

ILO AND LEGAL PROTECTION FOR INDONESIAN MIGRANT WORKERS (STUDY CASE: ADELINA)

Nasrullah¹, Logi Farman², Rian Ade Pangestu^{3*}, Ardi Novasela⁴

¹ Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia. E-mail: nasrullah@umy.ac.id

² Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia E-mail:

logi.farman.law21@mail.umy.ac.id

³ Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia. E-mail:

Rian.ade.law21@mail.umy.ac.id

⁴ Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia. E-mail:

ardi.novasela.law18@mail.umy.ac.id

Abstract: Adelina's case indicates that there are still arbitrary actions experienced by Indonesian workers in Malaysia. Adelina is an illegal migrant worker and was convicted of attempted murder by her employer in Malaysia. Adelina often received violent treatment from her employer until Adelina died. This research aims to find the facts of Adelina's case objectively so that it can be an evaluation of the applicable legal formulation. The legal research used is normative legal research, researchers put the law as a building system of norms. Doctrinal legal research in this study uses a regulatory approach, and research sources that are in accordance with the legal issues studied. The results found that the lack of prevention efforts by Indonesia and Malaysia against cases of smuggling of illegal workers resulted in trafficking in persons being the main factor in the occurrence of unlawful acts committed by employers against migrant workers.

Keywords: Migrant Worker; Human Trafficking; Illegal Worker; Woman Worker.

1. Introduction

The ILO is an International Labour Organization under the United Nations or often called the United Nations. The ILO aims to protect and protect workers, by “encouraging the creation of employment opportunities for one or a group of women and one or a group of men in a company so that all workers can obtain productive and decent work freely, safely, fairly, and with dignity.”¹

The main goal of the ILO is as a labor organization that can promote the rights of every worker. The ILO also encourages the creation of decent employment opportunities for workers, by improving social protection and strengthening dialogue in addressing problems in the labor world. Thus, the ILO as a labor organization has established cooperation with approximately 181 member states.

¹ Vicente Silva, “The ILO and the Future of Work: The Politics of Global Labour Policy,” *Global Social Policy* 22, no. 2 (2022): 341–358, <https://doi.org/10.1177/14680181211004853>.

The ILO also ensures that employment standards are respected by “all parties in both basic labor practices and principles.”²

The basis of the ILO's role as an international labor institution is the connection with the phenomenon of security that often occurs in the world of work. Phenomena that occur include exploitation, violence, sexual harassment, and other forms of crime. Often in the world of work workers do not get their rights such as the right to get a salary and protection from treatment of violence and sexual harassment. Cases of crime in the world of work are increasing, this is due to the deindustrialization the creation of tensions between workers and employers. “From 2018 to 20223, there were 2,300 crimes in the workforce, including not getting a salary.”³ So the ILO has expected to accommodate all the needs of the workforce. In addition to the ILO, “the State also plays an important role in guaranteeing the rights of workers. The right to welfare, and the right to legal protection.”⁴

The role of ILO as an international organization has sought legal protections for migrant workers from various countries. This can be seen by the existence of protection instruments such as ILO Convention Number 19 of 1925 concerning Equal Treatment for Citizens and Foreign Workers and ILO Convention Number 105 of 1957 concerning the Elimination of Forced Labor. The Instrument is a form of protection provided by the ILO convention on migrant workers. The ILO acts as a drafter of regulations at the international level which can then be used or utilized by member states to serve as a guideline for the protection of migrant workers. In addition to efforts to establish legal instruments, “the ILO also carries out a role as a communicator by conducting campaigns and socialization efforts related to migrant workers. As well as facilitating migrant workers who get unfair treatment while working.”⁵

Despite the existence of ILO Convention Number 19 of 1925 concerning Equal Treatment for National and Foreign Workers and ILO Convention Number 105 of 1957 concerning the Elimination of Forced Labor, in its realization, there are still cases of violence that occur in the world of work. including the cases that were then the talk of the community the Adelina case. Adelina is a migrant worker from the country who was the victim of attempted murder and torture. Adelina died in Malaysia, as a result of malnutrition and abusive treatment by her employer which resulted in injuries to Adelina's body. By cause of often gets modeling violent treatment in evacuees with very weak body conditions. Adelina Sau was sentenced to die in a hospital, a day after being rescued from her employer's home. The

² Cindy Margareta, "The Role of the International Labour Organization (ILO) on Human Rights Violations in the Form of Trafficking in Persons Occurring in Crew members (ABK)," *Atma Jaya University Yogyakarta* Vol. 2, no. 3 (2016): 1-7, <https://123dok.com/document/4yrplrvq-peran-international-labour-organization-pelanggaran-berupa-perdagangan-terjadi.html>.

