

Legal Protection for Indonesian Migrant Workers in the Domestic Sector in Brunei Darussalam

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ABSTRACT

Background. The protection of Indonesian Migrant Workers (PMI) abroad, particularly in Brunei Darussalam, is crucial to ensure their rights and welfare. Despite existing regulations such as Law Number 18 of 2017, PMIs continue to face various challenges including exploitation, unpaid wages, and violence. Addressing these issues requires a comprehensive approach involving legal, social, and diplomatic efforts.

Purpose. This study aims to analyze the legal protections available to Indonesian Migrant Workers in Brunei Darussalam. It seeks to identify the effectiveness of current legal frameworks, the roles of Indonesian governmental institutions, and the impact of bilateral agreements between Indonesia and Brunei in safeguarding the rights of PMIs.

Method. Utilizing a juridical-normative methodology, this research examines the legal documents, regulations, and policies related to PMI protection. It also analyzes case studies and statistical data on PMI cases in Brunei, focusing on the roles of BP2MI, the Ministry of Manpower, and the Ministry of Foreign Affairs.

Results. The findings reveal that while legal frameworks exist to protect PMIs, there are significant gaps in implementation and enforcement. Bilateral agreements between Indonesia and Brunei need to be strengthened, and there is a need for more effective legal assistance and support systems for PMIs. The study also highlights the critical role of the Indonesian Embassy in providing on-ground support to PMIs.

Conclusion. Comprehensive protection of Indonesian Migrant Workers in Brunei requires a multi-faceted approach. This includes stronger bilateral relations, improved regulatory frameworks, and active support from Indonesian government institutions. Ensuring the rights and welfare of PMIs will require ongoing collaboration between Indonesia and Brunei, as well as continuous monitoring and evaluation of the effectiveness of legal protections.

KEYWORDS

Brunei Darussalam, Indonesian Migrant Workers (PMI), Legal Protection

INTRODUCTION

Legal protection is an effort to safeguard human rights that have been harmed by other parties to ensure that society can enjoy all rights guaranteed by law. It is achieved through various legal actions by law enforcement officers, to provide mental and physical security from disturbances and threats that may come from various sources.

Citation: Purnamasari, W., Sulaiman, A., & Redi, A. (2024). Legal Protection for Indonesian Migrant Workers in the Domestic Sector in Brunei Darussalam. *Rechtsnormen Journal of Law*, 2(3), 266–275.

<https://doi.org/10.70177/rjl.v2i3.1296>

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Received: August 31, 2024

Accepted: September 04, 2024

Published: September 04, 2024



Legal protection also aims to prevent arbitrary actions by authorities inconsistent with the law, thereby creating order and tranquility in society and allowing each individual to live with dignity as a human being (Indra Gunawan Purba et al., 2023).

According to Kamus Besar Bahasa Indonesia (KBBI), legal protection is an action or method used to protect certain parties through various protective efforts. Muchsin adds that legal protection is a mechanism used to safeguard legal subjects through applicable regulations, which are enforced with specific sanctions. Legal protection can be divided into two types: preventive, which aims to prevent violations by providing guidelines and limitations on obligations, and repressive involves the imposition of sanctions such as fines, imprisonment, or additional penalties after a breach or dispute has occurred (Kansil, 2011).

Meanwhile, Philipus M. Hadjon defines legal protection as an effort to safeguard the dignity and honor of legal subjects, and to recognize the fundamental human rights they possess, by shielding them from arbitrary and capricious actions. This approach emphasizes human dignity protection based on applicable legal provisions (Brownsword, 2021). On the other hand, Satjipto Raharjo defines legal protection as the guardianship of human rights that have been harmed by others, to ensure that society can fully enjoy the rights guaranteed by law. Raharjo's view highlights the necessity of legal protection to provide safety and justice to individuals who are victims.

Article 27, paragraph (2) of the 1945 Constitution of Indonesia asserts that every citizen has the right to work and earn a decent livelihood, which is part of human rights. Indonesia has also ratified the International Covenant on Economic, Social, and Cultural Rights, which affirms every person's right to work under fair and favorable conditions (Sujata, 2011). The term Indonesian Migrant Workers (PMI) or Indonesian Migrant Labor (BMI) is not as well-known as Indonesian Overseas Workers (TKI) or Indonesian Female Workers (TKW), though the meanings are the same, referring to Indonesian citizens working abroad. Many people choose to work abroad as a solution to meet their family's needs, but this often requires robust protection from the state.

