



# The Neglect of Protection for Undocumented Migrant Workers within the Framework of Human Rights Law

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## Article

## Abstract

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*The safeguarding of fundamental rights for undocumented migrant workers represents a critical challenge that necessitates immediate attention. This article seeks to address the oversight within the human rights discourse regarding the fundamental rights of undocumented migrant workers. Through empirical normative research, incorporating a comprehensive review of normative literature, this study critically examines the regulations affecting migrant workers through the lens of human rights. It identifies a significant correlation between the lack of protective guarantees for undocumented migrant workers and the various cases and consequences that ensue. Regulations from a human rights perspective prioritize equality before the law, protection, and anti-discrimination. This stance contrasts with existing laws that govern Indonesian migrant workers, wherein protection is exclusively extended to those legally recognized. Such exclusivity denies undocumented migrant workers the assurance of their fundamental rights. Arguably, the provision of basic rights and protections should be indiscriminately extended to all migrant workers, irrespective of their legal status. While the specifics of migrant worker placement can still be regulated concerning requirements, processes, involved parties, and responsibilities, it is imperative that these regulations do not infringe upon the fundamental human rights of individuals. Consequently, this paper advocates for a thorough evaluation of current legislation with respect to its content, the comprehension of involved stakeholders, and the practical implementation of regulations concerning the management of migrant workers.*



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## INTRODUCTION

The lack of protection for the fundamental rights of undocumented migrant workers constitutes a pressing issue requiring immediate academic and policy attention. These workers often fall prey to fraudulent schemes perpetrated by both individuals and officials, exacerbated by the absence of alternative employment, poverty, the simplicity of the undocumented process, and exploitative practices in border regions (Bloch 2013). The Indonesian Migrant Worker Protection Agency (BP2MI) estimated that in 2023, approximately 4.5 million individuals undertook undocumented migration (Ikhsanudin 2023).

The absence of regulations regarding undocumented migrant workers is the neglect of protection. The multifaceted concept of protection neglect arises when parties are absolved from accountability for specific actions or hazards, including healthcare provision, community life support, and employment assistance (Chuang 2010). Wilkinson & Craig, (2012) addresses a manifestation of this neglect in employment support, pinpointing the scarcity of social and labor protections for informal workers. Additionally, Wilkinson, (2012) brings attention to the exploitation prevalent in principal industry sectors, further exacerbated by the denial of formal recognition to domestic labor as entitled to worker protections due to its informal nature. This perspective resonates with Noll, (2010) assertion that the absence of legal safeguards leaves workers vulnerable to exploitation and violence. The phenomenon of protection neglect is deeply entwined with societal constructs of gender, class, race, and nationality (Wilkinson 2012). The fragility of regulatory frameworks and the inefficacy of law enforcement mechanisms significantly contribute to the oversight of rights that ought to be secured (Sharma and Lalit 2020). Consequently, this oversight detrimentally affects their general welfare and access to fundamental services.

Migrant workers are individuals who migrate from one country to another, seeking employment or better living conditions (Zanfrini 2022). Undocumented migrant workers are those without official immigration documentation and recognized status as migrant workers, lacking governmental legal protections, are categorized as undocumented migrant workers (Suyanto et al. 2020). The phenomenon of undocumented migration encompasses a broad spectrum of complexities. The classification of individuals as undocumented is based not solely on the absence of legal documentation but also on their origins and the methods by which they enter a host country. The status of being undocumented subjects these workers to a range of threats and vulnerabilities, including employment under conditions of limited wages and inhumane living standards, susceptibility to extortion by law enforcement, and increased risk of workplace accidents (Rustam et al. 2022).

The symbiosis between human rights and the rule of law is essential, with the latter ensuring the prioritization and protection of human rights. The law's primary

role is safeguarding individuals in their quest for various interests, albeit with the stipulation that each person must regard the interests of others in the pursuit of their own (Hutabarat et al. 2021). The domain of human rights law is intricate, covering a broad array of both international and domestic legal frameworks (Huhta 2023). Its objective is to rectify the divergences encountered in the quest for justice. Norms established within human rights law offer viable alternatives for enforcing laws worldwide (Fudge 2014), underlining the importance of human rights law in advocating for freedom and justice under the principles of humanity.