³ Raja Eben Lumbanrau Endang Nurdin, “PRT Indonesia Di Malaysia - Ratusan Kasus Penganiayaan, Puluhan Ribu Permintaan Di Balik Bisnis Besar,” BBC News Indonesia, 2023. Accessed on 10 January 2023, Available: <https://www.bbc.com/indonesia/dunia-64769844>.

⁴ Michelia Valeria Japian, "The Existence of the International Labour Organization (ILO) in providing protection for workers' rights under ILO Convention No. 111 of 1958 on discrimination in employment and position and its implementation in," *Lex Privatum* Vol. 9, No. 1 (2021): 28-39., <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/33148>

⁵ Cici Valensy, "The Role of the International Labour Organization (ILO) in Protecting Indonesian Migrant Workers in Saudi Arabia," *JOM FISIP* Vol. 4, no. 2 (2017): 1-11.

perpetrators in this case have been successfully secured, “while Indonesia has managed to secure two suspected masterminds of shipping or trafficking to Malaysia.”⁶

Incident that killed Adelina Sau, contrary to ILO principles of maintaining protection and enforcement of the law for migrant workers. In the context of human rights, the relevant state is obliged to provide guarantees of protection and respect for human rights for each individual. Such obligations are slowly being accepted by countries. stating that the country's obligations include three things, namely the obligation to respect, the obligation to carry out, and the obligation to protect human rights. The regulations relevant to the Adelina Case are contained in the Convention on Migration for Employment or Labor Abroad. The convention contains several provisions to ensure the security, comfort, and safety of migrants in carrying out their work outside the country where they work. “The Convention urges member states to comply with the results of the convention to enforce laws against criminal acts of violence experienced by workers or migrant workers. and ILO Organizations can easily take steps to counter propaganda that misleads Indonesian workers or migrants.”⁷

The Convention on the Protection of Migrants was created by the ILO through ILO Convention No. 105 of 1957 on the abolition of forced labor. And on the outcome of the convention is to ask its member states that have ratified the convention to be able to position foreign workers who are legally within their territory. This is done with the best treatment such as considering fairness in applying various statutory instruments and rules. Then for countries that ratify it is prohibited to carry out discrimination such as citizenship discrimination, racial discrimination, religious discrimination, and sex discrimination.

In the ILO convention, the fundamental objective is to regulate the conditions under which labor is employed and can provide special protection to workers who are particularly vulnerable to being victims of unlawful acts. “The ILO convention does not distinguish between permanent migrant workers and temporary migrant workers.”⁸

The theory used in this scientific journal is a theory related to the theory of international organizations. “International Organizations have been defined as a formal structural body that focuses on global and mutually sustainable issues, and its implementation prioritizes the interests of people who do not get their rights.”⁹ And in its formation through the consent of various sovereign and legitimate states.

⁶ Gede Dendi; Sudika Mangku Teguh Wahyudi Dewa Gede; Rai Yuliantini, Ni Putu, “Perlindungan Hukum Tenaga Kerja Indonesia Ditinjau Dari Perspektif Hukum Internasional (Studi Kasus Penganiayaan Adelina Tkw Asal Ntt Di Malaysia),” *Jurnal Komunitas Yustisia* 2, no. Vol 2, No 1 (2019): Maret, *Jurnal Komunitas Yustisia* (2019): 55–65.

⁷ Aliesa Amanita Akbar, Taufan Herdnyah, Sumarti Sari, “Implementasi Kebijakan Pemerintah Dalam Perlindungan Tenaga Kerja Wanita (TKW) Studi Kasus: TKW DI Malaysia,” *Jurnal Ilmu Hubungan Internasional* 2, no. 1 (2017): 23–47, <http://dx.doi.org/10.52947/morality.v8i1.223>.

