

INDONESIAN MIGRANT WORKERS (IMW) AND HUMAN TRAFFICKING: PERSPECTIVES FROM ISLAMIC AND HUMAN RIGHTS STANDPOINTS

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ABSTRACT

Indonesian migrant workers (IMW) serve as a stark representation of female poverty in Indonesia. Despite the constitutional guarantees outlined in Article 27 of the 1945 Constitution, which ensure employment opportunities both domestically and internationally, many IMW find themselves ensnared in the web of human trafficking. This article delves into this pressing issue through the dual lenses of Islamic teachings and human rights principles. Employing a normative legal research methodology with a statutory approach, a comparative analysis was conducted to evaluate the regulatory frameworks concerning IMW and human trafficking. Both Islam and human rights frameworks underscore the gravity of human trafficking, emphasizing the government's duty to prioritize domestic employment opportunities for women to safeguard their livelihoods. The eradication of human trafficking hinges on four key pillars: prevention, prosecution, protection, and partnership. Enhanced efforts are imperative to create suitable employment opportunities for IMW, particularly women, aligning with Islamic teachings and upholding global and national human rights standards for women's protection.

Keywords: IMW; Human Trafficking; Islam; Indonesia; Human Rights.

INTRODUCTION

Islam drawing its norms from divine revelations, has bestowed upon women a position of honor and nobility that aligns with their inherent nature and character, recognizing them as equals to men in terms of humanity and rights.¹ Despite this, practical challenges persist that cast a shadow on Islam's stance on gender equality. This

¹ Bahruddin, Moh, "Kedudukan Perempuan Dalam Perspektif Hukum Islam," *ASAS: Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2012): 1–8.

issue may stem from external researchers who rely on historical and anthropological perspectives in their studies, methods that may not always align with Islamic beliefs. Islam imposes certain restrictions on women not to oppress them, but rather to elevate and dignify their status.² Even in contemporary times, women are increasingly recognized as equals to men, enjoying freedom and opportunities for advancement.³

Many of the women themselves consider that the boundaries given by Islam become high walls and limit their movement in daily life, for example, related to work problems. Most people also consider that Islam prohibits women from working, even though what is meant is a ban on work that resembles the work of men.⁴ Perceptions that look down on women have confirmed women's "eligibility" to take on domestic roles while men take on roles in the public sector. Such extreme stereotypes in the distinction between the roles of women and men have narrowed the possibility for women to participate in developing their potential skills in participation in nation-building.⁵

Many women still choose to work with various factors, including economic factors, even with the consequences of having to leave children at home or in daycare. Based on Article 27, paragraph (2) of the Constitution of the Republic of Indonesia Year 1945 (from now on referred to as the 1945 Constitution of the Republic of Indonesia) reads: *"Every citizen has the right to work and a decent living for humanity."* This means the state guarantees its citizens to get jobs at home and abroad.

Similarly, for women in Indonesia, it includes the option to become Indonesian migrant workers (IMW) abroad. Even the Indonesian Migrant Workers Protection Agency (BP2MI) reported the number of Indonesian migrant workers (from now on referred to as IMW) placed abroad as many as 19,501 people in November 2023 consisting of 11,561 female migrant workers and 7,940 male migrant workers.⁶ This fact

² Fahri Hidayat, "Perspektif Peneliti Outsider Terhadap Perilaku Keagamaan Masyarakat Muslim (Kajian Pemikiran Frederick M Denny)," *Cakrawala: Jurnal Studi Islam* 14, no. 2 (2019): 112, <https://doi.org/10.31603/cakrawala.v14i2.3070>.

³ Lulu Mubarak, "Wanita Dalam Islam," *Journal of Islamic Studies and Humanities* 6, no. 1 (2021): 23–31, <http://dx.doi.org/10.21580/jish.v6i1.8175>.

⁴ Dwi Runjani, "Pandangan Hukum Islam Terhadap Wanita Karir," *El-Wasathiya: Jurnal Studi Agama* 6, no. 2 (2018): 91–175, http://www.uib.no/sites/w3.uib.no/files/attachments/1._ahmed-affective_economies_0.pdf%0Ahttp://www.laviedesidees.fr/Vers-une-anthropologie-critique.html%0Ahttp://www.cairn.info.lama.univ-amu.fr/resume.php?ID_ARTICLE=CEA_202_0563%5Cnhttp://www.cairn.info.

⁵ Fadilah Suralaga, *Pengantar Kajian Gender* (Jakarta: PSW UIN-IISEP, 2003).

⁶ Data Indonesia, "Data Jumlah Pekerja Migran Indonesia Pada November 2023," Data Indonesia, 2023, <https://dataindonesia.id/tenaga-kerja/detail/data-jumlah-pekerja-migran-indonesia-pada-november-2023>.

confirms that women dominate the high number of our Indonesian migrant workers (IMW).