In the realm of human rights law, an alternate lens is applied to scrutinize various instances of injustice. It is noted that certain legal systems fail to extend equitable rights to undocumented migrant workers (Hidayah et al. 2022). Nonetheless, the plight of undocumented migrant workers is intrinsically linked to human rights, invoking the fundamental essence of human dignity as codified in the UN Charter, obligating all nations. This encompasses *jus cogens* norms within every international agreement, customary international law, and further international responsibilities to safeguard every migrant worker, irrespective of their documentation status (Theddy et al. 2022). Despite this, the harsh reality is that most nations lack comprehensive legislation or regulations for the protection of migrant workers, particularly those undocumented (Kartono et al. 2022).

The need for a scholarly investigation into the human rights implications for undocumented migrant workers, focusing on their experiences, the normative framework, and the consequences of neglecting their protection, is critical for the advocacy and safeguarding of their rights as fundamental human rights.

To date, the scholarly examination of undocumented migrant workers predominantly revolves around the challenges they encounter and the protective measures undertaken by diplomatic representatives abroad. Within this discourse, three predominant perspectives emerge. Firstly, research highlighting the exploitation and victimization of migrant workers (Ajis, Askandar, and Awang 2015; Noll 2010; Putra and Runturambi 2022). Secondly, studies addressing the protection of migrant workers often focus exclusively on those with legal status, overlooking the human rights normative foundation (Kumar and Choudhury 2021). Thirdly, the literature identifies the repercussions of protection neglect for undocumented migrants, including trafficking (Maksum 2021) and deportation at international borders (Alunaza et al. 2022). This analysis suggests a significant gap in the human rights discourse concerning undocumented migrant workers, with existing studies insufficiently addressing the intersection of their lived experiences and the broader implications of such neglect.

This investigation addresses the gaps in previous research that neglected the human rights perspective concerning undocumented migrant workers. Integrating a human rights viewpoint sheds unique light on the fundamental rights of these workers. By comprehending this perspective, we can propose normative analyses aimed at mitigating the challenges faced by undocumented migrant workers. Consequently, this

study is guided by three pivotal questions. First, what incidents commonly befall undocumented migrant workers? Second, how are current legal frameworks structured, and what critical insights can a human rights lens offer on these workers? Third, what consequences arise from the disregard of protection for undocumented migrant workers? The elucidation of these queries will offer profound insights, laying the groundwork for developing protective policies tailored to Indonesian migrant workers.

The premise of this paper is that the predicaments undocumented migrant workers face stem from a lack of normative protections. This void in normativity is interpreted as state negligence from a human rights standpoint. The deployment of migrant workers has created identifiable patterns and actors responsible for the perpetuation of undocumented migrant activities (Machin and Shardlow 2022). These entities commodify migrant workers, exploiting them for profit within the unlawful placement process. The nonexistence of normative protections renders undocumented migrant workers susceptible to exploitation by organized groups. Three fundamental conditions contribute to this vulnerability: First, emergent situations arising from various incidents that threaten human dignity. Second, the fragility of migrant workers is underscored by differential access to protection. Third, a glaring omission by the state to ensure basic rights for migrant workers. Accordingly, a thorough comprehension of these precarious conditions for undocumented migrant workers will serve as a crucial base for the development of laws imbued with a human rights orientation.

## METHOD

This study delves into the experiences of migrant workers who engage in migration through unauthorized or irregular channels. The heightened risk of undocumented migrant workers becoming victims, coupled with the restrictive nature of existing regulations that tend to objectify migrant workers, underscores the need for a paradigm shift. Accordingly, this research adopts a perspective that recognizes migrant workers as human subjects endowed with fundamental human rights, inclusive of rights specific to their status as migrant workers. Special focus is directed towards undocumented migrant workers, examining the challenges they encounter, the regulatory framework governing them, and the repercussions of protection negligence. The investigation maps various case studies and their outcomes, drawing from the narratives provided by stakeholders. A critical analysis of migrant worker regulations is conducted to address the observed negligence in protection.

