security forces such as the police and military to take legal actions in other countries. In the practice of international relations, the role of diplomats is carried out by officially recruiting local residents to become staff in a country's representative office. The presence of this local staff of diplomats allows the process of protecting the interests of citizens to be more efficient. Meanwhile, in the context of military and police involvement in protection, usually in an emergency situation where the partner country is in a position of instability and there is no guarantee of security for foreign residents in a country.

### ***Research Methods***

This research uses qualitative analysis to define the governance of the protection of Indonesian migrant workers, and then used as a backdrop to evaluate it. The analysis process begins with an analysis of the policy documents for the protection of Indonesian migrant workers, both at the level of laws and ministerial regulations. The evaluation process is carried out using a duty of care approach, to assess the

extent to which Indonesian migrant worker protection regulations internalize the idea, and how to provide adequate infrastructure for the effectiveness of protection policies.

### **Result and Discussion**

In the last 8 years, there has been no significant decline in the number of complaints against Indonesian migrant workers every year. BP2MI data in the period 2013-2020 shows that there are 38,246 case complaints. Of these, 53% of case complaints actually occurred within the time span after the Indonesian Migrant Workers Law was passed (2017-2020). Meanwhile, before the Indonesian Migrant Workers Law was passed (2013-2016), 47% of recorded case complaints, (Migrant Workers Network, 2022). Even in the 2019 case, there was an extraordinary increase in the number of case complaints compared to the previous year, from 4,779 complaints to 9,377 complaints, (Migrant Workers Network, 2022). The types of cases that experienced the highest spike in cases included unpaid salaries, termination of employment before the work agreement period ended, and overstay.

Despite the decline in the number of case complaints in 2020, it is estimated that the number of cases experienced by Indonesian migrant workers remains high, especially in relation to the new vulnerabilities that have emerged during the COVID-19 pandemic. Not a few Indonesian migrant workers do not want to file their cases, or even do not have access to complaints at all during the COVID-19 pandemic. However, the Ministry of Foreign Affairs of the Republic of Indonesia noted that cases of Indonesian citizens, including Indonesian migrant workers handled by representatives of the Republic of Indonesia abroad, actually increased in 2020.

Furthermore, during 2020, there was a large and sudden flow of Indonesian migrant workers returning home. There are 3 sources of data for returning home during the COVID-19 pandemic. First, SISKOP2MI, which is integrated with SIMKIM, recorded at least 49,211 procedural return of Indonesian migrant workers. Second, the online return system from Indonesian representatives, and information from various parties, recorded 53,200 returning Indonesian migrant workers, the majority of which were non-procedural. Third, data from officers' reports from January 1 to April 24, 2020, which was carried out manually due to the massive flow of returning Indonesian migrant workers, recorded at least 75,424 returning Indonesian migrant workers, (Migrant Workers Network, 2022).

A survey conducted by Migrant Workers Network (MWN) and the International Human Rights Working Group (IHRWG) and the Indonesian Migrant Workers Union, April last year, showed that 54% of respondents to Indonesian migrant workers in Saudi Arabia were already unpaid and 34% were afraid to check their condition at a health facility because worried about being arrested by the security forces regarding their immigration status. (Migrant Workers Network, 2022). Respondents of Indonesian migrant workers who work in Singapore and Hong Kong, who mostly work in the household sector, generally still work and receive a monthly salary, only experiencing difficulties such as deprivation of vacation rights, depression, and unable to send money to Indonesia.

Another survey conducted by MWN from December 2020 to February 2021 also showed that the majority of Indonesian migrant worker respondents said that the protection conditions remained the same and there were no significant changes. Many respondents to Indonesian migrant workers experienced problems during the COVID-19 pandemic, including difficulties in organizing, increasing workloads, cutting salaries, and having to work 7 days a week. 53.7% of the number of case complaints received by SBMI during 2020 came from female Indonesian migrant workers. Furthermore, 36% or most of the complaints were filed by Indonesian female migrant workers who work as domestic workers (Migrant Workers Network, 2022). This data shows a certain pattern, namely that female Indonesian migrant workers, especially those working in the informal sector, are the most vulnerable group.