The choice of women to become Indonesian migrant workers (IMW) abroad is not without reason and careful consideration. This is because even though the state has provided guarantees for work, which can be interpreted as the opportunity to find work that can be done at home or abroad, it is considered that the opportunity to get a job in the country is much more difficult because of limited job opportunities. Therefore, becoming an Indonesian migrant worker (IMW) abroad is a solution to getting a job. In addition to economic factors, the income factor obtained abroad is also a unique attraction because it is considered much more significant when compared to the income received if working domestically. This also proves that there is no discrimination based on gender. Both women and men have the same right to get work, including becoming IMW.⁷

The problems experienced by IMW are accurate and are a concrete picture of the face of poverty in our women. The complexity of this issue involves various parties, not only from the side of IMW themselves. Internal factors of IMW, such as being forced by the family to become the backbone to break the chain of poverty, tempted by promises to be paid high wages in the destination country even with a very excessive workload. IMW, especially women, are vulnerable to physical and psychological violence to become victims of *human trafficking*. The chain of human trafficking cases must be broken because this is an important issue, considering that this case intersects with aspects of Labor law, Islamic law, and human rights (HAM).

RESEARCH METHODS

This study used normative legal research methods, namely legal research carried out by examining library materials or secondary data,⁸ also called doctrinal research, where the law is often conceptualized as what is written in statutory regulations (law in books) or conceptualized as rules or norms which are benchmarks for human behavior that are considered proper.⁹ Researchers use normative legal research methods because

⁷ Badratun Nafis, Sanusi Bintang, 'Maternity Protection of Women Workers: A Comparative Study of Indonesian and Malaysian Labor Laws', *Student Journal of International Law*, Vol 1 (2) 2021.

⁸ Soekanto, Soerjono, and Sri Mamuji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2013).

⁹ Amiruddin, and H Zainal, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2006).

researchers use library materials as the main data to analyze cases and researchers do not conduct field research. The statutory approach is used to review regulations, legislation, and legal cases related to female Indonesian migrant workers (IMW) who are victims of trafficking. In addition, a comparative analysis focusing on integration and modernization was conducted to assess regulations regarding Indonesian migrant workers (IMW) and human trafficking. The material in this study comes from primary legal materials, namely laws and regulations. In comparison, secondary legal materials are obtained from journals, books, and official websites of government agencies, including the official websites of international organizations. The data collection technique used in this study was a literature study.

Islam is a perfect religion that regulates human rights, whereas in many cases that happen to female Indonesian migrant workers (IMW), their human rights as human beings are violated. So, the author feels it is necessary to conduct a study regarding the case of female Indonesian migrant workers (IMW) in the trap of human trafficking from an Islamic and human rights perspective. The main question that researchers try to answer in this paper is how Islamic and human rights perspectives are in resolving the problem of female Indonesian migrant workers (IMW) in the trap of human trafficking.

RESEARCH OUTCOME AND DISCUSSION

1. IMW Women in Islamic Perspective and Human Rights

Human characters that *are* arranged or interpreted as daring to be arranged are depictions of women in the Javanese language. On this basis, the connotation of a husband's companion as synonymous with being devoted, obedient, and as queen in his household is more likely to be addressed to women. A person with an independent character comes from the term *per-empu-an*.¹⁰ The word "woman" in Arabic has been expressed in the Qur'an with different pronunciations, including *Mar'ah*, *Imra'ah*, *Nisa* or *Niswah* and *Unsa*. When viewed from Arabic philology, the word *nis aini* can mean *anisa*, namely comforting. It could also be *annisa*, which means docile and calm in heart, while the word *unsa* means gentle and gentle in her words.¹¹ While in Sanskrit, the woman comes from the word *wan*, which means lust. Therefore, the woman has an interpreted

¹⁰ Thahir, M, *Dinamika Hukum Dan Perkawinan* (Makassar: Alauddin University Press, 2012).

¹¹ Subhan, Zaitunah, *Tafsir Kebencian: Studi Bias Gender Dalam Tafsir Qur'an* (Yogyakarta: LKIS, 1999).

meaning. Changing the mention of the word woman to women is not easy, but it becomes the main in changing the view of objects into subjects.¹² However, women or women always connote an image of gentleness, entities, attractive, affectionate, crying, productive, and realistic.¹³

The placement of the position of women by Islam on a high dignity, dignity and degree equal to men. This can be seen from several rights that exist in women in sharing aspects of their lives.¹⁴ First, women are servants of Allah, where women also have the same responsibility as men, namely dedicating themselves to Allah according to the word of Allah in QS Adz-Dzariat: 56, which means "*And I did not create jinns and men but to worship.*" Second, as wives, women have a strong influence on the peace of mind of a husband, as explained in QS. Ar-Rum: 21 means, "*And among the signs of his power is that he created for you wives of your kind so that you might be inclined and at ease to him, and make love and affection among you.*"

Third, the position of women as parents was according to women's nature, namely giving birth and becoming parents. Women have to educate their children. In appreciation of the heavy responsibility of women as mothers in the family, Allah said in QS. Luqman: 14 means, "*And We commanded man (to do good) to his fathers; His mother had conceived him in a state of increasing weakness, and weaned him off in two years. Give thanks to Me and your fathers. Only to Me will you return*". Fourth, women are viewed as members of society responsible for the environment and social conditions, especially in carrying out the responsibilities of *amar ma'ruf nahi munkar*.¹⁵

