

## JUSTICE FOR MIGRANT WORKERS

Joice Soraya<sup>1\*</sup>, Muhammad Ansy Althafzifar<sup>1</sup>, Gunawan<sup>3</sup>, Dian Indriani<sup>3</sup>, Muh. Fadhel G Bata I<sup>3</sup>, Endang Silaningsih<sup>4</sup>, M. Syarif Hidayatullah<sup>5</sup>, Erni Zulfa Arini<sup>6</sup>, Suryani<sup>7</sup>

<sup>1</sup>Department of Law, Faculty of Law, Universitas Wisnuwardhana Malang  
Jalan Danau Sentani Raya No.99, Madyopuro, Kec. Kedungkandang, Kota Malang, Jawa Timur 65139 -  
Indonesia

<sup>2</sup>Universitas Dr. Soetomo, Jawa Timur, Indonesia

<sup>3</sup>Sekolah Tinggi Ilmu Ekonomi (STIE) Amkop Makassar, Sulawesi Selatan - Indonesia

<sup>4</sup>Universitas Djuanda, Jawa Barat - Indonesia

<sup>5</sup>Politeknik Negeri Sriwijaya, Sumatera Selatan - Indonesia

<sup>6</sup>Institut Agama Islam Negeri Kediri, Jawa Timur - Indonesia

<sup>7</sup>Universitas Perintis Indonesia, Sumatera Barat – Indonesia

\*Corresponding Author : [joicewijayas99@gmail.com](mailto:joicewijayas99@gmail.com)

---

### Article history:

Received: December 2024

Revised: December 2024

Accepted: December 2024

**ABSTRACT** The phenomenon of criminalization of marginalized communities in Indonesia is a complex and urgent legal and social justice issue to be addressed. This research aims to analyze the root critical causes underlying the criminalization of vulnerable groups and formulate ideas for reconstructing socially just criminal law. Through a socio-legal approach that combines literature study and field research, this research reveals various weaknesses in legislation, discriminatory law enforcement practices, and structural barriers marginalised communities face in accessing justice. The findings show that the reconstruction of socially just criminal law requires comprehensive and systemic reforms, which include revision of legal rules, paradigm shifts in law enforcement, strengthening access to justice, and transformation of legal culture that is more responsive to the needs of society. The reconstruction must be based on the principles of human rights protection, equality before the law, and empowerment of marginalized groups. This research offers concrete policy recommendations, such as revising the Criminal Code and related regulations, applying restorative justice in law enforcement, and increasing the budget and capacity for legal aid for the poor. Finally, this research emphasizes that the reconstruction of social justice criminal law is an ongoing and participatory process, which demands various stakeholders' commitment and active involvement in realizing the vision of a more just and humane law for all.

**KEYWORDS:** *Criminalization; Criminal Law; Legal Reconstruction; Marginalized Communities; Social Justice.*

## **1. INTRODUCTION**

Migrant workers often find themselves in positions of heightened vulnerability, exposing them to potential human rights violations and various forms of injustice. Individuals frequently encounter various obstacles when seeking justice in their destination countries and countries of origin. While international and national legal frameworks exist to safeguard the rights of migrant workers, the execution of these provisions remains suboptimal.

At the international level, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) establishes standards for the protection of human rights for migrant workers, encompassing the right to equality before the law and access to justice (Maheswara & Sari, 2022). It is important to note that several prominent destination countries for migrant workers, including Saudi Arabia and Malaysia, have yet to ratify this convention (Yusitarani, 2020). This lack of ratification significantly limits the legal protections afforded to migrant workers within these jurisdictions.

In Indonesia, Law No. 18/2017 concerning the Protection of Indonesian Migrant Workers (PPMI Law) delineates the rights and protections afforded to Indonesian migrant workers, including the right to legal assistance (Husna, 2021). Nonetheless, implementing the PPMI Law encounters several challenges, including insufficient socialization efforts, a limited number and capacity of labour attachés, and inadequate coordination among relevant institutions (Robi`ah, 2020).

Migrant workers frequently encounter obstacles in their pursuit of justice, including a lack of familiarity with the legal framework of the host country, insufficient language proficiency, and inadequate knowledge regarding their entitlements. Individuals in this context are susceptible to discrimination and stigmatization by law enforcement officials and members of local communities. The lack of adequate and affordable legal assistance for migrant workers further complicates the current situation.

Migrant workers' limited access to justice has resulted in a significant prevalence of rights violations, such as instances of unpaid wages, harassment, violence, and forced repatriation (Fikri, 2022). This situation necessitates thorough initiatives to enhance legal safeguards and facilitate access to justice for migrant workers. This can be achieved through policy reforms, enhancing legal aid services, and fostering international collaboration.

