

INTERNATIONAL LAW REVIEW ON THE EXPLOITATION AND NEGLECT OF INDONESIAN WORKERS IN MALAYSIA

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<i>Info Artikel</i>	<i>Abstract</i>
<p><i>Masuk:</i> <i>Revisi:</i> <i>Diterima:</i> <i>Terbit:</i></p> <p>Keywords: <i>Exploitation, Neglect, Labour</i></p>	<p><i>With the increasing number of Indonesian workers in Malaysia, the problems related to the supervision and protection of workers in are also more and greater in accordance to the international legal norm. Malaysia has identified to commit human rights violations in general and labor rights, in particular exploitation and neglect of workers, which contradicts the Memorandum of Understanding (MoU) between Indonesia and Malaysia along with the International Labor Organization (ILO) Conventions. In the case of a worker with the initial YT(60), his employer was identified as not providing wages for 7.5 years and it was found in 2022. The research used normative legal methods. The source and data used in this study are secondary sources in the form of legal materials. The result showed that the applicable MoU between the two countries is adequate, yet Malaysia was identified to violate some provisions in the MoU itself. Therefore, there is an urgency for the two countries to reinforce laws regarding such issues, including a more detailed agreement regarding the placement and all rights of migrant workers regulated by the national law of the receiving country, namely Malaysia.</i></p>
<p>Kata Kunci: Eksplorasi, Penelantaran, Tenaga Kerja</p> <p>P-ISSN: E-ISSN:</p>	<p>Abstrak</p> <p><i>Dengan semakin banyaknya tenaga kerja Indonesia di Malaysia, permasalahan terkait pengawasan dan perlindungan tenaga kerja dalam perspektif hukum internasional semakin besar. Malaysia telah melakukan pelanggaran HAM pada umumnya dan hak-hak buruh, khususnya eksploitasi dan penelantaran pekerja, yang bertentangan dengan Memorandum of Understanding (MoU) antara Indonesia dan Malaysia bersama dengan Konvensi Organisasi Perburuhan Internasional (ILO). Seperti yang dialami oleh tenaga kerja berinisial YT(60), pada tahun 2022, majikan nya diidentifikasi tidak memberikan upah selama 7.5 tahun. Jenis penulisan ini menggunakan metode hukum normatif. Sumber dan data yang digunakan dalam penulisan ini adalah sumber sekunder berupa bahan hukum. Hasil penulisan menunjukkan bahwa MoU yang berlaku telah memadai, namun Malaysia diidentifikasi telah melakukan pelanggaran terhadap beberapa ketentuan MoU di atas. Oleh karena itu, ada urgensi bagi kedua negara untuk memperkuat undang-</i></p>

undang terkait masalah tersebut, termasuk perjanjian lebih detail mengenai penempatan dan segala hak-hak pekerja migran yang di atur oleh hukum nasional negara penerima yaitu Malaysia.

INTRODUCTION

The high population in the Republic of Indonesia has an impact on the availability of employment. The high rate of unemployment and poverty in Indonesia is required by the law of the state to ensure survival and employment. As stipulated in Article 27 Paragraph 2 of the 1945 Constitution of the Republic of Indonesia, "every citizen has the right to a decent job and livelihood." According to Indonesia Central Statistics Agency, in March 2022, the poverty percentage in Indonesia reached 9.54 and 6.49 percent of unemployment in August 2021.¹ With the high rate of poverty and unemployment in Indonesia and the lack of employment to ensure the survival of its people, one of the ideal steps is for the Republic of Indonesia to establish bilateral relations with Malaysia in an effort to improve the economy through international cooperation, especially in terms of employment.

The agreements between Indonesia and Malaysia have been running for about 65 years. Within those years, the relationship between Indonesia and Malaysia in the value of being related has experienced various challenges in establishing bilateral relations. The difficulties that the two countries have faced have an impact on whether bilateral relations between Indonesia and Malaysia can be endured.