Labor is called a worker/laborer if he has done work in an employment relationship and under the orders of others by receiving wages or other forms of remuneration. Labor according to the concept of labor Article 1 number 2 of Law Number 13 of 2003 (from now on referred to as Law No.13/2003) concerning Manpower is everyone who can do work to produce goods or services to meet their own needs and for the community. Workers/laborers work by receiving wages and rewards in other forms. In this definition, there are two elements: people who work and receive wages or rewards

¹² Subhan, Zaitunah, Tafsir Kebencian Studi Bias Gender Dalam Tafsir Al Qur'an (Yogyakarta: LKIS, 1999).

¹³ Nur, Syamsiyah, "Emansipasi Wanita Dan Penerapan Konsep Mitra Seajar: Analisis Gender Perspektif Pendidikan Islam" (UIN Aluddin, 2004).

¹⁴ Quraish, M, Membumikan Alquran (Bandung: Mizan, 1999).

¹⁵ Runjani.

in other forms.¹⁶ Worker/laborer in Law No.13/2003 is defined as everyone who works by receiving wages or other forms of compensation. The workers/laborers in question are not limited to only male workers/laborers but also include female workers/laborers. Workers/laborers are part of the workforce, namely workers who work in an employment relationship under the employer's orders (can be individuals, employers, legal entities, or other institutions), and for their services in work, the person concerned receives wages or other forms of compensation.

Equality of rights between male and female workers is guaranteed in the constitution through Article 28D paragraph (2) of the 1945 Indonesian Constitution, which affirms that “*everyone has the right to work and to receive fair and decent remuneration and treatment in employment relations.*” Therefore, the state guarantees fair treatment of workers/laborers regarding the type of work, placement of positions, and providing wages. If the formal juridical guarantee of the rights of women workers/laborers has been regulated in the constitution, then as an affirmation of the existence of another arrangement that accommodates the substance of rights for women workers/laborers, namely in the *Convention On the Elimination Of All Forms Of Discrimination Against Women* (CEDAW) is an international agreement that has been ratified by Indonesia through Law Number 7 of 1984 (from now on referred to as Law No. 7 / 1984) on the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women of July 24, 1984 and other related conventions.

Women workers/laborers have the potential to be in the most challenging position, due to the thick patriarchal culture that lives in a society that always places men as superior figures while women are placed as inferior (weak) figures. A female worker as a figure of a woman who lives in women's nature where her external environment also influences her living system. The women referred to here are 18 years old or older.¹⁷ According to scholars, women who act as wives who have to work outside and leave their families must get permission from their husbands, but a wife is allowed to leave the house even without permission from the husband in case of emergency. Ibn Hajar al-Haitami stated his permissibility for wives who leave the house without their husband's permission due to emergency conditions, such as fire, flooding, collapsed houses, or the need to earn

¹⁶ Maimun, *Hukum Ketenagakerjaan Suatu Pengantar* (Jakarta: Pradnya Paramita, 2003).

¹⁷ Suratman, *Hukum Ketenagakerjaan* (Jakarta: PT Indeks, 2010).

a living because the husband is unable to meet the necessities of life or because of religious needs such as *istifta'*.¹⁸

When married, a woman is not responsible for providing for her family. This is so that he can devote attention to the affairs of domestic life, educating and raising children. However, that does not mean women should not work, study, or do other activities. Women still have a role in rights and obligations towards what has been determined and become their nature.¹⁹ Quraish Shihab affirmed that Islam allows women to work in various fields, both inside and outside the home, either alone or together with others, with the Government or the private sector, as long as the work is done in a respectful, polite manner and as long as they can maintain their religion and can also avoid the harmful effects of their work on themselves and their environment. In addition, it was also explained that women had carried out such work and activities in the time of the Prophet of Allah. In more depth, women are directly involved in warfare and work hand in hand to help men.²⁰

2. IMW Women in the Trap of Human Trafficking

Article 1 point 2 of Law Number 18 of 2017 (from now on referred to as Law No.18/2017) concerning the Protection of Indonesian Migrant Workers defines Indonesian Migrant Workers (IMW), namely : *"Any Indonesian citizen who will, is, or has done wage work outside the territory of the Republic of Indonesia."*

Several studies reveal that Indonesia is included in the group of exporters of migrant workers, with the main destinations being Saudi Arabia, Kuwait, Hong Kong, Japan, and Taiwan. The Indonesian Government claims that sending Indonesian migrant workers (IMW) abroad is one of its efforts to expand employment.²¹ The Indonesian Government sends Indonesian migrant workers, especially women, to work in the informal sector against the background of their relatively low level of education.²² This

¹⁸ Haitami, Ibnu Hajar, *Al Fatawa Al Kubra Al Fiqhiyah 2* (Beirut: Dar al Fikr, 1983).

