



# Legal politics of Indonesian migrant workers (case study of the protection of female workers)

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## ABSTRACT

It is fascinating to study the legal politics of the protection of Indonesian Migrant Workers (PMI), particularly Female Migrant Workers. It should be able to provide legal protection via Law No. 18 of 2017 concerning the Preservation of Indonesian Migrant Employees and other regulations. However, this is not the case; according to a number of comparable studies, the regulation is insufficient to provide legal protection for female migrant laborers abroad. Because it does not contain a single provision that regulates the protection of the law. According to Legal Feminist Theory (LFT), this regulation is still general and has not sided with women based on its content. In the future, there must be a legal regulation that truly prioritizes historically and spiritually more vulnerable female migrant laborers whose fundamental worker and human rights have frequently been violated. The purpose of this paper is to provide the government with constructive criticism and recommendations on how to regulate the law against female migrant laborers in the future.

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## 1. INTRODUCTION

In his book, Marcuse quoted Hegel as saying that labor is an action of life, in a condition of awareness, and bebeas to achieve all the possibilities of the individual as a sign of a human being's existence. Work is the most fundamental human activity, according to Karl Marx, who also adopted and digested Hegel's ideas. Through labor, man has created himself (Budiardjo, 2008). Then work is an activity to grow and manage human nature universally in the fulfillment of the needs of his life (Magnis-Suseno, 1999).

According to the theory of need and stress, when a person's desired needs cannot be satisfied in his immediate vicinity, he will be motivated to engage in mobility in order to meet those needs elsewhere. (Maksum, 2021) According to the theory of need and stress, when a person's desired needs cannot be satisfied in his immediate vicinity, he will be motivated to engage in mobility in order to meet those needs elsewhere.

**Table 1.** The Open Unemployment Rate (TPT) in Indonesia as of 2020-2021

Open Unemployment Rate	August 2020	February 2021	August 2021
	7,07%	9,72%	6,49%

Source: *Badan Pusat Statistik Indonesia*

Since the global covid-19 outbreak began at the end of 2019, the TPT rate has risen dramatically in many regions of the globe. After the covid wave struck, many Indonesian state administrations migrated abroad in search of employment. Linguistically, they are referred to as

Indonesian Migrant Workers (PMI), whereas the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, as cited by Connie de la Vega and Conchita Lozano, defines a migrant worker as a person who moves from one country to another in order to work. “a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (De La Vega & Lozano-Batista, 2006).

As previously stated, the majority of Indonesian migrant laborers have economic and fictitious motives for procuring a respectable living, as this cannot be achieved in their environment (Maksum, 2021). Moreover, the current pandemic of Coronavirus Disease (Covid-19) is not only a health-related phenomenon, but also a factor that is detrimental to the economy. The family economy is the prevalent factor that causes women to also earn a livelihood, rather than assisting their spouses and providing for their daily needs.

According to a 2017 survey conducted by the World Bank (quoted from ekbis.sindonews.com), there are approximately 9 million PMI individuals living abroad. Curiously, the majority of these figures are dominated by women who hold informal or domestic employment. This is depicted in a straightforward manner in table 2 below:

**Table 2.** Number and Placement of Indonesian Migrant Workers by Formal and Informal Sector and Gender, January to November 2021

No	Sector	2021										
		January	February	March	April	May	June	July	August	September	October	November
1	Formal	1133	872	1336	1211	1609	1397	1159	1512	1381	1465	1592
2	Informal	4822	3359	5735	4573	4655	5266	3647	3708	4941	5268	4845
	Total	5955	4231	7071	5784	6264	6663	4896	5220	6322	6733	6437
No	Gender	2021										
		January	February	March	April	May	June	July	August	September	October	November
1	Men	630	446	697	584	590	838	618	687	668	794	796
2	Woman	6326	3785	6374	5200	5674	5825	4188	4533	5654	5939	5641
	Total	5955	4231	7071	5784	6264	6663	4896	5220	6322	6733	6437

Source: Indonesian Migrant Workers Protection Agency (BP2I)

This phenomenon is interconnected between two variables. The high labor force, the dearth of available jobs, and the need for low wages necessitate placement in the low-employment sector for countries with high welfare levels. According to data released by BP2MI, the majority of them hold informal employment, particularly those related to domestic duties that are dominated by women (Juddi et al., 2021) (Natalis & Ispriyarso, 2018)

The fact that more women than males are unemployed has a direct impact on the number of women who seek employment abroad. Since the turn of the century, it has been established that migrant workers are frequently tortured, harmed, tormented, and murdered by their employers, particularly female migrant workers in the domestic sector. As a result, beginning in 2011, the Indonesian government has imposed a ban on dispatching individual employees to Saudi Arabia, particularly in the domestic sector.