Indonesia was the earliest country to establish diplomatic relations with Malaysia after independence on August 31, 1957.² At that time, Malaysia was considered a younger brother by Indonesia. Furthermore, Malaysia considers Indonesia to be the strongest country in the Southeast Asian region based on its area and population. The popularity and decisiveness of the proclamation at that time was one of the proud figures of the population in Malaysia.³

Based on history, it is clear that the relationship between Indonesia and Malaysia often faces adversities on various issues, one of which is the issue of employment. Malaysia is a prime target for migrants or workers from Indonesia. The geographical location is strategic and close compared to several countries cooperating with Indonesia, so the community and labor of Indonesia choose Malaysia as a place to work. The dynamics of bilateral relations between Indonesia and Malaysia is that Malaysia is considered to have carried out forced labor practices which have been highlighted by the international media.⁴ Cases of forced labor that have been carried out by Malaysia include not paying salaries, withholding documents, and prohibition of communication. Cases of forced labor occur not only in the household but also in the plantation and manifest sectors.

The practice of forced labor and violence against workers is still common in Malaysia, such as in the case of migrant workers who were victims of violence and forced labor for nine years. Unfortunately, employers have been convicted of trafficking and physical violence committed against Indonesian migrant workers based on a ruling by the Baharu City Court, Kelantan.⁵ As cases of

¹ Nurma Midyanti, March, 2022, "Presentase Penduduk Miskin & Tingkat Pengangguran Terbuka", Available on website: <https://www.bps.go.id/indikator/indikator/>, Accessed on 29, 2022.

² Ernst Spaan and Ton Van Nerssen, "Migration Decision-Making and Industry in the Indonesia-Malaysia Corridor", *Journal of Ethnic and Migration Studies*, Vol. 44 No. 4, 2017, p. 682.

³ Salmiaty Taty, Bayu Taufiq Possumah, and Ridwan Ismail Razak, "Human Capital Competitiveness in ASEAN Economic Community (AEC): The Role of Regulation, Indonesia Experiences", *American Journal of Applied Sciences*, Vol. 14 No. 2, 2017, p. 268.

⁴ Pamungkas A. Dewanto, "The Domestication of Protection the State and Civil Society in Indonesia's Overseas Labour Migration", *Bijdragen tot de Taal-, Land- en Volkenkunde*, Vol. 176 No. 4, 2020, p. 506.

⁵ Ronda E, Briones-Vozmediano E, Galon T, "A Qualitative Exploration of the Impact of the Economic Recession in Spain on Working, Living and Health Conditions: Reflections Based on Immigrant Workers' Experiences", *Health Expectations*, Vol. 19 No. 2, 2016, p. 420.

exploitation of workers in Malaysia increase, it is necessary for both countries to consistently commit to regulations that guarantee human rights in recruitment, placement, and security in working in agreements between Indonesia and Malaysia, and in the Convention on International Labor Organizations (ILO).

The ILO is a United Nations agency tasked with advancing the society of a country to obtain decent and productive work in guaranteeing equal, safe, independent, and dignified conditions. The main objective of the ILO is to expand employment and social protection and strengthen relationships in dealing with problems in the world of work.

Furthermore, there have been many labor regulations that have been included in the MoU between Indonesia and Malaysia or in the regulations of the Internal ILO Convention. Despite the comprehensive regulations, there are still migrant workers or Indonesian workers experiencing forced and violent labor, which is one of the human rights violations in international agreements. Thus, this article analyses certain issues pertaining to international regulations on violations of the practice of exploitation and neglect of Indonesian workers in Malaysia and who has the authority and responsibility to ensure legal provisions and rehabilitation for victims.

RESEARCH METHODS

This research belongs to normative legal research, which is a process of finding the rule of law, legal principles, and legal doctrines to answer the legal issues, which results in using qualitative descriptive analysis by describing, interpreting argumentation data, theories, and concepts as a description in solving the problems. The sources and data used in this research are secondary data in the form of legal materials, which are techniques in collecting data with literature studies, namely reading, reviewing laws and regulations, writings from legal experts, research journals, and others.