Linguistically, "worker" refers to someone who receives wages for their work, while "migrant" denotes someone moving from one place to another. In the context of workers, migrant means moving to work abroad (Arisman & Jaya, 2020). Therefore, a migrant worker is defined as someone working outside their home country. Formally, Indonesian citizens working abroad are referred to as Indonesian Migrant Workers (PMI) by Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers (Nuraeny, 2023). Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers (PMI) provides a clear legal framework, including for recruitment, placement, and protection of PMI's rights (Husni et al., 2020).

Normatively, individuals must meet stringent requirements before being deployed, such as being at least 18 years old, possessing relevant competencies, having good physical and mental health, and having complete documentation. The placement process also involves structured stages, including health checks, signing employment agreements, and registering for social security participation as stipulated in Article 5 on PMI Law (Ashari, 2021). Legal protection for Indonesian Migrant Workers (PMI) in Brunei Darussalam is based on principles contained in Pancasila and the Preamble of the 1945 Constitution, which affirm every citizen's right to decent employment. The Indonesian state is responsible for protecting the rights of its citizens, including migrant workers abroad. The right to decent work and life is emphasized in Article 27, paragraph (2) and Article 28D, paragraph (2) of the 1945 Constitution, and is regulated by various laws such as Law No. 39 of 1999 on Human Rights and Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social, and Cultural Rights (Taklima et al., 2023).

In the context of migrant workers, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers replaces the term Indonesian Overseas Workers (TKI) with Indonesian Migrant Workers (PMI) and underscores the need for legal, social, and economic protection for PMI (Hadi, 2008). The recruitment process for PMI must meet specific requirements, including a minimum age of 18 years, relevant competencies, physical and mental health, and participation in social security programs. Pre-deployment stages include information provision, registration, selection, health and psychological examinations, and visa processing (Cubelo et al., 2024).

Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers defines Indonesian Migrant Workers (PMI) as any Indonesian citizen who is or will be, working for remuneration outside the territory of the Republic of Indonesia. Chapter II, Article 4, includes those working for legal entities, individual or household employers, as well as seafarers and fishery crew members. Indonesian citizens assigned or employed by international organizations or foreign states for official duties, students and trainees abroad, refugees or asylum seekers, investors, civil servants or local employees in Indonesian diplomatic missions, those working for institutions funded by the state budget, and Indonesian citizens with independent businesses abroad are not categorized as PMI (Sianturi & Viartasiwi, 2021) (Tjitrawati et al., 2023).

Data on the placement of Indonesian Migrant Workers (PMI) indicates a significant increase in recent years, with countries such as Malaysia, Taiwan, and Hong Kong being major destinations. From January to October 2023, PMI placements reached 237,992, predominantly in the formal sector. Despite the increase in placements, many PMIs face various issues in their destination countries, such as sexual harassment, physical violence, and unpaid wages (Shalihah & Alviah, 2023). Legal protection for PMIs is not only preventive but also repressive, including through the passive national principle which allows Indonesian criminal law to be enforced against Indonesian citizens who commit violations abroad. The National Agency for the Placement and Protection of Indonesian Migrant Workers (BP2MI), as the government institution responsible for protecting PMIs, must ensure effective protection and prevent human trafficking. The Indonesian government has also signed the ASEAN Convention Against Trafficking in Persons, which aims to prevent and combat human trafficking and protect victims, particularly women and children (Hidayat et al., 2024).

Law No. 18 of 2017 stipulates that to become an Indonesian Migrant Worker (PMI), an individual must meet several requirements listed in Article 5, namely: being at least 18 years old, having relevant competencies, being in good physical and mental health, registered and possessing a Social Security number, and having complete required documentation (Dewantari et al., 2022). The term “Illegal TKI” in media reports refers to migrant workers who do not meet one or more of these five requirements. The PMI Protection Law underscores the rights of every prospective PMI and migrant worker, including obtaining employment and choosing according to competence, access to education and training, accurate labor market information, professional and non-discriminatory services, freedom of worship, wages according to standards, legal protection and assistance, explanation of rights and obligations, communication access, possession of travel documents, the right to association, guarantees of safety and security in repatriation, and obtaining valid work documents and agreements (Kunarti et al., 2023). Every Indonesian Migrant Worker (PMI) is obligated to comply with the laws and regulations in Indonesia and the host country, respect local customs, perform work according to the Employment Agreement, and report their arrival, presence, and repatriation to the Indonesian Representative in the destination country.