## Evaluation to Indonesian Migrant Workers Protection

In the context of the Duty of Care paradigm, the Indonesian government has actually implemented a social contract model by establishing a number of institutions that have the main duties and functions to provide services, and protection of Indonesian migrant worker rights abroad (Arpangi, 2018). The governance of the protection of Indonesian migrant workers abroad has actually been carried out comprehensively by institutionalizing a special agency, previously called BNP2TKI and then replaced with BP2MI.

Refer to law No. 29 of 2004 has not given much decentralized authority for local governments to participate in managing Indonesian migrant worker issues, where the management of Indonesian migrant workers, from training, delivery and placement is in the domain of the central government. In fact, this law actually gives a wide space for labor delivery agencies to carry out massive recruitment. The diction of PJTKI (Deployment of Indonesian Manpower Services) implies that the private sector has the responsibility to carry out the widest possible recruitment. Meanwhile, in Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers by increasing the role of the government and reducing the role of the private sector (ekon.go.id, 2021). This condition allows the government to manage Indonesian migrant worker protection from upstream to downstream, and become more proactive and responsive in providing protection (Husni et al., 2020).

As part of the constitutional responsibility, the government also ratified the protection of migrant workers and their families. This choice is actually a progressive policy when compared to a number of countries in ASEAN that have not ratified this convention. Indonesia's move is inseparable from the desire to provide protection to migrant workers in Indonesia, and it is hoped that countries targeted by Indonesian migrant worker will also do the same (Auethavornpipat & Palmer, 2022).

In addition, the government also mainstreams gender-based migrant workers. This policy choice is in response to the large number of migrant workers who are female and most of them work in the private sector who are vulnerable to discrimination related to the difficulty of the supervision process compared to migrant workers who work in public spaces (Yeoh et al., 2020). This policy to a certain extent shows the serious political will of the government to provide protection to migrant workers in a comprehensive and systematic manner.

But the big question is, why has the Indonesian government made a number of progressive efforts for Indonesian migrant worker protection, the number of cases related to Indonesian migrant worker is still high which reached 50 thousand cases in 2021, and around 10 thousand are still not resolved properly? The simple argument is the law of Indonesian migrant worker protection is still inward looking and has not yet had an outward looking character. It is in this context that the idea of the intermediaries care model becomes an alternative that needs to be considered. This means that the Indonesian government must increase reaching out to the protection process abroad to be more substantive and progressive.

In this context, the Indonesian government's choice to place a moratorium on Indonesian migrant worker shipments to Malaysia in 2022 is a strategic diplomatic step so that the Malaysian government is serious about providing protection for migrant workers. Indeed, the same thing Indonesia did in 2012 to suppress the Malaysian government which is less responsive in the protection of migrant workers. However, there is a tendency for the moratorium policy to cause a serious dilemma for the Indonesian government, where the flow of Indonesian migrant worker workers into illegal migrant workers has increased, this is related to Malaysia's high need for migrant workers.

Finally, Indonesia and Malaysia re-discussed lifting the moratorium, and continued to urge the Malaysian government to be more concerned about removing the protection of migrant workers. However, in the view of migrant care, the MOU for Indonesian migrant worker protection is still

vulnerable to exploitation and human trafficking spaces. The short period of the moratorium actually makes Indonesia's bargaining space to the Malaysian government less effective. So there is a possibility that the Malaysian government will do violations at future.