DISCUSSION

1. History of the Relationship between the Republic of Indonesia and Malaysia

Geographically Malaysia is one of the closest countries to Indonesia. The geographical location of Indonesia and Malaysia allows for bilateral relations between the two countries, especially in an effort to improve the economy through labor cooperation. Bilateral relations between Indonesia and Malaysia began on August 31, 1957.⁶ when Malaysia declared its independence from the United Kingdom. Indonesia was one of the 14 countries that first recognized Malaysia.⁷

The relationship between Indonesia and Malaysia was established long before the two countries became independent, from the time of the Srivijaya Kingdom in the 7th century to the glory of the Samudra Pasai Kingdom in the 17th century and the colonial period. Public relations between the two countries have been very strongly established, and close to each other, it is the same family of nations, namely the Malay nation, which has the same culture and language, comes from the same ancestry, and is bound by a strong and close kinship. With this concept of "family" and brotherhood, the relationship between Indonesia and Malaysia feels very distinctive. In the past, this emphasis on the dimensions of fraternity and clump was so prominent that it gave a commonality of goals. In the process and development, the relationship between Indonesia and Malaysia often experiences ups and downs. Various issues that arise are not uncommon to attract controversy. In fact, there are often tensions on both sides.⁸

⁶ Syamsul Hadi. "The Dispute Ambalat in Perspective of Indonesian Foreign Policy in the Post-New Order", *Indonesian Journal of International Law*, Vol. 12. No. 1, 2014. p. 5.

⁷ *Ibid*, p. 7.

⁸ McKillop C, Parson J, Brown J, "Rights, Responsibilities and (Re)presentation: Using Drawings to Convey Health and Safety

During the initial bilateral relationship, the two countries experienced an era of confrontation from 1963-1965. After passing through the period, the two country leaders took a wise stance and immediately restored relations between the two countries and became the pioneers of the founder of the Association of Southeast Asian Nations regional organization in 1967. After passing through the confrontation period, during the new order period (1966-1998), the relationship between Indonesia and Malaysia was more cooperative than since the beginning of Malaysia's independence or the old order period (1945-1966). The improvement of international relations between Indonesia and Malaysia is inseparable from supporting factors.

Besides that, the emergence of two new figures in the two countries, namely, Tun Abdul Razak from Malaysia and Soeharto from Indonesia. These two figures have a big role in creating good relations between Indonesia and Malaysia. Malaysia, under Tun Abdul Razak, changed Malaysian foreign policy views from a pro-western country to a neutral country. Meanwhile, Suharto changed Indonesian politics from confrontational and high profile to focus on domestic issues or low profile and more concerned with regional and national stability.

The element of proximity is further strengthened by the existence of religious similarities, where Malaysia and Indonesia are countries with a majority of Muslims and the position of Indonesia itself. Indonesia is a big country in terms of its area, and its population is bigger than Malaysia. Indonesia perceives itself as a leading country in Southeast Asia.

Post-reform in Indonesia, Indonesia-Malaysia relations face ups and downs. Several incidents were recorded that caused relations between the two countries to experience problems. In 2005, Indonesia and Malaysia experienced a dispute over land ownership in the Ambalat region.⁹ In 2007 there was an outcry from the public due to the use of Rasa Sayange or Rasa Sayang-Sayange song in Malaysian pre-tourism advertisements. A similar problem occurred in 2011 with the art of Reog and Pendet Dance¹⁰. After the reforms, there was also tension between Indonesia and Malaysia when fishermen from Malaysia were caught by the Indonesian Ministry of Maritime Affairs and Fisheries. Another problem and issue that often arises is the problem of Indonesian Manpower. Issues about workers who do not complete immigration files or issues about violence and exploitation.

The dynamics of the problems between Indonesia and Malaysia, in general, can be divided into two, namely, first, the problem of *high politics* is a variety of problems related to politics between the two countries such as the struggle for territory and national boundaries. This is similar to the seizure of the Ambalat area and regional boundaries in Kalimantan. The second is that the problem of *low politics* is related to social problems such as the problem of Indonesian Labor, smuggling, and cultural claims.

The relationship between Indonesia and Malaysia illustrates dependence. In the economic and trade sectors, Indonesia and Malaysia are developing well. Total trading reached 15,354,841.1 (Thousand US\$) or decreased by a total of 18.59%.¹¹ The above shows the dependence and trust of the two countries. This dependence and trust is the background for Indonesia and Malaysians to still have a relationship even though they are faced with serious problems in the *high political* sector.

2. Dynamics in the Implementation of the Agreement between Indonesia and Malaysia

The 1969 Vienna Convention on international treaties has strictly regulated how a State can withdraw from a treaty and no longer open up space for unilateral action of withdrawal as long as that

Messages among Immigrant Workers", *Work*, Vol. 55 No. 1, 2016, p. 40.