Indonesia, as one of the countries with a significant number of Indonesian Migrant Workers (PMI) exports, faces various challenges in sending PMIs abroad due to the evolving nature of international relations and the increasingly complex needs of the global sector (Putri & Makhroja,

2023). A key factor influencing PMI deployment is the wage disparity between the country of origin and the destination country. Low domestic wages often fail to meet basic needs, while countries with higher per capita incomes than Indonesia can offer more attractive wages for the same jobs (Faharuddin & Endrawati, 2022). Despite the existence of a legal framework to protect and uphold PMI rights, various issues persist. Cases of exploitation, unprocedural departures, use of visitor visas for work, illegal worker detainment, deportation, and migrant worker deaths remain prevalent, especially in domestic sectors in countries like Brunei Darussalam (Ramli & Astawa, 2020).

Brunei Darussalam is a sovereign nation in Southeast Asia located on the northern coast of Borneo Island. It is the only fully independent country in Borneo, with the remaining territory divided between Malaysia and Indonesia. This small nation has an area of 5,765 km² and a coastline of 161 km facing the South China Sea and Brunei Bay. Its capital is Bandar Seri Begawan also the largest city in Brunei so the country is renowned for its natural resource wealth, particularly oil and natural gas, making it the second richest country in the world based on GDP per capita. Most of its population enjoys a high standard of living with various public amenities and adequate infrastructure (Debnath, 2022).

Brunei Darussalam, governed by an Absolute Monarchy under Sultan Hassanal Bolkiah, had a population of approximately 455,858 in 2023, with 180,000 residents living in Bandar Seri Begawan. The official language is Malay, and the currency is the Brunei Dollar (B\$). Islam is the official religion, and Brunei's economy is dominated by the oil and gas sector, while other sectors such as fisheries, agriculture, and tourism are developing. Brunei's culture is rich with Malay and Islamic traditions, featuring numerous festivals and cultural events throughout the year, making it an attractive tourist destination with its pristine natural beauty, unique culture, and the hospitality of its people. As a result, Brunei Darussalam is a primary destination for Indonesian Migrant Workers (PMI) in Southeast Asia for various reasons.

Countries like Brunei Darussalam offer high employment opportunities, especially in construction, hospitality, caregiving, and domestic work, with relatively higher wages than other regional countries. Bilateral cooperation between Indonesia and Brunei Darussalam ensures the protection of PMI rights, supported by the Indonesian Embassy in Bandar Seri Begawan, and clear labor regulations. Easy access, such as proximity, fast visa processing, and a significant Indonesian community in Brunei, also facilitates PMI adaptation and social support.

In 2023, the Indonesian Embassy in Bandar Seri Begawan reported that it had protected 510 Indonesian nationals/PMIs in the domestic sector, with successfully advocated rights valued at Rp 2.6 billion (Prajanti et al., 2024). Issues faced by PMIs in Brunei Darussalam include inadequate working conditions, non-compliant employment agreements, unpaid wages, overstaying, illness, violence, sexual harassment, and moral issues. Protection efforts by the Embassy include managing and advocating for PMI rights, as well as coordinating with local authorities such as the police, labor department, and immigration. The Embassy also conducts empowerment activities in shelters to maintain the health and morale of PMIs during their waiting periods (International Labour Organization & Departemen Luar Negeri, 2006).

However, the local Indonesian authorities have not provided enough attention to this issue. As per Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, a strong legal framework is essential to safeguard PMIs during the pre-deployment, placement, and post-placement phases. The governments of Indonesia and Brunei Darussalam must come to a mutual understanding on these matters to guarantee the best protection for PMIs.

RESEARCH METHODOLOGY

This research methodology employs a juridical-normative approach within the legal research framework. It is characterized by descriptive-analytical research and utilizes primary, secondary, and tertiary legal materials as data sources. Data collection involves two main stages: library research, which entails gathering information from legal literature sources, and field research, which utilizes interview techniques to obtain primary data from relevant respondents (Taherdoost, 2021). Conclusions are drawn using qualitative normative analysis, allowing for a comprehensive understanding of the studied issues through an in-depth examination of the collected data.

RESULT AND DISCUSSION

Indonesian Migrant Workers in Brunei Darussalam Need Binding Legal Protection

In this regard, binding legal protection is required for Indonesian Migrant Workers (PMI) in Brunei Darussalam, as regulated by Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Legal protection for PMI starts from before their departure, during their employment, and continues until after their return to Indonesia. The institutional authority to implement this protection lies with the Ministry of Manpower (Kemnaker) and the Ministry of Foreign Affairs (Kemenlu), which play a fundamental role in ensuring that PMIs are protected by applicable legal regulations (Rusli, 2023).