What about the advance care model? Actually, normatively, Indonesian migrant worker protection has been formulated to the degree of regulation up to the level of the Law, meaning that the degree of regulation is already at the highest level, and can modulate resources for Indonesian migrant worker protection simultaneously. So it can be interpreted that the government has adopted the highest level of protection. But why the cases that hit Indonesian migrant worker have not decreased significantly, and even raise a number of important questions. What is wrong with his legislation, or is it because of the design of the orientation of his legislation or the problems at the level of compliance (Martin & Abimourched, 2009)?

Referring to a number of studies in the context of international legislation, the ineffectiveness of a policy can be derived from two main factors. First, it is the design of the regulations themselves that have problems at the governance level. This means that the regulatory roadmap for solving the problem turned out to be inappropriate in photographing the problem itself. In other words, although the regulation is really implemented as a whole, the problem is still not resolved. In Tallberg's view this is called a management problem in international legislation. Second, problems at the level of compliance enforcement. This means that by design the regulation is already on the track but there are a number of problematic compliance enforcement instruments. As long as the regulation is actually implemented, the problem can be solved properly. It is a problem on enforcement of regulations (Jönsson & Tallberg, 1998).

It is in this context that it is reflected that the protection of Indonesian migrant worker is actually problematic in both sources. The revision law of the Indonesian migrant worker protection has also not changed much about the protection roadmap which is still inward looking. For this context, it is necessary to revise the governance of Indonesian migrant worker protection using the advanced care paradigm by strengthening the orientation of Indonesian migrant worker protection based on outward looking (Amalia, 2020). This step can be built by building a partnership framework with Indonesian migrant worker stakeholders both with partner countries, international institutions on labor such as the ILO and IOM, as well as with a number of INGO that focus on advocacy for migrant workers. In this context, Indonesia can learn from the Philippine government on how to build regulations that allow the protection of migrant workers to be more effective (Go, 2004).

## **Conclusion**

The governance of the protection of Indonesian migrant workers requires serious attention from various parties from the government, companies, nongovernmental organizations, political parties, and universities. Protection governance must ensure that any superstructure and protection infrastructure can run effectively and productively. Referring to the high rate of discrimination experienced by Indonesian migrant workers abroad, the legislative process of protection of Indonesian workers needs to systematically internalize the duty of care model, from the model, design to operational governance.

## **Acknowledgement**

Thank you to Ristek DIKTI for providing research funding assistance related to the Protection of the Indonesian Diaspora and Peace Governance from 2021-2023.

## **References**

Amalia, E. (2020). Sustaining transnational activism between Indonesia and Hong Kong. In *Asian and Pacific Migration Journal* (Vol. 29, Issue 1, pp. 12–29). <https://doi.org/10.1177/0117196820925556>.