## **2. METHOD**

This research employs a normative juridical approach, focusing on the examination of legal norms encompassing both legislative frameworks and international legal instruments. This approach has been selected because the research objective is to analyze the legal framework governing access

to justice for migrant workers and identify any gaps or deficiencies in the current legal protections available (Soekanto & Mamudji, 2010)

### **3. RESULT AND DISCUSSION**

#### **3.1 Analysis of the National and International Legal Framework on Access to Justice for Migrant Workers**

Indonesia has established a comprehensive legal framework aimed at safeguarding the rights of migrant workers, which encompasses their entitlement to access justice. The enactment of Law No. 18/2017 concerning the Protection of Indonesian Migrant Workers serves as the principal framework for ensuring legal safeguards for Indonesian migrant workers. Article 6, paragraph (1), letter i of the PPMI Law clearly articulates that Indonesian migrant workers are entitled to receive protection and legal assistance against actions that undermine their dignity, in accordance with the relevant laws and regulations both in Indonesia and in the country of placement (Undang-Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia, 2017).

The PPMI Law establishes the Indonesian Migrant Workers Protection Agency (BP2MI), which is tasked with ensuring the protection of Indonesian migrant workers, encompassing legal protection. Nevertheless, considering its constrained resources and extensive geographical coverage, the efficacy of BP2MI in delivering legal assistance to migrant workers requires enhancement.

Law Number 13 Year 2003 Concerning Manpower, which also provides legal protections to workers, including migrant workers, complements the PPMI Law. According to Article 6 of the Labor Law, every worker is entitled to equal treatment, free from employer discrimination. Nevertheless, the execution of this provision continues to encounter obstacles, particularly concerning migrant workers employed overseas who are susceptible to discriminatory practices.

Law No. 16/2011 on Legal Aid establishes a fundamental right for all individuals, including migrant workers, to access legal aid services. Nonetheless, the absence of socialization opportunities and the restricted number of legal aid providers continue to pose significant challenges for migrant workers in obtaining this essential service.

The Minister of Manpower Regulation No. 4/2023 concerning the Social Security for Indonesian Migrant Workers. This includes the requirement for placement executors to offer advocacy and legal assistance to those migrant workers who encounter legal issues. Nonetheless, the supervision of the execution of this obligation requires enhancement.

The national legal framework has established a foundational basis for the protection and access to justice for migrant workers; however, the implementation of these provisions continues to

encounter significant challenges. Additional measures must be implemented to enhance institutional capacity, foster legal socialization and awareness, and guarantee effective law enforcement in order to safeguard the rights of migrant workers, particularly their right to access justice.

Numerous international legal instruments affirm the entitlement of migrant workers to seek access to justice. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) serves as the principal framework for safeguarding the rights of migrant workers on a global scale. According to Article 18, paragraph (1) of the ICRMW, migrant workers and their family members are granted the right to equality with the citizens of the host country regarding access to judicial systems, including courts and tribunals (Komnas HAM, 1990).

Furthermore, Article 83 of the ICRMW mandates that state parties establish effective remedy mechanisms for migrant workers whose rights have been infringed, ensuring that complaints from migrant workers are addressed relatively (Komnas HAM, 1990). The low ratification rate of the ICRMW, especially among the primary destination countries for migrant workers, significantly constrains its overall effectiveness.

The International Labor Organization (ILO) has adopted several conventions pertinent to migrant workers' access to justice, including ILO Convention No. 97 concerning Migration for Work, established in 1949, and ILO Convention No. 143 regarding Migrant Workers, enacted in 1975. The conventions underscore the significance of ensuring equal and non-discriminatory treatment for migrant workers, particularly regarding their access to justice and legal aid.

The Universal Declaration of Human Rights (UDHR) explicitly acknowledges the entitlement of every individual to seek an effective remedy through a competent national tribunal for any actions that infringe upon the fundamental rights bestowed upon them by the Constitution or by law (Hannafiah & Prawira, 2024). This provision is applicable to all individuals, encompassing migrant workers, and is to be enforced without any form of discrimination.

The international legal framework has established a basis for ensuring that migrant workers can access justice; however, the practical application of this framework continues to encounter significant obstacles. Numerous migrant workers lack awareness regarding their rights or encounter obstacles when attempting to access the justice system in their host countries. These obstacles may include language difficulties, financial constraints, and apprehension about potential reprisals.

In order to effectively tackle these challenges, we must intensify our efforts to encourage the ratification and implementation of pertinent international legal instruments. Additionally, fostering cooperation between countries of origin and destination is essential, as is enhancing the provision of legal aid and other forms of support for migrant workers. States must guarantee the accessibility of

their justice systems to migrant workers, ensuring that no discrimination occurs and that effective remedies are available for any violations of their rights.