The methodological approach of empirical normative research is selected as the most suitable for exploring the oversight in protection. This methodology

combines normative analysis, critically evaluating the current migrant worker regulations from a human rights law perspective (Pelu et al. 2022). The objective is to normatively propose regulations that are both inclusive and non-discriminatory towards undocumented migrant workers. Data for this research are sourced from secondary materials, including literature reviews and document analyses of regulatory studies. Primary data are collected empirically, utilizing field observations and interviews to gather firsthand information. Through the integration of normative analysis and fieldwork data, the study aims to provide a comprehensive understanding of and solutions to the issues surrounding the neglect of protection for undocumented migrants.

This research encompasses an analysis of documents related to the Law on the Protection of Indonesian Migrant Workers (UU PPMI) and the Human Rights Law (UU HAM). Empirical information is obtained from interviews with migrant workers in Indonesia and Malaysia, labor departments, the Indonesian Migrant Worker Protection Agency (BP2MI), the Ministry of Foreign Affairs, the National Commission on Human Rights (Komnas HAM), Migrant CARE, migrant worker groups in Malaysia, the Indonesian Embassy in Kuala Lumpur, and Migrant CARE Malaysia. Conducting empirical studies in two countries allows for a comprehensive understanding of the experiences of migrant workers in both the sending (pre-employment) and receiving (during employment) countries. Normative analysis aims to provide human rights-based alternatives for migrant worker regulations. Insights from field and literature data will offer a contextual understanding that can recommend norms.

Data collection is conducted through a desk review, utilizing official reference sources such as legislation, books, publications, and research findings to gather relevant information. Systematic interview data collection is structured through clear and directed question-and-answer sessions to obtain accurate and truthful information directly from primary sources. Interviews are conducted with all informants, including migrant workers, government representatives, and NGOs in both Indonesia and Malaysia, to ensure the validity of the collected data. Information from brokers or agents involved in illegal deployment is also obtained through direct meetings and inquiries. Interview and literature data are utilized for a critical review of cases, impacts, and norms. Data analysis employs descriptive analysis, categorizing similar information and data according to sub-aspects to facilitate interpretation. Following categorization into sub-aspects, the data analysis proceeds with a qualitative approach to both primary and secondary data.

## RESULTS AND DISCUSSION

All Indonesian citizens employed abroad are inherently entitled to equivalent levels of protection by their national representatives stationed overseas. The substantial interest of Indonesian workers in overseas employment is primarily driven by the belief that such opportunities serve as a remedy for the absence of domestic job prospects and a pathway out of poverty. Contrary to these expectations, the reality reveals that numerous migrant workers encounter a myriad of challenges during their tenure abroad. Despite the existence of legal frameworks designed to safeguard these individuals, state institutions frequently fall short in providing necessary support to the victims. Particularly, undocumented migrants find themselves at the core of this protective neglect. A notable laxity in the regulatory approach towards migrant workers has significantly contributed to the escalating number of undocumented migrants. This study delves into the nature, causative factors, and consequential impacts of the protection neglect faced by undocumented migrant workers in foreign lands.

### Increase in Cases Involving Undocumented Indonesian Migrant Workers

**Table 1. Cases Involving Indonesian Migrant Workers**

Informant	Field of work	Interview Quote	Coding
1	Domestic worker	"After arriving at the employer's house, [the worker] was confined by the employer." (All documents were confiscated by the employer)	Violence
2	Domestic worker	"Experienced violence from the employer, including being slapped and abused."	Violence
3	Domestic worker	"Faced verbal abuse and acts of indecency while staying in a shelter located in the forest."	Violence
4	Construction worker	"During employment, wages frequently went unpaid due to the foreman's disappearance, and disputes over these unpaid wages with the superior led to [the worker] being reported and subsequently becoming a fugitive from the Malaysian police."	Non-payment of wages
5	Construction worker	"Experienced unpaid wages because the foreman fled."	Non-payment of wages
6	Domestic worker	"The wages paid were not as agreed upon, with deductions made under the pretext of covering departure costs."	Non-payment of wages