¹⁹ Syaparuddin, "Islam Dan Tenaga Kerja Wanita (Keadilan Ekonomi Bagi Kaum Wanita)," *Madania: Jurnal Kajian Keislaman* 17, no. 1 (2023): 101–10.

²⁰ Quraish, M, *Membumikan Alquran* (Bandung: Mizan, 1999).

²¹ Ode, Wa, "Problems Faced by Indonesian Female Migrant Workers and the Empowerment Through Writings (Organisations): A Case Study of Indonesian Female Migrant Workers in Hong Kong," *International Journal of Arts & Sciences* 4, no. 13 (2011), <https://www.proquest.com/docview/927581424?sourcetype=ScholarlyJournals>.

²² Prakarsa, Pebria, "Efforts of Migrant Care and the Indonesian Government in Realizing the Protection of Indonesian Migrant Workers (IMW) Facing the Death Penalty in Saudi Arabia (2015-2018)," *Sociologia y*

increases the country's foreign exchange.²³ Our Indonesian migrant workers (IMW) are called heroes of the country's foreign exchange because they can send money to touch the trillion rupiah mark in a year. Based on data from the Ministry of Manpower, it is reported that the total remittances or foreign money transfers made by Indonesian migrant workers (IMW) will reach IDR 77.35 trillion in the second quarter of 2023²⁴. However, in reality, the hope of getting wages and decent treatment in terms of humanity is not obtained. Many female Indonesian migrant workers (IMW) are victims of human *trafficking*.

Human trafficking is a highly profitable business and even generates millions of dollars globally.²⁵ Human trafficking encompasses a complex array of sensitive issues and issues that are interpreted differently by each person depending on his or her personal or organizational point of view.²⁶ The act of recruiting, sheltering, transporting, transferring, sending, or receiving a person accompanied by threats of violence, fraud, forgery, captivity, fraud, debt bondage by providing payment or other benefits, abuse of power, and vulnerable position of migrant workers is defined as trafficking in persons has been described in Law No. 21 of 2007 (from now on referred to as Law No. 21/2007) on the Eradication of Trafficking in Persons. Trafficking in persons for exploitation and causing exploitation occurs when consent has been obtained from the party who has control over that person.

Classic problems experienced by female migrant workers, such as violence, sexual exploitation, and exploitation of labor without getting wages, began when they became victims of fraud by employer agents. Women migrant workers, when heading to destination countries that do not have legal regulations in the fields of labor, women's rights, violence against workers and households, or strict enforcement against labor agents who commit fraud and exploitation, become the most significant vulnerability that female migrant workers will experience. Common examples experienced by female

Tecnociencia 13, no. 1 (2023): 80–101, <https://www.proquest.com/scholarly-journals/efforts-migrant-care-indonesian-government/docview/2787280190/se-2?accountid=62100>.

²³ Qobulsyah, *Politik Perlindungan Buruh Migran Indonesia* (Jakarta: Departemen Ilmu Politik Universitas Indonesia, 2013).

²⁴ Kontan, "Remitansi Pekerja Migran Indonesia Hingga Kuartal II 2023 Capai Rp 7735 Triliun," Nasional Kontan, 2024, <https://nasional.kontan.co.id/news/remitansi-pekerja-migran-indonesia-hingga-kuartal-ii-2023-capai-rp-7735-triliun>.

²⁵ International Organisation for Migration, "National Policy on Human Trafficking and Smuggling of Migrants," *IOM International Organization for Migration & The Hague Process on Refugees and Migration*, 2023, https://www.iom.int/sites/g/files/tmzbd1486/files/documents/2023-05/national_policy_on_human_trafficking_and_smuggling_of_migrants.pdf.

²⁶ Ruth, and A Hamim, *Kajian Perundang-Undangan Indonesia Dalam Perdagangan Anak Di Indonesia* (Jakarta: USAID, 2003).

migrant workers are problematic work visas due to labor agency fraud, passports withheld by employers, and work that is not following the agreement, which causes migrant workers to be considered *illegal migrant workers* by the destination country. The illegal status of migrant workers makes Indonesian migrant workers mostly lose their rights as legal subjects.²⁷

The threats posed by female migrant workers include *transnational crime* and *international organized crime*. Transnational crimes such as human trafficking and coercion to become narcotics couriers are a vulnerability for female migrant workers. The phenomenon of women's migrant workers abroad was found to be exposure to violent extremist ideology in the name of religion.²⁸ The vulnerability of the negative stigma experienced by female migrant workers is due to the phenomenon of the involvement of female migrant workers in various kinds of international crimes. The framework for the prevention and protection of female migrant workers is the main focus on mitigating international crime.²⁹

This is very unfortunate because there are so many cases of violence, both in the context of mild, moderate, and severe, in the country experienced by our female Indonesian migrant workers (IMW). Even when some of our female Indonesian migrant workers (IMW) in Saudi Arabia were sentenced to death, our Government could not do anything about it. Even though indirectly, our female Indonesian migrant workers (IMW) are called heroes of the country's foreign exchange for their extraordinary contributions to the country's foreign exchange.³⁰

Human trafficking is a classic problem that has occurred throughout the ages. Modern slavery, which is inevitable in the current era, is manifested in trafficking in persons based on various views of society (*communis opinio*). The world's fastest growth in negative connotations is reflected by the crime of human trafficking, which has become one of the vilest crimes in several periods.³¹ One of the five most significant crimes in the world is

²⁷ Nova, Atnike, "Perempuan Pekerja Migran, Jurnal Perempuan," Jurnal Perempuan 25, no. 3 (2020): 4–6, https://www.jurnalperempuan.org/uploads/1/2/2/0/12201443/jp106_cjp.pdf.