⁸ Purwaka Hari Prihanto, “Kebijakan Moratorium Pengiriman Tenaga Kerja Ke Luar Negeri Dan Dampaknya Terhadap Penigkatan Kualitas Pekerja Migran Indonesia,” *Hukum Dan Keadilan* 7, no. 1 (2013): 15–28.

⁹ Yordan Gunawan, *Hukum Internasional: Sebuah Pendekatan Modern* (Yogyakarta: LP3M UMY, 2021). 40.

With so many perspectives on Adelina's case, the author will try to gather and analyze the facts to find an objective truth in Adelina's case, and also to animate the legal position in force in Indonesia and Malaysia as countries that have ratified the ILO convention, thus making it easier to find the legal formulations within the ILO to protect migrant workers.

2. Method

The research method chosen is normative legal research which is legal research that puts the law as a building system of norms. doctrinal legal research in this case uses two types of approaches, including: First, the statutory approach, this is done by examining laws and regulations that are in accordance with the problem being studied. Second, is an analytical approach, aiming to be able to examine other research that is in accordance with the problem.

3. Analysis or Discussion

3.1. The case of Adelina the Indonesian Worker who Died As a Result of Being Tortured

In line with the increasing interest of Indonesian workers who want to work abroad, "It is recorded that in 2023 the demand in the worker sector has reached 66,000."¹⁰ As well as the large number of Indonesian workers working outside the country, "In 2021 the number of Indonesian migrant workers has reached 3.25 million."¹¹ there are also various cases experienced by Indonesian workers. One of the most common issues is human trafficking, which can be categorized as a crime against humanity. "Indonesian workers outside the country are often subjected to trafficking, including slavery and forced labor, victims of violence, arbitrariness, crimes of human dignity and dignity, and other treatment that violates human rights."¹²

According to the terms of Article 27 paragraph (2) jo. Article 28 D paragraph (2) of the 1945 Constitution of the Republic of Indonesia explains that work is the human right of the people of the country which is the responsibility of the state to fulfill it. To carry out this constitutional mandate, the government has set various policies. "One of them is by filling job opportunities outside the country. Indonesia is the second largest sending country for migrant workers in Southeast Asia after the Philippines."¹³

The meaning of work for each person is reflected in the 1945 Law of the Republic of Indonesia Article 27 paragraph (2) states that every Public Society of the Republic of Indonesia has the right to work and a decent livelihood for humanity.

¹⁰ Ibid

¹¹ Dimas Bayu, "Jumlah Pekerja Migran Indonesia Capai 3,25 Juta Pada 2021," *DataIndonesia.Id*, 2022. Accessed on 13 February. Available: <https://dataindonesia.id/sektor-riil/detail/jumlah-pekerja-migran-indonesia-capai-325-juta-pada-2021>

¹² I Gede Angga Aditya Putra, "Upaya Perlindungan Hukum Bagi Para Tenaga Kerja Indonesia (Tki) Di Luar Negeri Dalam Perspektif Hukum Internasional," *Jurnal Komunikasi Hukum* 8, no. 1 (2022): 469–80, <https://doi.org/10.23887/jkh.v8i2.52017>

¹³ Nina Yolanda, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia," *Solusi* 18, no. 2 (2020): 198–217, <https://doi.org/10.36546/solusi.v18i2.286>.

However, in reality, the limitations of job vacancies within the country have an impact on the number of Indonesians looking for work outside the country. From year to year, the number of those who work outside the country continues to grow. The amount of interest of workers who want to work outside the country and the large number of migrant workers who are working outside the country on the other hand have positive sides. Among them is tackling some of the problems of unemployment in the country. But it also has a negative side in the form of the inhumane treatment of migrant workers. "This effect can be felt by migrant workers either throughout the departure process while working outside the country, or after returning to Indonesia."¹⁴

If based on Article 27 paragraph (2) of the 1945 Law of the Republic of Indonesia, the law requires protecting the people of the country who want to exercise their rights to get a job, especially outside the country, so that they can get labor placement services effectively and instantly by always prioritizing the safety of workers, both physical, moral and dignity.