“Through Decree No. 260 of 2015 of the Minister of Manpower concerning the Termination and Prohibition of The Placement of Indonesian Workers” to Individual Users in the Middle East Region, the government also implemented a moratorium in 18 additional Middle Eastern countries in 2015 Countries (Chan, 2010).

The Indonesian government's legal protection of female migrant laborers has been conservative in recent years. Initially, employees' rights were governed by the 1945 NRI Constitution and other derived laws, despite being established in the constitution. Significant adjustments are anticipated only after the moratorium and the passage of Law 18 of 2017 on the Protection of Indonesian Migrant Workers. Obviously, these legal remedies are inseparable from a series of legal political processes conducted by policymakers and decision-makers in order to realize these ideals (Hakim & Havez, 2020).

In addition, this paper will examine the analysis of the protection of female migrant laborers from the feminist legal theory perspective. The objective is to have a thorough and all-encompassing discussion about the legal protection of migrant laborers in Indonesia.

## 2. RESEARCH METHOD

This study employs normative legal methodologies. This study utilizes both primary and secondary legal resources. Through the study of literature, the technique for gathering legal materials is carried out.

Normative research methods in which research begins with *das solen* (law on paper) and ends with *das sein* (law in actions). This research is classified as *ke* in normative legal research based on a literature review or a review of merely secondary sources. It is said to be normative because the law is assumed to be an autonomous entity whose enforceability is determined by the law itself and not by external factors.

This research methodology employs the Statute and Conceptual approaches. *Primer Legal Material*, which is authoritative legal material, has authority in the form of laws and regulations relevant to this paper's discussion.

## 3. RESULTS AND DISCUSSIONS

### **The Politics of Law and the Theory of Feminism in the Legal Protection of Female Migrant Workers**

Legal politics, before delving into the legal politics of migrant laborers in Indonesia, the author will provide a brief overview of the political theory of law. Legal politics is defined as a strategy employed by the state to accomplish its objectives through the legislative process. Then, according to specialists, legal politics is defined as follows: Legal politics, as described by Moh. Mahfud MD, is a government legal strategy, either planned or executed. Making new laws, revising existing ones, and carrying them into effect are all within the purview of legal politics (Dwi Anggono, 2016).

According to Sunaryati Hartono, legal politics is a set of policies and procedures the government can implement to establish a national legal system that can serve as the basis for the rule of law (Darin, 2016).

Soedarto argues that the goal of legal politics is to establish a body of law that reflects the current state of society in terms of its growth and its requirements. Soedarto, *Law and Criminal Law* (Bandung: Alumni, 1986), 151.

Legal politics, according to Padmo Wahyono, is the fundamental policy of state leaders in the realm of law that has been, is in effect, and will implement based on the values and standards accepted by the society. Padmo Wahyono, *Indonesia State Based on Law* (Jakarta: Ghalia Indonesia, 1983), 159.

Feminist Legal Theory Studies, later, she'll elaborate on feminist legal theory by quickly examining a number of competing schools of thought. Feminist Legal Theory (FLT), also known as feminist jurisprudence, is a body of law that argues that the state should do more to end women's subjugation and that the legal system should be used to advance women's rights.

Moreover, the following are some concepts central to feminist legal theory: In the Oxford Dictionary of law legal feminist of law make some definision "far from being gender-blind, ignores the position and perspective of women. Feminist write examine the inequalities to be found in the criminal law (especially in rape and domestic violence), family law, contract, tort, property, and others branches of the substantive law, including aspects of public law" (Martin, 1994); Marxist feminists believe that women's subjugation stems from the abuse of class and the mode of production.

They argued that women's position dropped because of the idea of private property, citing a study by Friederich Engels (Oschatz & Marker, 2020); Cultural feminists, on the other hand, argue that women's gender must be represented in a certain way in order to signal their very presence in society. Ollenburger (1996:1) quotes Jessica Bernard as saying, "A woman's presence is a distinct fact because she provides three distinct benefits: 1) an integrated system; 2) affection and ethics of obligation; and 3) cultural leapfrogging through vocal and nonverbal behavior." *Ibid.*, 207.