Kemnaker is responsible as the main regulator overseeing and regulating the placement of PMI abroad, including in Brunei Darussalam. In this capacity, Kemnaker has the authority to halt or prohibit the placement of PMI in certain countries if threats to security, human rights, or equitable job opportunities are found (Bakir & Syahputra, 2023). Kemnaker also supervises labor placement companies to ensure they meet the requirements set out in Law No. 18 of 2017, including the establishment of Desmigratif to provide integrated services to PMI (Wajid Fauzi et al., 2023).

On the other hand, Kemenlu plays a crucial role in protecting Indonesian citizens (WNI) abroad, including PMI in Brunei Darussalam. Through the Indonesian Embassy (KBRI) and Consulates General (KJRI), Kemenlu monitors the conditions and treatment of PMI, provides consular services, and offers complaint mechanisms to address issues faced by PMI. The Ministry also strengthens regulations related to the issuance of passports, and visas, and the fulfillment of PMI departure requirements (Saraswati, 2024).

Overall, binding legal protection for PMI in Brunei Darussalam is carried out through cooperation between Kemnaker and Kemenlu, each with specific functions and authorities per Law No. 18 of 2017. It demonstrates the Indonesian government's commitment to ensuring that the rights and interests of PMI are effectively and fairly protected in their destination countries (Arista et al., 2022).

The Indonesian Government's Efforts to Provide Legal Protection for Indonesian Migrant Workers in Brunei Darussalam

Regarding the protection of Indonesia Migrant Workers, the Indonesian government through the National Agency for the Placement and Protection of Indonesian Migrant Workers (BP2MI) has undertaken concrete measures to prevent the departure of non-procedural PMIs. The following are some of the initiatives and actions that have been implemented:(Wahyudi et al., 2019)

1. Inter-agency Cooperation and Coordination

BP2MI actively coordinates with various related agencies such as the Indonesian Police, TNI, Prosecutor's Office, and other law enforcement officials to increase supervision and action against human trafficking and human smuggling syndicates that utilize non-procedural PMI.

2. Strengthening Information Systems

BP2MI has integrated the Immigration Management Information System (SIMKIM) belonging to the Directorate General of Immigration, Ministry of Law and Human Rights (Kemenkumham) with the Computerized System for the Protection of Indonesian Migrant Workers (Sisko P2MI). It aims to increase efficiency in PMI placement and protection services and minimize gaps for syndicates.

3. Use of LTSA in Services

BP2MI ensures that passport-making is performed through the One-Stop Integrated Service (LTSA) that has been built so that this process can be monitored and well documented. Syndicates operating outside the LTSA will be easier to detect and prosecute.

4. Coaching and Education

Apart from taking action against syndicates, BP2MI is also active in coaching and educating the public, especially in recruitment areas, regarding the dangers and consequences of unprocedural departures. This effort aims to increase public awareness of the importance of going through official channels.

5. Strengthening International Cooperation

BP2MI also collaborates with various PMI destination countries to exchange information and carry out better coordination in preventing non-procedural PMI departures.

6. Evaluation and Improvement of Regulations

BP2MI routinely evaluates applicable regulations and procedures and strives to improve existing regulations so that they are more effective in dealing with non-procedural PMI problems.

With these steps, it is expected that BP2MI can be more effective in handling and reducing non-procedural PMI departures and protect the interests and rights of PMI more comprehensively (Ningrum, 2023).

Construction of Legal Protection Required by Indonesian Migrant Workers in Brunei Darussalam

The legal protection framework for Indonesian Migrant Workers (PMI) in Brunei Darussalam needs to be based on various integrated legal, social, and economic aspects. Firstly, it is crucial to ensure that the Memorandum of Understanding (MoU) between Indonesia and Brunei Darussalam is approved to provide a strong legal foundation for PMI protection. (Vigneswaran, 2020). The process of convincing Brunei Darussalam to approve this MoU has been ongoing since 2013 and should be evaluated regularly, considering similar experiences in other countries such as Saudi Arabia, Bangladesh, Malaysia, and Japan (McAdam & Gilbert, 2021).

Before the departure of PMI, legal protection can begin by selecting destination countries based on risk assessment and stringent regulations. The Indonesian government must ensure that there is a swift and effective complaint mechanism for prospective PMI and their families to address legal issues before their departure. Education and training for prospective PMI need to be enhanced to ensure they have the required skills and understand their rights and obligations. Once PMI arrives in Brunei Darussalam, the construction of legal protection should consider the legal realities related to the legal processes they face there. This includes intensive legal assistance, including access to advocacy and legal representation in case of disputes or rights violations (Wright & Clibborn, 2019).