juridically, the laws and regulations that are under reference to the placement and protection of migrant workers outside the country are the Ordinance on the Deployment of Indonesians to Carry Out Work Outside Indonesia (Staatsblad of 1887 No. 8) as well as Ministerial Decree, namely PP No. 59 of 2021. Where the Law positions Indonesian migrant workers as active subjects who have dignity and dignity as human beings and the conditions in the ordinance are so simple that they instantly do not meet the growing needs. "The weakness of the ordinance and the absence of a law that controls the placement and protection of migrant workers outside the country has so far been addressed through arrangements in Ministerial Decrees and regulations for their application."¹⁵

"Malaysia is the country that occupies the highest latrine in violence against Indonesian workers, let alone reaching 39%."¹⁶ The high level of violence against Indonesian workers in Malaysia must receive serious attention from the Indonesian government for labor placement procedures. In essence, this is by article 7 of Law Number 39 of 2004 concerning the Placement and Protection of Migrant Workers, where the government is obliged to:

- 1) "Ensure the fulfillment of the rights of prospective migrant workers or migrant workers, whether they depart through the implementation of the placement of migrant workers, or those who leave independently;
- 2) Supervise the placement of prospective migrant workers;
- 3) Establish and improve the data system for the placement of prospective migrant workers outside the country;
- 4) Carry out diplomatic work to ensure the fulfillment of the rights and protection of migrant workers to the maximum in the destination country;

¹⁴ Ni Putu Yuliantini Rai Dendi Teguh Wahyudi, Dewa, Dewa Gede Sudika Mangku, "Perlindungan Hukum Tenaga Kerja Indonesia Ditinjau Dari Perspektif Hukum Internasional (Studi Kasus Penganiayaan Adelina TKW Asal NTT Di Malaysia)," *Komunitas Yustisia Universitas Pendidikan Ganesha* Vol.9, no. 1 (2019): 55-65, <https://doi.org/10.23887/jatayu.v2i1.28772>

¹⁵ Ibid.

¹⁶ Teguh Wahyudi Dewa Gede; Rai Yuliantini, Ni Putu, "Perlindungan Hukum Tenaga Kerja Indonesia Ditinjau Dari Perspektif Hukum Internasional (Studi Kasus Penganiayaan Adelina Tkw Asal Ntt Di Malaysia)."

- 5) Distribute protection to migrant workers throughout the period before departure, placement period, and retirement period.”

Universally, the government's barriers to protecting Indonesian workers outside the country began in 2006 in Bali, Indonesia agreed on an MoU (Memorandum of Understanding) with Malaysia relating to the protection of domestic workers. This again case of violence and human trafficking is not just a matter of fact. However, this has always been a dynamic towards the Indonesia and Malaysia agreements. “This is evidenced by several times that Indonesia has terminated cooperation with Malaysia, especially in sending workers to Malaysia, because Malaysia often violates agreements with Indonesia.”¹⁷

The Indonesian government's obstacles to enforcing Indonesian labor laws outside the country include trafficking in Indonesia. Similarly, the problems experienced by TKW from Nusa Tenggara Timur Adelina, after it was identified that Adelina was an Indonesian TKW. Adelina passed away because of being tortured by her employer, Adelina often finds torture to the point of facing anemia and malnutrition, especially since Adelina's body has residual injuries that are not overcome to the point of failure to the body's organs.

Looking further at the issue of trafficking in persons leading to violence is in stark contrast to the ILO Number agreement. 105 1957 on the Abolition of Forced Labor. Therefore, the police evacuated Adelina and said that Adelina's death was one of the symptoms of human trafficking in Malaysia, Adelina's death problem, for the Migrant Care Agency, only one of the thousands of other problems was successfully disclosed, Migrant Care recorded trafficking crimes, “from 2012 to February 2018, there was 1.288 Indonesian migrant workers died outside the country. As many as 36% of problems exist in Malaysia.”¹⁸

So, it was confirmed that Adelina, a migrant worker from NTT, was one of the trafficking victims in NTT who was employed in Malaysia. After Adelina was assisted by the Protection of Indonesian Citizens and BHI, “Adelina's body was immediately repatriated to the country, and provision of money and compensation money was given to Adelina's family in NTT.”¹⁹

Crime and the threat of human trafficking are becoming actual issues in NTT. In recent years, NTT has been ranked at the top, being named as the home area for victims of trafficking. Efforts to combat trafficking in NTT have always been highlighted by various groups. The Ministry of Social Affairs of the Republic of Indonesia gives a signal that the case of migrant workers in NTT has reached a chronic situation so the enforcement steps become a common urgency. Universally, the number of migrant workers from NTT is not the largest in Indonesia, but the number of human trafficking problems from NTT for information from the Police CID is the highest in Indonesia. “Since February 2014, the problem of trafficking in persons has become a “hotspot” of complaints of the civil movement in NTT.”²⁰

Human trafficking in NTT can be said to have been an emergency because there are so many NTT people, especially among women aged 15 years and over who are

¹⁷ Ibid.