²⁸ "The Radicalisation Of Indonesian Women Workers In Hong Kong," *Conflict, Institute For Policy Analysis Of*, 2017.

²⁹ M Gaussyah, M Iqbal, "Borders'policy In Preventing Human Trafficking In Aceh", *Kanun: Jurnal Ilmu Hukum*, Vol 25(2) 2023.

³⁰ Ilham, Muhammad, "Tinjauan Hukum Bagi Tenaga Kerja Wanita (TKW) Dalam Hukum Islam," Sangaji: Jurnal Pemikiran Syariah Dan Hukum 2, no. 1 (2018): 34–59, <https://doi.org/10.52266/sangaji.v2i1.266>.

³¹ Novianti, "Tinjauan Yuridis Kejahatan Perdagangan Manusia (Human Trafficking) Sebagai Kejahatan Lintas Batas Negara," *Jurnal Ilmu Hukum*, 2014, 50–66.

human trafficking, which is a focus anticipated immediately because it has implications for economic aspects, political aspects, cultural aspects, and humanitarian aspects.³²

Human trafficking hurts people because it makes them victims in all fields.³³ The trafficking stage involves sexual abuse and psychological abuses that lead to deprivation, torture, and forced use of harmful substances. Human trafficking itself has become a rapidly growing business consisting of people with criminal minds who even form syndicate groups. Stable policies and strong institutions are essential to the supportive environment needed for a developed and prosperous economy. The Government needs to build structures in place to prevent the involvement of children and women in the cycle of abuse and human trafficking.³⁴

The main factors causing the proliferation of *human trafficking* cases can be known, namely poverty, the large population, and patriarchal culture. Poverty is the most dominant factor causing *human trafficking*. People in the lower middle levels are easily persuaded to get better jobs even though this is a mode of *human trafficking*. This condition is exacerbated by the position of women in patriarchal cultures who are constantly under pressure from the environment around them. Therefore, it that is often used as an object of *human trafficking* is women.³⁵

Labor trafficking is a form of modern slavery in which victims are forced to serve through the use of force and coercion. Traffickers adopt a variety of strategies, including threats and violence, to force victims to do so against their will. Women are a range group because they are victims of emotional intimidation and sexual harassment, similar to female Indonesian migrant workers (IMW). In addition, the journey is complicated and accompanied by various threats, so being a female migrant worker is not a job without risk.³⁶

³² Ali, Mahrus, and Bayu, *Perdagangan Orang: Dimensi, Instrumen Internasional Dan Pengaturannya Di Indonesia* (Bandung: Citra Aditya Bakti, 2011).

³³ Igbelokoto Ikhayere, and Marvellous, "Infringement on Fundamental Human Rights Through Human Trafficking," *Kuwait Chapter of Arabian Journal of Business and Management Review* 12, no. 2 (2023): 41–44, <https://www.proquest.com/docview/2858729258?accountid=62100&sourcetype=Scholarly%2520Journals>.

³⁴ Idehen, and Oaikhena, "Policy Summersault: A Recurring Nightmare in Developmental Process in Africa," *Sapiential Foundation Journal of Education, Science and Gender Studies (SFJESGS)* 3, no. 2 (2021): 295–304.

³⁵ Novianti, "Tinjauan Yuridis Kejahatan Perdagangan Manusia (Human Trafficking) Sebagai Kejahatan Lintas Batas Negara," *Jurnal Ilmu Hukum*, 2014, 50–66.

³⁶ Adharhinalti, "Perlindungan Tenaga Kerja Indonesia Irreguler Di Luar Negeri," *Jurnal Rechts Vinding: Pusat Penelitian Dna Pengembangan Sistem Hukum Nasional Badan Pembinaan Hukum Nasional* 1, no. 1 (2021): 157–73, <http://dx.doi.org/10.33331/rechtsvinding.v1i1.111>.