7	Domestic worker	“Doing work that was not as agreed upon, which was hard without a raise like fellow domestic workers. The Indonesian migrant worker stayed for 2.5 years and due to no change in conditions, the worker eventually fled.”	Exploitation of working hours
8	Domestic worker	“There was no written employment contract, work did not match the agreement, and working hours were unlimited as per the employer's orders.”	Exploitation of working hours
9	Domestic worker	“The absence of an employment contract and clear working hours, thus having to comply with the employer's orders.”	Exploitation of working hours

*Source: Data compiled by authors, 2024*

The neglect of protection for undocumented migrants has precipitated widespread incidents among Indonesian migrant workers, predominantly manifested through violence, non-payment of wages, and exploitation of working hours. The spectrum of violence endured by these workers includes verbal abuse, physical assault, sexual harassment, and psychological trauma. Verbal abuse often initiates within shelters and persists within the employer's premises, inflicted by both shelter authorities and employers, who sometimes dehumanize the migrant workers by likening them to animals. Physical assault encompasses actions such as slapping and other forms of mistreatment. Sexual harassment denotes indecent acts perpetrated by shelter supervisors. Psychological trauma, a resultant of verbal, physical, and sexual abuse, affects all victims, manifesting as a significant psychological consequence of these abuses. The primary victims of such violence are those employed in the domestic sector.

Unpaid wages are categorized into delayed payments, amounts lesser than agreed upon, and complete non-payment. This issue is particularly prevalent among construction workers, often attributable to foremen fleeing. Domestic workers, on the other hand, frequently receive less than the agreed payment, alongside experiencing unjust wage deductions. Exploitation of labor hours emerges from excessive working hours, discrepancies with agreed conditions, stagnant wages despite increased workloads, and the absence of formal employment contracts. Consequently, migrant workers often find themselves working beyond the standard eight-hour shift, with ambiguous work schedules and at the mercy of their employer's demands, available at all hours. These exploitative practices are a common reason for migrant workers to escape their employment conditions. Collectively, these scenarios encapsulate the diverse challenges faced by Indonesian migrant workers overseas, highlighting the urgent need for enhanced protections.

Legislation as a Determinant of Protection for Undocumented Migrants

Table 2. Legislation as a Determinant of Protection

Legislation	Content	Description
1945 Constitution	Article 27, paragraph 2 Every citizen has the right to work and a decent living for humanity	Basic rights for every citizen to obtain employment and a decent living both domestically and abroad
	Article 28D, paragraph 1 Everyone has the right to legal recognition and assurance	The fundamental right of every citizen to legal guarantees, explicitly addressing undocumented migrants
Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers	Article 1, paragraph 1 An Indonesian migrant worker candidate is any Indonesian labor force that meets the requirements as a job seeker who will work abroad and is registered with the district/city government agency responsible for labor.	Defines Indonesian migrant worker candidates, limited to those who meet the requirements and are registered with an agency.  In this context, undocumented migrant workers are not included in this rule.
	Article 33 The central and regional governments provide legal protection for Indonesian migrant workers in accordance with the provisions of legislation, the laws of the destination country, as well as international laws and customs.	The scope of protection provided by the government to migrant workers according to the legislation. In this context, undocumented migrant workers are not included.
	Article 68 Everyone is prohibited from placing Indonesian migrant workers in a manner that does not meet the requirements as	Restrictions for individuals to place migrant workers in accordance with the law. This provision does not recognize undocumented migrant workers who



	referred to in Article 5 letters b to e.	depart through individuals/brokers.
	Article 3, paragraph 3 The protection of Indonesian migrant workers aims to: a. guarantee the fulfillment and enforcement of human rights as citizens and Indonesian migrant workers; and b. ensure legal, economic, and social protection for Indonesian migrant workers and their families	The provision broadly regulates the guarantee of rights as citizens and the assurance of protection. This provision conflicts with Article 1 paragraph 1.
Law No. 39 of 1999 on Human Rights	Article 3, paragraph 2 Everyone has the right to recognition, guarantee, protection, and fair legal treatment as well as legal certainty and equal treatment before the law.	The recognition and guarantee of protection and treatment before the law. This construction conflicts with the PPMI Law, which applies only to legal migrant workers.
	Article 3, paragraph 3 Everyone has the right to human rights protection and fundamental human freedoms, without discrimination.	The right to protection and the absence of discrimination. This conflicts with the differential regulations and treatment between legal and undocumented migrant workers.