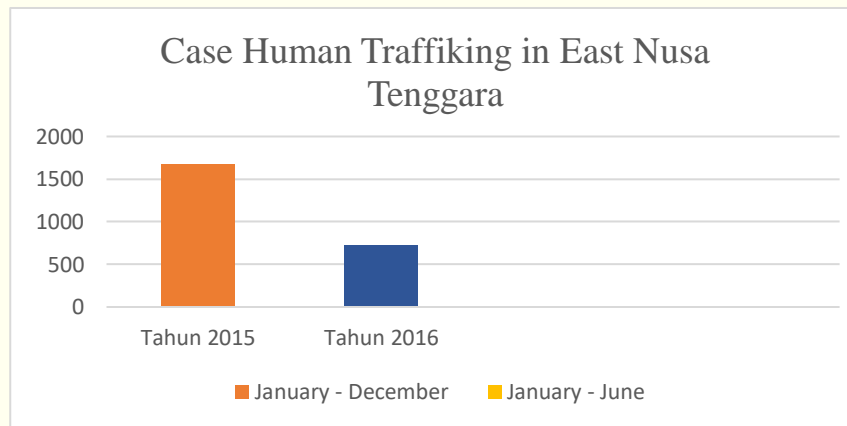
¹⁸ Adharinalti, “Perlindungan Terhadap Tenaga Kerja Indonesia Iregular Di Luar Negeri,” *Jurnal Rechts Vinding* Vol 1, no. 1 (2020): 157–173, <http://dx.doi.org/10.33331/rechtsvinding.v1i1.111>

¹⁹ Ibid.

²⁰ Ibid.

used as TKW outside the country, especially in Malaysia, Singapore, Taiwan, and other countries. Information Institute of Resource Governance Social Change (IRGSC) from

“January to December 2015, there were 941 people victimized, it is alleged that there were 7 industry networks and individuals who participated. In 2015 there were 1.667 TKWs from NTT who were victims of human trafficking. Meanwhile, in 2016, from January to July, there were 726 TKWs with problems or indications of trafficking practices. The East Nusa Tenggara Regional Police (Polda) noted, 1.667 female labor candidates (TKW) from NTT were sent out of the region illegally.”²¹



TKW candidates are planned to be sent by several trafficking networks to work in Medan and Malaysia. With this situation, the practice of human trafficking has become a new phenomenon that is quite surprising because first, nationally, “NTT has not had time to be ranked in the highest record of human trafficking problems in Indonesia.”²²

Adelina Sau, a Female Worker (TKW) who died as a result of violence from her employer, has now added to the long history of cases of victims who died because they were victims of violence from their employers abroad. Adelina Sau, also known as Adelina Lisao, alleged that her file was forged by an agent who sent her to work abroad. The short story in Adelina's case is often getting Acts of mistreatment committed by her employer and then Adelina was rescued from her employer's home in 2018. But due to the injuries suffered by Adelina, Lives were not helped, and Adelina died a day after being rescued from her employer. “Based on the examination results of Bukit Hospital, Malaysia, Adelina Sau has been pronounced dead as a result of the mistreatment carried out by her employer.”²³

In the case of Adelina, who received violent treatment, it was contrary to ILO convention No. 105 of 1957 on the Abolition of Forced Labor. Based on police information, Adelina's case is indicative of human trafficking in Malaysia. Adelina's

²¹ Aloysius Lewokeda, “IRGSC: Perdagangan Orang Tak Hanya Dipicu Soal Kemiskinan,” *AntaraNews*, 2019. Accessed on 12 January 2023. Available: <https://www.antaraneews.com/berita/1090624/irgsc-perdagangan-orang-tak-hanya-dipicu-soal-kemiskinan>

²² Ibid.