Economic injustice that occurs against our female Indonesian migrant workers (IMW) who work abroad, a form of tyranny, therefore, needs to be eradicated. Justice must be upheld because this is the primary purpose of the treatise of the Apostles of Allah, which is based on QS Al-Hadid (57): 25.³⁷ QS Al-Maidah (5):8 also affirms that justice is often placed on equal footing with policy and piety. All scholars throughout Islamic history placed justice as the most crucial element in *maqashid al-shari'ah*. Afzalurrahman says that Ibn Taymiyyah called justice the principal value of tawhid, while Muhammad Abduh considered tyranny the worst evil within the framework of Islamic values. Sayyid Qutb called justice a comprehensive and essential element in all aspects of life.³⁸

Article 1 point 1 of Law Number 39 of 1999 concerning human rights and Article 1 point 1 of Law Number 26 of 2000 concerning Human Rights Courts confirm that no one can violate human rights. No one has the right to restrict or violate the rights of others. People still have human rights (HAM) even though a state makes laws that do not protect or violate human rights.³⁹

The concept of human rights (HAM) has two primary meanings: the first concept that cannot be separated from a right derived from the moral rights of the humanity of every human being, which aims to ensure the dignity of every human life. The concept of second rights was created by establishing national and international rules.⁴⁰ The right to life, the right to be free from *servitude* or slavery, is a manifestation of the nature of the protection of the rights of women and children. Comprehensive and lasting implementation without differences in origin, gender, religion, ethnicity, to age attached to human rights and protected by the state without exception.⁴¹

Indonesia's involvement in sending the most migrant workers is the basis for Indonesia to ratify the rights of migrant workers following the results of an international conference by the International Labor Organization (from now on referred to as the ILO). A legal basis covers the rights of national workers in the form of Law No. 37 of 1999 (from now on referred to as Law No. 37/1999) concerning Foreign Relations, Law

³⁷ Departemen Agama Republik Indonesia, ed., *Al-Quran Dan Terjemahannya* (Bandung: Diponegoro, 2003).

³⁸ Afzalurrahman, *Muhammad Sebagai Seorang Pedagang (Muhammad as A Trade)* (Jakarta: Yayasan Swarna Bhumi, 1997).

³⁹ Ubaidillah, and Abdul, *Demokrasi Hak Asasi Manusia* (Jakarta: UIN Syarif Hidayatullah, 2006).

⁴⁰ Ubaidillah, and Abdul, *Demokrasi Hak Asasi Manusia* (Jakarta: UIN Syarif Hidayatullah, 2006).

⁴¹ Gede, I, "Perlindungan Korban Kejahatan Perdagangan Manusia Sebagai Wujud Perlindungan Hak Asasi Manusia," *Kertha Wicara* 3, no. 2 (2014): 1–5.

Number 21 of 2000 (from now on referred to as Law No. 21/2000) concerning Trade Unions/Trade Unions, Law No. 13/2003, Law Number 39 of 2004 (from now on referred to as Law No. 39/2004) concerning the Placement and protection of Indonesian Workers Abroad. The ILO Declaration 1998 became the basis for ratification in Indonesia for equal principles and rights of all workers, including migrant workers. The guidelines ILO members must implement principles and rights in the migrant sector based on the ILO Multilateral Framework on the results of the decision of the 92nd session in 2004.⁴²

The growth of labor migration as a global phenomenon continues to attract attention and concern, especially concerning the risks of coercion and exploitation. The International Labor Organization (ILO) globally reported 49.6 million victims of modern slavery in 2021, forced labor (27.6 million), and forced marriage (22 million). In addition to being a form of gross violation of human rights (HAM), human trafficking is also one of the causes of poor physical, sexual, and mental health.⁴³

The protection of women and children against all activities that seek to exploit them illegally is essentially a form of protection of human rights (HAM). This is because human rights (HAM) are an inherent right in humans obtained from birth and God's gift that cannot be reduced for any reason. Any form of trafficking in women and children is a violation of human rights because of the rights of children and the rights of workers who are treated as victims only and as commodities bought, sold, shipped, and resold. This phenomenon that prevails throughout the world is increasing, developing, and changing; even the remaining complexity level is only an exploitative condition placed on humans.⁴⁴

The question that workers must know is what the urgency in the world of work is. The urgency is the right of migrant workers and their families. The main reason for this urgency is the lack and/or even absence of the right to fulfillment and protection for its workers and their family members. The classic but crucial problem is unawareness and/or awareness but not understanding their rights within the scope of Human Rights (HAM), which is a protective part not to be violated.⁴⁵ There are 9 (Nine) human rights owned by

⁴² Adi, F, "Perlindungan Hak Bagi Pekerja Migran Indonesia Dan Keluarganya," Prosiding Seminar Nasional Kota Ramah Hak Asasi Manusia, 2021, 196–206.

⁴³ Busza, Joanna, "Accidental Traffickers: Qualitative Findings on Labour Recruitment in Ethiopia," *Globalization and Health* 19, no. 1 (2023): 1–13, <https://doi.org/10.1186/s12992-023-01005-9>.

⁴⁴ Ruth, and A Hamim, *Kajian Perundang-Undangan Indonesia Dalam Perdagangan Anak Di Indonesia*.