The politics of law and the study of feminist theory on the protection of female migrant workers, then, based on the preceding description, an evaluation of the relationship between the political perspective of the law and the protection of Indonesian women migram workers. The evolution of the law as it relates to migrant laborers, as well as the perspective of legal feminist

theory in analyzing past events. First, using several laws pertaining to the precarious situation of female migrant workers who are susceptible to physical and sexual abuse and ethnic prejudice, this article traces the legal politics of women in the migrant labor force.

Even today, some people believe that the worth of foreign laborers is being undervalued. In the Indonesian judicial system, *pancasila*, or the "base of law," is the most foundational document. Referring back to the fifth tenet, the job requirements of Indonesia are met in part through the dispatching of migratory laborers overseas. (Natalis & Ispriyarso, 2018)

Then, in article 27 paragraph (2), article 28D paragraph (1), and article 28D paragraph (2) of the NRI Constitution from 1945, it is stated that fundamental rights such as reasonable income, security, assurances, and jobs are incorporated (2). Several international conventions were ratified because of provisions in the constitution, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Law No. 6 of 2012) and the Convention on the Elimination of All Forms of Discrimination Against Women (Law No. 7 of 1984). Following approval, Indonesia, along with all other states bound by international law, must comply with the treaty's provisions. (Natalis & Ispriyarso, 2018)

That's the thinking behind Indonesia's new law protecting migrant workers, Decree Law No. 18 of 2017. Work is a human right that must be maintained, honored, and assured its implementation, which is why these international treaties were ratified in the first place. (Sepang Johannes et al., 2021) Therefore, protecting migrant employees is an attempt to safeguard the rights of all migrant workers, from those seeking employment to those already employed, including retirees and their dependents.

Finally, there is a contradiction in the law when it comes to the security of women. Article 63 of Law No. 18 of 2017 provides that if an individual Indonesian migrant worker encounters a labor danger while working overseas, it is the worker's own duty to return home and deal with it. Obviously, this piece goes against the state's stated policy of safeguarding the complete Indonesian population.

In violation of clause (a) of section 28G, this text (1). Article 16 paragraph 2 of the Convention on Migrant Workers and Their Families states that "Migrant workers and their families must have effective protection from the State against any acts of violence, physical injury, threats, intimidation carried out by government officials or by any other individuals, groups, or institutions." Article 63 contradicts this provision of the convention." (Natalis & Ispriyarso, 2018).

Ordinance No. 18 of 2017 was passed in response to the need to safeguard migrant workers, particularly female migrant workers who are frequently the targets of abuse on the job. (Chang, 2021) However, the evidence demonstrates that there is no provision in the Legislation addressing the safety of female migratory laborers. General law security for both males and women is outlined in Article 11.

Given the numerous incidents of aggression against women over the past few years, this is only right. The Saudi Arabian situation in particular, which is always horrifying to hear about, can cause more concern among lawmakers and prompt them to make their stance on specific exclusion crystal obvious.

Indonesia's ban on exporting PMI to Saudi Arabia in 2012 and to 19 Middle Eastern nations in 2015 is a similar example. The purpose of this is to demonstrate that the government is sincere about enforcing law safeguards for female foreign laborers.

The protection of Indonesian migrant laborers is then examined through the lens of legal feminist theory. It cannot turn a blind eye to the fact that the majority of Indonesian female migrant laborers still have limited human resources. According to BP2MI data from 2021, the average level of education is elementary (28%). (Husnah, 2021) junior high (33%) and senior high (31%). Consequently, the majority of Indonesian female migrant laborers are relegated to working in the 3D (dirty, hazardous, and difficult) sector, primarily as domestic assistants. (Natalis & Ispriyarso, 2018).

In light of this reality, legislative safeguards for female foreign laborers remain inadequate. Despite its importance, the state is not very good at responding to citizens' needs. Then the legal feminist theory of the period emerged, emphasizing women's rights and the role of the state in securing those rights.

Since it is difficult to advocate for women's rights, the LFT research emphasizes the necessity of formal security for female migratory laborers. This is why feminist judicial leadership that supports women's rights and defends women's interests is so important.

For this reason, the International Office for Migrants (IOM) has adopted a strategy of "gender mainstreaming" to prioritize the requirements of female migratory laborers. Safety measures in the workplace and judicial recourse for violations of domestic labor laws are available to them on an equitable basis (Natalis & Ispriyarso, 2018).