- Arpangi, A. (2018). Legal Protection on Indonesian Labor in Abroad. *International Journal of Law Reconstruction*, 2(1), 53. <https://doi.org/10.26532/ijlr.v2i1.2977>.
- Auethavornpipat, R., & Palmer, W. (2022). Indonesia's Promotion of UN Migrant Protection Norms in ASEAN. In *Pacific Affairs* (Vol. 95, Issue 1, pp. 75–97). <https://doi.org/10.5509/202295175>.
- Aziz, S. N. A., & Basir, S. M. (2021). Protection of Migrant Workers under the ICMW: Incompatibility with Malaysian Laws and Position in ASEAN. In *Hasanuddin Law Review* (Vol. 7, Issue 3, pp. 150–168). <https://doi.org/10.20956/halrev.v7i3.3066>.
- Bianchi, R. R. (2017). Reimagining the Hajj. *Social Sciences*, 6(2). <https://doi.org/10.3390/socsci6020036>.
- Dewi, E., & Yazid, S. (2017). Protecting Indonesia's women migrant workers from the grassroots: a story of Paguyuban Seruni. In *Journal of the Indian Ocean Region* (Vol. 13, Issue 1, pp. 76–91). <https://doi.org/10.1080/19480881.2016.1272812>.
- Dollah, R., & Abdullah, K. (2018). The Securitization of Migrant Workers in Sabah, Malaysia. *Journal of International Migration and Integration*. <https://doi.org/10.1007/s12134-018-0566-0>.
- ekon.go.id. (2021). *Sinergi Pemerintah Pusat dan Daerah Dalam Melindungi Seluruh Pekerja Migran Indonesia*. <https://ekon.go.id/publikasi/detail/3365/sinergi-pemerintah-pusat-dan-daerah-dalam-melindungi-seluruh-pekerja-migran-indonesia>.
- Go, S. P. (2004). Fighting for the rights of migrant workers: The case of the Philippines. In *Migration for Employment: Bilateral Agreements at a Crossroads* (Vol. 9789264108, pp. 187–202). <https://doi.org/10.1787/9789264108684-13-en>.
- Hune, S. (1991). Migrant women in the context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In *International Migration Review* (Vol. 25, Issue 4, pp. 800–817). <https://doi.org/10.2307/2546845>.
- Husni, L., Cahyowati, R. R., & Mansur. (2020). Legal Protection For Indonesian Migrant Workers Based On Law Number 18 Of 2017. *Journal of Legal, Ethical and Regulatory Issues*, 23, 1–6.
- Jönsson, C., & Tallberg, J. (1998). Compliance and post-agreement bargaining. *European Journal of International Relations*, 4(4), 371–408. <https://doi.org/10.1177/1354066198004004001>.
- Kristiana, A. (2020). Key Policy Challenge : Social Security for Migrant Workers. *International Journal of Religious and Cultural Studies*, 2(1), 7–10. <https://doi.org/10.34199/ijracs.2020.04.02>.
- Mahardika, A. P., & Wicaksono, S. S. (2020). Human Trafficking and Migrant Workers: Analysis of Indonesian Migrant Workers Protection in Overseas. *Law Research Review Quarterly*, 6(2), 173–180. <https://doi.org/10.15294/lrrq.v6i2.37366>.
- Martin, S., & Abimourched, R. (2009). Migrant rights: International law and national action. In *International Migration* (Vol. 47, Issue 5, pp. 115–138). <https://doi.org/10.1111/j.1468-2435.2009.00566.x>.
- Nugrahaningsih, N., Nuzulian, U., & ... (2022). Paradiplomacy in Protecting West Kalimantan Migrant Workers in Malaysia during the Covid-19 Global Pandemic. *Jurnal Hubungan Internasional*. <https://journal.umy.ac.id/index.php/jhi/article/view/12500>.
- Plan, R. (2013). Trafficking for labour exploitation: Getting the responses right. In *Labour Migration, Human Trafficking and Multinational Corporations: The Commodification of Illicit Flows* (pp. 20–37). <https://doi.org/10.4324/9780203134733>.

- Raharjo, D. B. (2022). *Kemlu Perkirakan 5,9 Juta WNI Tidak Diketahui Keberadaannya di Luar Negeri, Tapi Muncul saat Ada Masalah*. Suara.Com. <https://www.suara.com/news/2022/07/13/141734/kemlu-perkirakan-59-juta-wni-tidak-diketahui-keberadaannya-di-luar-negeri-tapi-muncul-saat-ada-masalah>.
- Rogozhina, N. G. (2020). Intra-regional migration of labor resources in Southeast Asia. *World Economy and International Relations*, 64(3), 111–119. <https://doi.org/10.20542/0131-2227-2020-64-3-111-119>.
- Taran, P. A. (2001). Human rights of migrants: Challenges of the new decade. *International Migration*, 38(6), 7–51. <https://doi.org/10.1111/1468-2435.00141>.
- Yeoh, B. S. A., Goh, C., & Wee, K. (2020). Social Protection for Migrant Domestic Workers in Singapore: International Conventions, the Law, and Civil Society Action. In *American Behavioral Scientist* (Vol. 64, Issue 6, pp. 841–858). <https://doi.org/10.1177/0002764220910208>.

## Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).