⁴⁵ Priscilia, P, "Melindungi Hak Pekerja Di Era Normal Baru," *Buletin Hukum Dan Keadilan* 4, no. 1 (2020): 270–84.

migrant workers,⁴⁶ namely 1). perform worship according to his beliefs; 2). accurate and actual information; 3). health; 4). social security; 5). get a decent job; 6). carry out work according to agreed standard hours; 7). earning wages for work; 8). socialize and interact; 9). Union and gather unions/workers.

Slavery or servitude, the slave trade, and enslavement in any language being forms that must be prohibited are delineations of Article 4 of the National Declaration of Physical violence and/or sexual violence become concrete actions for the dangers experienced by Indonesian Migrant Workers (IMW) who experience slavery or the slave trade.⁴⁷ Indonesian migrant workers (IMW) women in the domestic helper sector are forced to serve the desires of their employers, which violates Article 5 of the *Universal Declaration of Human Rights of 1948*, namely that no one shall be tortured or treated or punished in a cruel, inhuman or degrading manner. In addition, unfortunately, our female Indonesian migrant workers (IMW) often experience trafficking, and they do not know that they are going through a hazardous migration process.⁴⁸

The promise of a decent life and high wages became potent bait and was accepted by Indonesian workers who were part of modern slavery. The perpetrators of modern slavery are carried out by Private IMW Placement Implementers (from now on referred to as PPTKIS), IMW brokers, employers in destination countries, and IMW agents to the Government (*traffickers*). Most Indonesian migrant workers are exposed to the trap of modern slavery due to discrepancies in undergoing procedures through illegal and/or irresponsible PPTKIS, falsification of residence documents, and sudden changes of employers without reporting to BP2MI. Document forgery, for example, using a tourist visa to work as a migrant worker. This indicates human *trafficking*. Unlawful procedures and the black market for the transfer of persons across national borders and to international boundaries are prohibited and opposed to trafficking in women.⁴⁹ Trafficking in women and girls generally occurs in developing countries and countries undergoing economic transition.⁵⁰ The trade has implications for oppression, sexual

⁴⁶ Priscilia.

⁴⁷ United Nations, "Universal Declaration of Human Right" (Majelis Umum PBB, 1948), <https://doi.org/10.1017/CBO9781107415324.004>.

⁴⁸ Sultoni, Fikri, "Perlindungan Dan Pemenuhan Hak Asasi Manusia Bagi Pekerja Migran Indonesia Di Luar Negeri," *Morality: Jurnal Ilmu Hukum* 8, no. 2 (2022): 108–26, <http://dx.doi.org/10.52947/morality.v8i2.255>.

⁴⁹ United Nations, "Traffic in Women and Girls," 1994.

⁵⁰ Suhardin, Yohannes, "Tinjauan Yuridis Mengenai Perdagangan Orang Dari Perspektif Hak Asasi Manusia," *Mimbar Hukum* 20, no. 3 (2008): 473–86, <https://doi.org/10.22146/jmh.16289>.

exploitation, economic exploitation, forced fake marriage, and fake adoption wrapped by evil syndicates in the recruitment process.⁵¹

Islam has two concepts regarding rights. First, the right of humans or *huquq al-insan al-dharuriyyah*. Second, the right of Allah or *huquq Allah*.⁵² These two types of rights are inseparable, and this is precisely what distinguishes the concept of human rights (HAM) according to Islam and human rights (HAM) according to the Western perspective. Based on the level, Islam has three forms of human rights (HAM). First is the right of *darury* (basic rights), where something is considered a basic right if the right is violated and not only makes humans miserable but also loses its existence and human dignity. Second, *hajy* (secondary rights (i.e., rights that, if not fulfilled) will impact the loss of basic rights, such as a person's right to get clothing and adequate food, resulting in the loss of the right to life. Third, *tahsiny* (tertiary rights) are the lowest level rights compared to primary and secondary rights.⁵³

International relations and cooperation is the discourse of migrant workers because the responsibility of protection lies on both sides, namely the protection of sending countries and the protection of receiving countries of migrant workers. The concept of *safe migration* is a concept at the global level that continues to develop in its implementation, starts from the initial migration procedure that can reduce vulnerability by strengthening the protection of migrant workers' rights and obligations to produce a sense of security in the minds of migrant workers. The 1990 UN Conference, with all members present, agreed on the concept of *safe migration*.⁵⁴ As a member of the United Nations, Indonesia is obligated to ratify and/or translate the results of this 1990 conference. The translation must contain the protection of migrant workers applied in issuing state laws and rules of procedures for safe and dignified labor migration governance starting from the regional and national levels to be contained in bilateral and multilateral agreements. Indonesia's concrete step is to approve the conference results on September 22, 2004, and ratify it on May 31, 2012.

⁵¹ Suhardin, Yohannes, "Tinjauan Yuridis Mengenai Perdagangan Orang Dari Perspektif Hak Asasi Manusia," *Mimbar Hukum* 20, no. 3 (2008): 473–86, <https://doi.org/10.22146/jmh.16289>.

⁵² Abu, A'la, *Hak Asasi Manusia Dalam Islam* (Jakarta: YAPI, 1998).