Clearly, the Indonesian government has a pivotal part to play in ensuring the lawful safety of female foreign laborers. (Husnah, 2021) Real obstacles have arisen in the current circumstances and conditions, making it more difficult to fulfill the rights of female migratory laborers. The LFT believes that it is now time to advocate for the creation of a legislative policy that is welcoming to female migratory laborers, particularly in terms of offering unequivocal human rights assurances. (Silvey, 2004) Female Indonesian migratory laborers should receive special treatment regardless of where they are located, and this should be the policy's overarching goal. The overarching aim is to better the legal standing of Indonesian foreign laborers, particularly women, for the future.

### **Regulation and Legal Politics of Protection of Migrant Workers in Indonesia**

Laws and rules pertaining to social assistance in Indonesia are heavily based on the philosophy of Pancasila, particularly its fifth tenet. Similarly, it is important to ensure that female PMI (Indonesian migrant workers) are safeguarded. It all starts with the lack of employment opportunities in Indonesia, which forces many people to leave the country in search of work (Chang, 2021).

The law of the Republic of Indonesia protects these basic liberties, making it an obligation of the government to provide for its people. As a state that applies international law, Indonesia is obligated to follow through on the outcomes of conventions concerning migrant workers, including the requirement that women in this position be given special treatment up to and including their families (see International Convention On The Protection Of The Right Of All Migrant Workers and Member Of Their Families).

In addition, the following are some of the legal provisions that have been implemented in Indonesia regarding Indonesian migrant workers: Law Number 37 of 1999 concerning International Relations; Law Number 13 of 2003 concerning Manpower; Law Number 39 of 2004 concerning Protection of Indonesian Workers Abroad; Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons; Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers; Regulation of the Ministry of Manpower of the Republic of Indonesia number 18 of 2018 concerning Social Security for Indonesian Migrant Workers; Presidential Regulation No. 90 of 2019 concerning the Protection of Indonesian Migrant Workers

### **Efforts to Protect Female Migrant Workers in Indonesia**

Following on from what has been said above about LFT and the politics of law, numerous writers have detailed the ways in which the State intervenes to ensure the safety of female migratory laborers. As a whole, the newly created regulatory framework has not been fully exploited, either. This is because no hard and fast regulation exists in support of female employees.

From the explanation of the legal protections contained in article 63 of Law 18 of 2017, it has contradicted what is stated in the 1945 NRI Constitution. (Natalis & Ispriyarso, 2018) And despite the law's existence, there are still a number of issues that affect Indonesian women who labor as migrants. Mrs. Sugiyem's situation is illustrative. It is believed that migratory laborers from Pati who had been working in Singapore since 2015 were subjected to cruel treatment for two years (from 2017 through early 2020), which resulted in their ultimate blindness and hearing.

There will be less international respect for the Indonesian administration as a result of what occurred to Mrs. Sugiyem. Sadly, it is true that most people who have been the target of such abuse keep quiet about it and do not go to the authorities. Of course, this can also be brought on when sufferers' loved ones don't take them seriously. It is important to draw attention to the fact that female foreign laborers, a particularly susceptible population, are not routinely monitored (Maksum, 2021).

The experience gained through regulatory execution has shown that the current legislation is outdated and should be revised. It is made clear in the text that working women cannot feel secure because the government does not take their side. According to the writers, the reports service alone is not sufficient; instead, there needs to be additional surveillance of susceptible groups who may be subject to human rights violations on the job.

#### 4. CONCLUSION

Legal protection for migrant laborers from Indonesia, particularly women, has not been completely implemented. The management of regulations from the perspective of legal politics and the study of Legal Feminist Theory of existing regulations continue to provide numerous exemptions for the violation of the rights of women employees. For current and future circumstances, there must be a regulation or legal framework that gives particular attention to the legal protection of migrant laborers, particularly women. In the future, the legal framework for the protection of female workers must also include a recommendation to focus on the government's comprehensive and periodic monitoring of vulnerable worker groups. Its purpose is to provide comprehensive protection and security for the state against its own citizens. In addition, the government must sign a Memorandum of Understanding (MoU) with relevant countries regarding the guarantee of legal protection for migrant workers abroad, so that employers are aware of human rights guarantees that must not be violated and so that it can create welfare for Indonesian migrant workers in the future.

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