The 1945 Constitution of Indonesia enshrines the fundamental rights of Indonesian citizens, including the right to employment. This right extends beyond mere employment to securing jobs that are humane and adhere to established norms of decency. The Constitution mandates that "every citizen has the right," thus obligating the state to protect these rights effectively. Employment is considered a transnational right, relevant both within Indonesia and abroad, and these rights are intrinsically linked to one's citizenship status. This applies equally to citizens working overseas as migrant workers, without differentiation between those who are documented and undocumented. Furthermore, the right to legal recognition and assurance is a cornerstone of citizen rights, requiring equal legal treatment under laws such as the Indonesian Migrant Worker Protection Law. This law outlines the eligibility for Indonesian migrant worker candidates as those who meet the requirements and are

registered with an agency, as per articles 5 and 13 of the Indonesian Migrant Worker Protection Law. Registration signifies enrollment through the employment information system at a local government level. Article 68 of the same law introduces limitations on the placement of migrant workers, insisting that such placements comply with the legal requirements; non-compliant placements are thus forbidden. Only private companies are authorized to conduct these placements. Additionally, article 33 specifies the scope of protection provided, thereby imposing limitations on the protection available to undocumented Indonesian migrant workers. Collectively, these legislative articles establish the limitations of protection for undocumented Indonesian migrant workers.

Undocumented migrant workers fall into two categories: non-procedural undocumented migrant workers and undocumented migrant workers who are victims of human trafficking. Non-procedural individuals do not comply with the administrative requirements outlined in the Indonesian Migrant Worker Protection Law. Victims of human trafficking encompass both those who have and have not followed procedural requirements. Article 3, paragraph 3 of this law presents a paradox by demanding protections that ensure the human rights of both citizens and migrant workers, covering legal, economic, and social aspects. This suggests that basing protection on human rights is an intrinsic right for all migrant workers, regardless of their legal status. This tenet is further supported by the Human Rights Law, which ensures recognition and guarantees protection and equitable treatment before the law (Article 3, paragraph 2), alongside the right to non-discriminatory protection (Article 3, paragraph 3). These provisions establish the foundation for all citizens to be treated equally under the law and to receive protection free from discrimination, highlighting a discrepancy with the Indonesian Migrant Worker Protection Law's specific regulations and treatment of legal versus undocumented migrant workers. The Human Rights Law acts as a basis and standard for the fulfillment of migrant workers' rights, underlining the critical nature of non-discrimination in the provision of rights for both legal and undocumented workers. Nevertheless, the Indonesian Migrant Worker Protection Law has not fully integrated these principles of human rights into its regulations, thereby leading to a differentiation in the regulations for protection of migrant workers. Regulations concerning the requirements and procedures for placement are vital for simplifying the process and ensuring proper oversight, but the promise of protection must extend to all Indonesian migrant workers.

**The Impact of Neglecting Protection for Undocumented Migrant Workers**

**Table 3. Impact of Neglecting Protection for Undocumented Migrant Workers**

Informant	Interview Quote	Coding
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Informant 1	“Currently, Indonesia is facing an emergency regarding the placement of undocumented Indonesian migrant workers. There are 720 cases with the police, 255 cases with the prosecution, and 42 cases have been sentenced.”	Human trafficking
Informant 2	“There's a difference in perception regarding the handling of trafficking cases in Malaysia. The Malaysian government distinguishes cases involving Indonesian migrant workers into immigration, breach of contract, and trafficking. So, even if a migrant worker is a victim of trafficking but lacks documentation, they will be charged with immigration offenses, and if a migrant worker is not paid, it's considered a breach of contract. Due to this perception, many cases categorized by the Indonesian Embassy as trafficking are not recognized as such by Malaysia.”	
Informant 1	“It's estimated that 4.5 million Indonesian migrant worker placements were made illegally, of which 1.3 million are destined for Malaysia. From 2019–2023, there were 102,945 Indonesian migrant workers deported and repatriated, mostly from Malaysia”	Deportation
Informant 3	“Malaysia deports PMIs working without a work permit. Previously, the cost was covered by the government through the foreign ministry's budget. Due to budget constraints, now if a PMI is legal, the cost is borne by the company; if illegal, by their family members.”	
Informant 4 (domestic worker)	“Fled from the employer because there was no wage increase, then was falsely accused by the employer of stealing money. On the other hand, the Indonesian migrant worker's employer also reported to the immigration authorities, and the worker was blacklisted from Malaysia.”	Entry ban
Informant 5 (Malaysian NGO)	“Indonesian migrant workers deported from Malaysia will be blacklisted from re-entering for 2 years. However, Indonesian migrant workers find ways around this, usually re-entering Malaysia after 3 or 6 months using fake identities, all arranged by brokers.”	