²³ Joni Sitondai, “Tuntutan Jaksa Penuntut Umum Terhadap Agen Penyalur Tenaga Kerja Indonesia Bagi Anak Sebagai Korban Tindak Pidana Perdagangan Orang Dengan Cara Pemalsuan Dokumen,” *Jurnal Hukum Universitas Atma Jaya Yogyakarta* Vol 1, no. 2 (2019): 1- 16.

death, according to the Indonesian Migrant Workers Protection Agency (BP2MI), “is just one of thousands of other cases that have come to light, the Indonesian Migrant Workers Agency recorded 1,445 Indonesian migrant workers died abroad in 2020-2022, and as many as 665 of them died in Malaysia.”²⁴

In general, the role of the International Labour Organization (ILO) through the immigrant worker convention can be represented by the State of Indonesia. By sending orders to deal with the case of Adelina's death. This is an effort by the Indonesian government in terms of protecting Adelia or another worker in Malaysia. If based on the MoU between Indonesia and Malaysia then the two countries must act collectively in exposing the death of Adelina. It is also by the orders of the ILO Convention. In addition to working together to uncover cases from Adelina Indonesia and Malaysia also have the authority to provide or enforce a new legal umbrella, to expose trafficking crimes for workers with legal or illegal status. “One of the things that Adelina received persecution treatment was due to Adelina's status as an Illegal worker so there was minimal monitoring from each country.”²⁵ “The lack of prevention and enforcement carried out by each country is also caused by the continued trafficking of persons in both countries.”²⁶

Although normatively the laws applicable in the international convention or MoU between Indonesia and Malaysia are quite adequate, there are many more similar cases that have been experienced by other migrant workers. This is a challenge for International Institutions and each country to be able to eradicate unlawful acts that apply in the MoU or international conventions.

3.2. The Role of the ILO in the Legal Protection of Indonesian Migrant Workers

Based on the 1949 International Labour Organization Convention which regulates the work system and legal protection of migrant workers. Migrant workers are people or groups who migrate from one place to another. According to the Ministry of Social Affairs in Indonesia, “a migrant worker is a person who moves from Indonesia abroad (both legally and illegally), to work within a predetermined period or an unspecified period.”²⁷

ILO Convention No.105 which was later ratified by Indonesia by establishing Law No.19 of 1999 states that the state or government is obliged to suppress, and reduce the use of forced labor in any form. It also requires effective action to fully eliminate forced labor. This can be done in the form of, preventing Action, investigating violations, taking appropriate action against violators, and, providing legal handlers to victims by providing the right to recovery and alleviating suffering.

Then the ILO is the only UN "tripartite" body that invites representatives of governments, employers and workers to jointly formulate policy policies and programs. The ILO is a global body responsible for developing and overseeing

²⁴ Ibid

²⁵ Yordan Gunawan, *Introduction to Indonesian Legal System* (Yogyakarta: UMY Press, 2021).

²⁶ Bastianto Nugroho, “Analisa Hukum Tindak Pidana Perdagangan Orang (Human Trafficking).” *Jurnal Bina Mulia Hukum* Vol.2, no. 1 (2017): 107-114, <https://doi.org/10.23920/jbmh.v2n1.9>

²⁷ Josep Robert Khuana, “Pengaturan Dan Perlindungan Hukum Tenaga Kerja Migran Lintas Negara Dalam Perspektif Hukum Internasional,” *Jurnal Kertha Semaya* Vol.8, no. 8 (2020): 1275-1290, <https://doi.org/10.24843/KS.2020.v08.i08.p14>

international labor standards. "In cooperation with its 181 member states, the ILO seeks to ensure that these labor standards are respected both in principle and practice."²⁸

The ILO seeks to achieve its goals through, four key goals:

1. Promote and realize basic principles and rights in the workplace;
2. Create greater opportunities for women and men to get decent jobs;
3. Increase the coverage and effectiveness of social protection for all;
4. Strengthen tripartism and social dialogue.