### **3.2 Barriers and Efforts to Strengthen Access to Justice for Migrant Workers**

While the international and national legal frameworks are designed to safeguard the rights of migrant workers, these individuals continue to encounter numerous challenges in their pursuit of justice. A significant obstacle is the insufficient information and comprehension among migrant workers regarding their rights and the mechanisms for seeking remedies that are available to them. A sizable portion of migrant workers are unaware of or have a limited understanding of their rights as outlined in international or national law (Rizki, 2020).

Language and cultural barriers can also significantly hinder migrant workers' access to justice. The lack of effective communication in the language of the host country can significantly impede migrant workers' capacity to obtain legal assistance, comprehend legal documents, or engage in judicial processes (Saragih & Sihotang, 2024). The stigmatization that migrant workers experience, in addition to the presence of cultural differences, may significantly hinder their willingness to report rights violations or seek remedies.

The restricted availability of legal aid constitutes a considerable obstacle for migrant workers. While Law No. 16/2011 on Legal Aid establishes the right to legal assistance for all individuals, it is evident that, in practice, the provision and accessibility of such aid for migrant workers remain significantly constrained. Insufficient funding, geographic restrictions, and a lack of understanding of the particular difficulties migrant workers face may all significantly hinder the effectiveness of legal aid provision.

Additional obstacles encompass the apprehension of retaliation or deportation, particularly for migrant workers who are undocumented or find themselves in precarious circumstances. The absence of confidence in the justice system and law enforcement authorities may deter migrant workers from pursuing justice.

In order to address these obstacles, it is essential to implement thorough initiatives aimed at enhancing the delivery of legal information and education tailored for migrant workers. Additionally, it is crucial to bolster the availability and accessibility of legal aid services while also ensuring that the justice system and law enforcement agencies are attuned to the unique needs and circumstances faced by migrant workers. A collaborative framework must exist among countries of origin, countries of destination, and civil society organizations to effectively identify and address these barriers.

Addressing the barriers migrant workers face in accessing justice requires a comprehensive effort involving various stakeholders, including governments, international organizations, trade

unions, and civil society organizations. It is imperative to undertake policy and regulatory reform aimed at enhancing the protection of migrant workers' rights and ensuring their access to justice.

At the national level, amendments to Law No. 18/2017 concerning the Protection of Indonesian Migrant Workers have the potential to enhance provisions related to legal aid, grievance mechanisms, and effective remedies for migrant workers who encounter violations of their rights (Undang-Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia, 2017). Also, the way regulations are implemented, like Minister of Manpower Regulation No. 4/2023, might need to be changed to be clearer about what placement agencies are responsible for and how they can help people get legal help (Peraturan Menteri Ketenagakerjaan Nomor 4 Tahun 2023 Tentang Jaminan Sosial Pekerja Migran Indonesia, 2023).

Increased resource allocation for the provision of legal aid is also essential to ensure that migrant workers can access these services effectively. Such an endeavour may be achieved through collaborative efforts involving governmental bodies, legal aid organizations, and trade unions. Furthermore, it is imperative to enhance the capacity and sensitivity of law enforcement and judicial officers in managing cases that pertain to migrant workers.

Legal education and awareness-raising for migrant workers are also essential components in strengthening access to justice. The government, in collaboration with trade unions and civil society organizations, can implement information and education campaigns aimed at enhancing migrant workers' comprehension of their rights and the mechanisms for seeking remedies available to them. To effectively engage with migrant workers, it is imperative to disseminate information in multiple languages and through diverse media.

At the international level, cooperation between countries of origin and destination for migrant workers must be enhanced to safeguard the rights of these workers and facilitate their access to justice. Bilateral or regional agreements may encompass stipulations regarding legal aid, the exchange of information, and collaborative efforts in addressing cases that pertain to migrant workers. The ratification and implementation of pertinent international legal instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, serve to enhance the framework dedicated to safeguarding the rights of migrant workers.

The successful implementation of these initiatives necessitates a steadfast commitment and collaborative engagement from a diverse array of stakeholders aimed at fostering an environment that facilitates access to justice for migrant workers. Through the enhancement of the legal framework, the improvement of legal aid services, and the elevation of awareness and

comprehension of the law, it is anticipated that migrant workers will be able to secure effective remedies for any violations of their rights and attain equitable justice.

#### **4. CONCLUSION**

The issue of access to justice for migrant workers necessitates thorough consideration and concerted efforts from a range of stakeholders. While both international and national legal frameworks establish a basis for safeguarding the rights of migrant workers, it is evident that, in practice, these individuals continue to encounter numerous obstacles in their pursuit of justice. An examination of the international legal framework reveals that instruments like the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and ILO conventions establish a basis for safeguarding the rights of migrant workers, encompassing the right to access justice. The effectiveness of these instruments is, however, constrained by low levels of ratification and implementation. At the national level, Indonesia has established a legal framework aimed at safeguarding the rights and welfare of migrant workers. This includes Law No. 18/2017, which specifically addresses the protection of Indonesian migrant workers, as well as Law No. 13/2003 concerning manpower regulations. Nonetheless, the execution of these provisions requires enhancement, particularly in relation to the constraints of institutional capacity and the enforcement of laws.