⁵³ Masdar, *HAM Dalam Islam* (Yogyakarta: UII Press, 2002).

⁵⁴ United Nations, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" (1990), https://treaties.un.org/doc/Treaties/1990/12/19901218_08-12/AM/Ch_IV_13p.pdf.

Progress to protect migrant workers can be seen with the passing of Law No. 18/2017. Compared to previous laws that were more business-oriented, Law No.18/2017 is considered to have brought a positive normative framework for protecting migrant workers. However, there is a shortcoming in the law that it includes gender elements needed for the protection of migrant workers and as a basis for responsiveness to women's migrant worker problems.

It has been affirmed that human rights (HAM) are closely related and even attached to human dignity. There is even more value than the formulation in the law, namely that humans are creatures of God Almighty, and this right is a gift from God Almighty. In addition, what is no less important is that all humans own human rights (HAM) without exception. Therefore, all forms of *human trafficking*, especially experienced by our female IMW, are among the greatest crimes against humanity that must be eliminated.

The global response to eradicating human trafficking rests on four pillars: prevention, prosecution, protection, and partnership.⁵⁵ *First*, prevention is the most effective anti-trafficking strategy's most crucial component. This requires addressing the root causes of supply and demand from human trafficking, especially for female Indonesian migrant workers (IMW). In addition, prevention efforts also require increasing awareness and ensuring effective mechanisms.⁵⁶

Second, prosecution where in this context, the current legal framework in Indonesia to combat human *trafficking* of IMW women has been aligned with the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Human Trafficking. *Third*, the protection, care, and assistance of trafficked persons, survivors, and witnesses of human trafficking are important in anti-trafficking efforts. Timely and practical support of trafficked persons is essential in ensuring their safety and assistance. This also requires a series of legal and non-legal actions, which are implemented in collaboration with all stakeholders and related partners. Special considerations are possible for children and persons with disabilities whose interests must still take precedence. However, in practice, the implementation of this effort still encounters several challenges, including:

⁵⁵ International Organisation for Migration, "National Policy on Human Trafficking and Smuggling of Migrants."

⁵⁶ Rina Melati Sitompul and Andi Maysarah, 'Initiating Payment of Trafficking Restitution from a Victims Perspective', *Kanun: Jurnal Ilmu Hukum*, Vol 23 (1) 2021.

a. Identification and immigration status of trafficked female IMW.

If a person is identified as a contraband migrant, that person is not entitled to the protection services provided to trafficking victims because they knowingly participated in the crime. Thus, the necessary criminal procedures will be applied. However, if it is found that the person is being forced to be smuggled, then the person is entitled to the protection services available to vulnerable migrants.

b. Consequences of trafficking and national referral mechanisms for trafficking victims.

Trafficking victims commonly experience a wide variety of human rights violations committed by their perpetrators, including sexual, physical, and psychological violence. During the prosecution of these cases, some witnesses are usually unwilling to testify due to trauma, ignorance of their status, fear, language barrier, and security concerns.

c. Service and security place.

When a trafficked person is identified, there is an urgent need to provide temporary shelter for the person in a safe and secure place. Depending on their individual needs and circumstances, trafficking victims may also need to access a variety of services, such as food, clothing, medical care, and emotional and spiritual support.

d. Migration and health

Migration has been one of the triggers of the epidemic due to the vulnerability of migrant groups to the transmission of infectious diseases. Health hazards increase between countries, and the spread of these diseases cannot be tackled in isolation and requires a coordinated approach.

e. Human trafficking funds

Adequate victim protection includes providing comprehensive services and ensuring their ability to receive the support and resources they need. Adequate victim protection requires effective partnerships between law enforcement and service providers immediately after identification and during victim participation in criminal justice or civil proceedings. Comprehensive victim services include both emergency and long-term services. This may include empowering, repatriating, and reintegrating trafficking victims.

Fourth, partnerships to stop human trafficking are a shared responsibility that involves a whole-of-government approach and a whole-of-society approach. To ensure a

collaborative and coordinated national and international response to combating human trafficking and migrant smuggling, the Government strengthened partnerships in all sectors, including civil society organizations, religious bodies, indigenous leaders, the private sector, local and international partners.

CONCLUSION

The challenges surrounding Indonesian Migrant Workers (IMW) are multifaceted, with human trafficking emerging as a significant concern. Despite the explicit guarantee in Article 27 of the 1945 Indonesian Constitution for citizens to access dignified work both domestically and internationally, a distressing number of individuals, particularly women, opt for overseas employment as IMW, placing them at risk of falling prey to human trafficking. Indonesia has endeavored to address this issue through Law No.18/2017, offering protection to IMW from pre-departure stages through their time abroad and upon their return to their place of origin. The Islamic perspective underscores the imperative of justice in safeguarding vulnerable groups, particularly women, aligning with global and national human rights frameworks. Therefore, the fight against human trafficking necessitates a foundation built on four pillars: prevention, prosecution, protection, and partnership, with a focus on upholding Islamic principles to ensure the protection and accountability of both women and men.

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