*Source: Data compiled by authors, 2024*

Indonesia is grappling with a critical situation regarding the placement of undocumented Indonesian migrant workers attributed to inadequate legal frameworks. There are currently 720 cases filed with the police, 255 cases under prosecution, and 42 cases have resulted in convictions. Malaysia, as a significant destination for these workers, predominantly sees placements conducted in a non-procedural manner, thereby increasing their susceptibility to human trafficking. The Indonesian Embassy

in Malaysia is managing 23 cases of human trafficking. A notable disparity exists in the perception of human trafficking between the governments of Indonesia and Malaysia. The Malaysian authorities do not recognize unpaid wages and limited freedom of movement as indicators of trafficking, leading to their refusal to apply the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022 (ATIPSOM 2022) due to a lack of compelling evidence. The implementation of the immigration act against undocumented migrant workers inadvertently criminalizes victims for immigration breaches. This fundamental difference in approach results in variances between the trafficking statistics recorded by Indonesia and Malaysia, highlighting the complex challenges in protecting migrant workers' rights and ensuring their safety.

Deportation is implemented against migrant workers who enter another country lacking the requisite documentation, including a passport and a work permit, essential for lawful employment. The absence of these documents is in violation of Malaysian immigration laws, leading to the arrest and subsequent imprisonment of the violators for three months. This is followed by forced repatriation in coordination with the local Indonesian Embassy. Between 2019 and 2023, a total of 102,945 Indonesian migrant workers were deported and repatriated, with the majority from Malaysia. The significant financial burden of deportation, initially borne by the government, has resulted in the cost being shifted to the employers and the undocumented workers involved. Furthermore, deportation may be enforced for migrant workers found guilty of criminal activities, such as theft from their employers. Escaping from employers and the ensuing reports can also justify deportation. Once deported, these migrant workers face a two-year ban from re-entering Malaysia. However, it is common for many to re-enter Malaysia before the expiration of this period, utilizing fraudulent identities and engaging in illicit processes. The increase in such cases, along with the adverse experiences of migrant workers and gaps in the legal framework, underscore the inadequate protection afforded to undocumented migrant workers under the current law.

### **Undocumented Migrant Workers within the Framework of Human Rights Law**

This research underscores that the inadequacy of protection for undocumented Indonesian migrant workers has precipitated a range of complex perceptions. This scenario unfolds through three pivotal findings. Firstly, the shortfall in safeguarding migrant workers has escalated incidents involving undocumented workers, encompassing violence, wage discrepancies, and exploitation (Luo, Gadd, and Broad 2023). Secondly, the deficiency in protection arises from regulatory frameworks that fail to holistically encompass the rights of all migrant workers. The Indonesian Migrant Worker Protection Law, while guaranteeing protection for legally migrating Indonesian migrant workers, paradoxically contrasts with the Human Rights Law by exclusively catering to legal migrant workers. Thirdly, this protection gap further exacerbates issues like human trafficking, the deportation of Indonesian migrant

workers, and the imposition of entry bans. These observations collectively affirm the necessity for addressing the protection deficit for undocumented migrant workers within the ambit of human rights law.