Social protection is also crucial in this context, including an integrated information system to facilitate access for PMI and their families to protection services, both in Brunei Darussalam and in Indonesia. Social reintegration upon return and special protection for women and children should also

be a focus of social protection efforts (Mumtaz, 2022). On the economic side, protection begins from the basic document processing stage to a financing system that favors PMI to prevent debt traps. Cooperation with banking institutions is also necessary to facilitate affordable remittance and money transfer services .

The significant attention of the Indonesian Embassy in Bandar Seri Begawan to the legal protection of Indonesian Migrant Workers (PMI) in the domestic sector in Brunei Darussalam is reflected in the series of activities and services they provide (Slesman & Hoon, 2023). Here is a summary of the legal protection framework provided:(Haumahu et al., 2023)

1. Legal Consultation and Assistance in the Legal Process

The Indonesian Embassy in Bandar Seri Begawan provides legal consultation services for PMI who face legal problems in Brunei Darussalam. They also assist in the investigation and investigation process at the local police or prosecutor's office. The Indonesian Embassy collaborates with local law offices to provide this service at adjusted fees.

2. Interpreter and Communication with Families

The Indonesian Embassy facilitates assistance by interpreters to help PMI understand the trial process in their language. Apart from that, the Indonesian Embassy also acts as a contact person between PMI who have problems and their families or relatives, both in Indonesia and in Brunei Darussalam, to ensure smooth communication and fulfill their rights.

3. Legal Socialization

Apart from providing reactive services such as consultation and assistance, the Indonesian Embassy in Bandar Seri Begawan is also active in legal socialization activities. They held an event to increase legal awareness among PMI/WNI in Brunei Darussalam. This socialization aims to prevent legal violations due to ignorance or unawareness of local laws.

4. Temporary Stopover Place (TSS) and Other Services

The Indonesian Embassy in Bandar Seri Begawan has a TSS facility used temporarily for PMI who need protection. At TSS, they not only provide temporary housing but also health assessment services and individual case handling according to the problems experienced by PMI, such as discomfort at work, salary problems, or violence.

5. Monitor and Evaluation of Cases

The Indonesian Embassy in Bandar Seri Begawan is active in monitoring and evaluating cases involving PMI in the domestic sector. They record the type of case, region of origin, gender and other details to tailor the protective approach provided.

6. Diplomatic Role and Collaboration with Regional Government

The Indonesian Ambassador is directly involved in ensuring that the local government in Brunei Darussalam also pays attention to the Indonesian people, including PMI. This includes meetings with local government officials to improve coordination in protecting PMI interests.

7. Use of Technology in Reporting and Services

The Indonesian Embassy in Bandar Seri Begawan adopts modern technology to facilitate digital reporting of PMI's whereabouts and the problems they face. This includes the Peduli WNI and Safe Travel portals which make it easier for PMI to access consular assistance and report their problems.

Overall, the construction of legal protection carried out by the Indonesian Embassy in Bandar Seri Begawan for domestic sector PMIs in Brunei Darussalam is comprehensive. They not only provide reactive assistance in the form of legal consultations and legal process assistance, but are also proactive in prevention efforts through legal outreach and collaboration with related parties in Brunei

Darussalam. These steps aim to ensure that the rights and interests of PMI/WNI are protected by international law and local regulations.

CONCLUSION

The legal protection for Indonesian Migrant Workers (PMI) in Brunei Darussalam is the result of a strong collaboration between various Indonesian government institutions, such as the Ministry of Manpower (Kemnaker), the Ministry of Foreign Affairs (Kemenlu), the Indonesian Migrant Workers Protection Agency (BP2MI), and the Indonesian Embassy in Bandar Seri Begawan. This protection is firmly established under Law Number 18 of 2017 and encompasses every stage from preparation to post-return, including placement arrangements, monitoring of working conditions, consular services, and legal assistance. Concrete measures such as integrating information systems, inter-agency cooperation, legal awareness campaigns, and the establishment of Temporary Transit Places (TSS) reflect Indonesia's dedication to comprehensively protecting the rights and interests of PMI. These efforts not only underscore the government's commitment to safeguarding its citizens abroad but also serve as a model of multi-institutional collaboration that can be emulated by other countries in addressing the challenges encountered by migrant workers.

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