In relation to the world of work, especially cross-border migrant workers, the ILO world labor organization under the auspices of the United Nations is very concerned about protecting migrant workers as stated in the convention with the four points above. So that every UN member state as a state party because "it has ratified is obliged to be responsible on behalf of the entire world community of civilized countries according to the legal principles of their respective countries accompanied by obeying and applying universal principles as well as applying extraterritorial jurisdiction."²⁹

ILO Convention No. 182 which has been ratified through Law No. 1 of 2000, contains several things that have the character of a principle. One of them is to take effective and immediate action to ensure the worst violations and elimination of workers. The worst forms of labor include work whose nature if done can endanger health, safety, and morals.

TKI can be said to be an Indonesian Worker (TKI), in its sense is every Indonesian citizen who has met the requirements and has applied to work abroad in an employment relationship with a certain period accompanied by a salary from his employer. since the declaration of the ILO (International Labour Organization) on the existence of principles accompanied by basic rights in the workplace and enacting a set of labor standards relating to conventions that have been mutually agreed upon by international organizations (ILO). "Member states that use the services of foreign workers are required to implement the standard also related to the basic form of Human Rights (HAM) on legal protection."³⁰ Then, to establish a standard of protection for member states, namely the role of legal migrant worker documents, "so that these migrant workers' legal documents guarantee the protection of these migrant workers and also these documents will also help minimize the occurrence of human trafficking and smuggling practices."³¹

The role of the ILO, through Convention Number 19 of 1925 on Equal Treatment for National Workers and ILO Convention Number 105 of 1957 on the Elimination of Forced Labor is that the ILO as an international organization has sought to be able to carry out legal protection for migrant workers. Then the ILO or the International

²⁸ International Labour Organization, "Sekilas Tentang ILO," 2007.

²⁹ International Labour Organization.

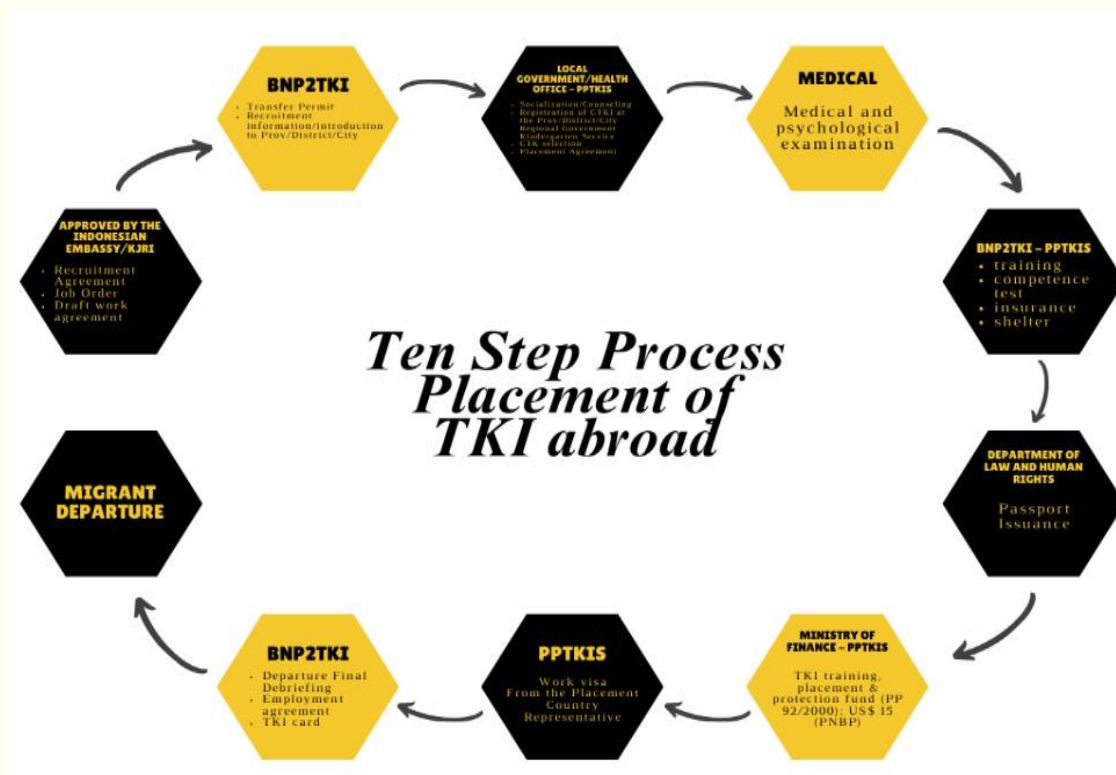
³⁰ I Wayan Parsa Ratihtiari, A.A Titah, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Di Luar Negeri," *Jurnal Cita Hukum* Vol 2, no. 3 (2019): 1-15, <https://doi.org/10.24843/KM.2019.v07.i07.p02>