Migrant workers encounter significant obstacles in their pursuit of justice. These include a lack of information and comprehension regarding their rights, challenges posed by language and cultural differences, restricted access to legal assistance, and apprehension about potential reprisals or deportation. These obstacles necessitate thorough and systematic efforts to address and surmount. Efforts aimed at enhancing access to justice for migrant workers may encompass policy and regulatory reforms, the enhancement of legal aid services, the promotion of legal education and awareness, and fostering international cooperation. Such initiatives necessitate a steadfast commitment and proactive involvement from governmental bodies, international entities, labour unions, and organizations representing civil society.

This research serves to identify and analyze the barriers encountered by migrant workers in their pursuit of justice while also providing recommendations aimed at enhancing the protection of their rights. Nonetheless, additional research is imperative to evaluate the efficacy of current initiatives and to ascertain best practices aimed at enhancing access to justice for migrant workers. Through coordinated and sustained efforts, it is anticipated that migrant workers will achieve equal access to justice and effective remedies for any violations of their rights. The protection of individual rights for migrant workers is of paramount importance, as it directly contributes to the

attainment of social justice and the promotion of dignified treatment for all workers, irrespective of their migration status.

## REFERENCES

- Fikri, S. (2022). Perlindungan dan Pemenuhan Hak Asasi Manusia Bagi Pekerja Migran Indonesia di Luar Negeri. *MORALITY: Jurnal Ilmu Hukum*, 8(2), 108. <https://doi.org/10.52947/morality.v8i2.255>
- Hannafiah, M., & Prawira, M. R. Y. (2024). Diskriminasi Perempuan Korban Konflik Etnis Di Manipur India Dalam Perspektif Hak Asasi Manusia. *JURNAL USM LAW REVIEW*, 7(2), 804. <https://doi.org/10.26623/julr.v7i2.9170>
- Husna, W. (2021). Perlindungan terhadap Hak-Hak Perempuan Pekerja Migran Indonesia dalam Undang-Undang Nomor 18 Tahun 2017: Perspektif Feminisme Legal Theory. *Jurnal Hukum Dan Pembangunan*, 51(2), 382–398. <https://doi.org/10.21143/jhp.vol51.no2.3056>
- Komnas HAM. (1990). *Konvensi Internasional tentang Perlindungan Hak-Hak Seluruh Pekerja Migran dan Anggota Keluarganya*. Xxi, 1–108.
- Maheswara, M. Y. H., & Sari, A. M. (2022). Proteksi Pekerja Migran dalam Sengketa Perburuhan Ditinjau dari Undang-Undang No 6 Tahun 2012 tentang Pengesahan International Convention On The Protection Of The Rights Of All Migrant Workers And Members Of Their Families Tahun 1990. *Jurnal Hukum Lex Generalis*, 3(5), 368–394. <https://doi.org/10.56370/jhlg.v3i5.265>
- Peraturan Menteri Ketenagakerjaan Nomor 4 Tahun 2023 Tentang Jaminan Sosial Pekerja Migran Indonesia (2023).
- Rizki, K. (2020). Implementasi Konvensi Internasional Tentang Perlindungan Hak Pekerja Asing dan Anggota Keluarganya: Studi Kasus Penjaminan Hak Pekerja Migran Indonesia Di Singapura. *RESIPROKAL: Jurnal Riset Sosiologi Progresif Aktual*, 2(1), 13–38. <https://doi.org/10.29303/resiprokal.v2i1.23>
- Robi'ah, V. D. (2020). Implementasi Perlindungan Hukum terhadap Pekerja Migran Indonesia Asal Kabupaten Ponorogo dari Tindak Kekerasan Fisik. *Novum: Jurnal Hukum*, 7(4), 62–76. <https://doi.org/https://doi.org/10.2674/novum.v7i4.33086>
- Saragih, H., & Sihotang, S. B. M. (2024). *Wanita Masa Depan: Peran, Identitas, dan Kontribusi dalam Menghadapi Tantangan Kehidupan*. Universitas Bakrie Press.
- Soekanto, S., & Mamudji, S. (2010). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Raja Grafindo Persada.
- Undang-Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia (2017).
- Yusitarani, S. (2020). Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia oleh Pemerintah Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 2(1), 24–37. <https://doi.org/10.14710/jphi.v2i1.24-37>