The oversight in safeguarding undocumented migrant workers results from a dichotomous approach in rights fulfillment and protection assurances for legal versus undocumented workers. The lack of legislative measures to ensure equality of rights sets the stage for the challenges confronting migrant workers (Rogozhina 2020). Persisting regulatory distinctions in rights allocation for migrant workers denote a continuous state of neglect, deemed a breach of citizens' rights (Negrón-Gonzales 2023). This neglect is attributed to a positivist outlook that disregards the essence of humanity and the fundamental rights of individuals. Unmistakably, migrant workers are still perceived as commodities, a viewpoint that benefits both origin and destination countries through the illegal placement process (Guidi and Berti 2023).

Importantly, the disregard for protecting undocumented migrant workers illuminates two critical insights. Firstly, it reveals that prevailing laws have not successfully harmonized existing regulations with the core principles and norms of human rights. The surge in undocumented migrants and related cases is inseparable from the ineffective enforcement of regulations managing worker mobilization abroad. Secondly, the protection of undocumented migrant workers is imperative as a component of human rights (Siagian, Tahir, and Damayanti 2023). The state bears the responsibility to provide employment and assure job-related protection indiscriminately (Rahayu Devi, ningwahyu Susilaningtyas 2020). The non-discriminatory provision of rights and protections for both legal and undocumented migrant workers constitutes a basic human right.

Prior research on migrant worker protection has predominantly centered on those legally employed, with studies on undocumented migrant workers focusing on the consular duties of Indonesian embassies overseas, responsible for safeguarding Indonesian nationals (Alunaza et al. 2022; Riyanto Benny, Martuti nana, Hidayah Isti 2023). The study by Alunaza et al. (2022) explores the management of cases involving undocumented workers through multi-track diplomacy between the Indonesian and Malaysian governments and NGOs in border regions. The research by Riyanto et al. (2023) considers the protective measures enacted by the state for migrant workers, including establishing temporary shelters for those embroiled in legal difficulties. These investigations collectively emphasize the diplomatic and institutional aspects of protection. This study unveils distinct findings by examining the role of legislative frameworks, specifically the Indonesian Migrant Worker Protection Law and the Human Rights Law, in shaping protections.

The oversight in safeguarding undocumented migrant workers calls for a comprehensive action plan, necessitating a thorough assessment of the Indonesian Migrant Worker Protection Law regarding its essence, the comprehension of involved parties, and the enforcement of its stipulations (Vakhoneva et al. 2023). The presence of norms supposedly designed to protect migrant workers proves to be ineffective against the actual challenges they face, such as violence, unpaid wages, and

exploitation. The limitations on recognition and protection starkly contrast with the core rights of migrant workers as delineated in human rights principles. A clear distinction is imperative between the assurance of equitable treatment for migrant workers and the bureaucratic procedures governing their placement.

## CONCLUSION

This study uncovers the neglect of protection for undocumented migrant workers, leading to severe consequences such as violence, unpaid wages, exploitation, and further complications like human trafficking, deportation, and entry bans into foreign nations. Significantly, the Indonesian Migrant Worker Protection Law provides protection exclusively to legal migrant workers, a practice that discriminates against undocumented migrant workers and constitutes a breach of human rights. Emphasizing a human rights perspective is essential, as it forms the cornerstone for the realization of citizens' rights, ensuring legal treatment and protection without discrimination in a constitutional state.

The adoption of a human rights lens in this analysis has facilitated an inquiry into the oversight of protection for undocumented migrant workers. This paper posits the necessity of evaluating regulations related to migrant workers, underscoring that such regulations should be inherently aligned with human rights principles. It advocates for the extension of basic rights and protections to all migrant workers, regardless of their legal status, while maintaining that regulations regarding the placement of migrant workers can still be differentiated based on conditions, processes, involved parties, and responsibilities (Sukiati et al. 2023).

However, this research is constrained by its focus on a human rights perspective, examining the neglect of protection for migrant workers via the Indonesian Migrant Worker Protection Law and Human Rights Law, thus limiting the breadth of data considered. It overlooks the broader policy context and the practical implementation of policies aimed at migrant protection. Consequently, further research is warranted to delve into the experiences of migrant workers as victims of human trafficking and to critically assess anti-trafficking legislation, aiming for a study that is both more comprehensive and profound.

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