³¹ Josep Robert Khuana, "Pengaturan Dan Perlindungan Hukum Tenaga Kerja Migran Lintas Negara Dalam Perspektif Hukum Internasional," *Kertha Semaya : Journal Ilmu Hukum* 8, no. 8 (2020): 1275, <https://doi.org/10.24843/ks.2020.v08.i08.p14>.

Labor Organization functions or acts as a drafting instrument for conventions for migrant workers by always being able to cooperate with Indonesia in protecting migrant workers who are Indonesian citizens who work abroad.

The ILO Convention for Indonesian Migrant Workers in this case aims, firstly to regulate how current labor conditions occur and secondly, to provide special protection in the category of vulnerable workers so that they can be employed within the Indonesian state itself. “The convention on migrant workers shall not discriminate between permanent or temporary migrant workers, even if the provisions of the convention are binding only on Indonesian migrant workers.”³²

With the existence of conventions and mutual agreements on the protection of migrant workers. Indonesia as one of the ratifying parties participated in implementing the protection of Indonesian migrant workers in the legislation of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. it states that Against efforts to protect Indonesian migrant workers. then the Central Government can organize or provide Social Security for Indonesian Migrant Workers, with this social protection and these provisions. Then Indonesian Migrant Workers can use the services or treatment of BPJS Ketenagakerjaan and further mandate a greater role for the central and local governments in terms of protection of Indonesian Workers, “protection for Indonesian Workers is carried out during or before departure, retirement, and placement period.”³³



³² Lukas Banu, “Implementasi Hukum Pasal 35 Undang-Undang Nomor 39 Tahun 2004 Dalam Program Recognised Seasonal Employment,” *Udayana, Jurnal Magister Hukum* Vol.3, no. 4 (2018): 1–15, <https://doi.org/10.24843/JMHU.2018.v07.i01.p08>

³³ Siti Hajati Hoesin Rolasta, Marwanto, “Perlindungan Hukum Bagi Pekerja Migran Indonesia Di Jepang (Analisis Peran BP2MI Pada Program G To G),” *Pakuan Law Review* Vol.1, no. 8 (2021): 253–261, <https://doi.org/10.33751/palar.v8i1.4789>

According to police in Malaysia, Adelina was a victim of trafficking, resulting in inaccessible rights, including the right to earn a salary, safety, and safety. So it can be interpreted as forced labor. This trafficking in persons is related to the transfer of a person, usually passing through the border between the two countries and having the purpose of exploitation. Human trafficking has been defined by the *Protocol to Prevent, Suppress and Punish Human Trafficking, especially Women and Children*. That complements the *UN Convention against Transnational Organised Crime* (Palermo Protocol) adopted in 2000. The *Palermo Protocol* distinguishes human trafficking from human smuggling through elements of exploitation, deception, and coercion. The *Palermo Protocol* defines Human Trade as the recruitment, transportation, transfer, or reception of persons, through the use of threats or the use of force or other forms of coercion, kidnapping, fraud, abuse of power or vulnerable positions, or by giving or receiving payments or benefits to reach an agreement from a person who has control over another person for exploitation. Exploitation may include, "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or service, slavery or slavery-like practices, or the taking of organs."³⁴ So by definition in Adelina's case, it is included in the human trade because it meets the identity of people's trade definitively. So that in practice the trade of people must be able to be resolved collaboratively with the cooperating state. By prioritizing prevention efforts through the enforcement of agents who commit smuggling, fraud, and coercion with and the lure of money.

4. Conclusion

The ILO Convention has been very clear and comprehensive in formulating instruments to protect workers from acts of exploitation, discrimination, and human trafficking. However, the main problem in the case of crimes against migrant workers is the lack of prevention of human transactions in each country and the lack of supervision between the two countries on the implementation of policies.

Thus, as an effective measure to reduce trafficking crimes and also as mandated by law. So the two countries should be able to maximize the MoU in each policy so that prevention and enforcement efforts can take place in balance

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