⁹ Tonny Dian Effendi, "Public Diplomacy as A Supporter of Indonesia-Malaysia Relations", *Scientific Journal of International Relations*, Vol. 9, No. 1, 2013. p. 50.

¹⁰ *Ibid*, p. 52.

¹¹ *Ibid*, p. 55.

action is approved by the treaty's parties. In addition, the Convention prohibits States from reneging on treaties by using the shield of their national laws.¹²

In 2004, Indonesia reached an agreement with Malaysia on the placement of Indonesian workers in Malaysia. Indonesia also issued a domestic law on Indonesian workers abroad with Law No. 39 of 2004 on the placement and protection of foreign workers working abroad. This Law provides for three variations of responsibilities, pre-placement and post-placement, for prospective overseas workers, namely:

1. Utilize and treat labor according to their rights,
2. Provide protection for prospective Indonesian workers both in pre-placement, placement, and post-placement, and
3. In addition to prospering Indonesian workers, it also protects workers.

The Mou approved by the governments of Indonesia and Malaysia from 2004 to 2011, is a regulation that regulates and provides protection for migrant workers residing in Malaysia. Mou 2004 is the latest version of the 1998 MoU. And the 2004 MoU is also a form of regulation that gives Malaysia a legal obligation to comply with regulations for migrant workers working in Malaysia.

This 2004 MoU did not have much effect on migrant workers in Malaysia, because it did not explain wages, passport access, and leave rights. Therefore, the governments of Indonesia and Malaysia revised the 2004 MoU because it was considered irrelevant, then updated in 2006. But it is very regrettable that the 2006 MoU only discusses the placement and recruitment of migrant workers in Malaysia without discussing the role of the two countries regarding the violation of rights against migrant workers.

Then, in 2011 the MoU between Indonesia and Malaysia was changed and revised, namely changes to the right to wages for migrant workers, the right to leave, and the right to own their own passports for domestic servants, and another change was the agreement of the two countries to form a Task Joint Force (JTF) which acts as a supervisor of the implementation of the MoU represented by both state parties from Indonesia and Malaysia, and conducting regular monitoring to resolve migrant worker problems arising in Malaysia.

The implementation of the Law is to advance the management of Indonesian workers or those who work in Malaysia. In 2006, Indonesia and Malaysia signed an MoU in the field of manpower which was carried out to address problems that occurred in the Indonesian workforce in Malaysia. The placement of Indonesian workers is stated in Article 2 between the Indonesian government and the Malaysian government.¹³

The aim of the MOU is to develop cooperation between Indonesia and Malaysia to strengthen the mechanism for agreements and recruitment of Indonesian domestic workers. Article 4 of the MoU explains that the Malaysian government recognizes that Indonesian domestic workers must be employed in accordance with the provisions and conditions of workers regulated under laws and regulations regarding workers in Malaysia. The MOU also regulates the procedures for recruiting Indonesian workers as the responsibility of employers, the Malaysian Recruitment Agency, and the Indonesian Recruitment Agency.¹⁴

¹² Dhiana Puspitawati and Adi Kusumaningrum, "Reposisi Politik Hukum Perjanjian Internasional dalam Rangka Mewujudkan Tertib Hukum di Indonesia", *Jurnal Media Hukum*, Vol. 22 No. 2, 2015, p. 267.

¹³ Fariastuti Djafar and Mohd Khairul Hisyam Hassan, "Dynamics of Push and Pull Factors of Migrant Workers in Developing Countries: The Case of Indonesian Workers in Malaysia", *Journal of Economics and Behavioral Studies*, Vol. 4 No. 12, 2012, p. 705.

¹⁴ Sirait, N. N, "Legal Protection of International Labor Organization (ILO) and Indonesia Towards Indonesia Illegal Migrant Workers. In Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021)", *Atlantis Press*, 2022, Vol. 642 No. 5, February 2022, p. 161.

Although Indonesia and Malaysia have officially agreed on the existence of legal protections and guarantees for workers, the relationship between Indonesia and Malaysia cannot proceed by the provisions agreed in the MoU. One example of Malaysia's disrespect for the MoU is the technical violation of recruitment committed by Malaysia, which puts workers at risk of being used as forced labor. In recruiting, Malaysia uses the *Maid Online System* (MOS), which consequently makes Indonesia unable to carry out supervision and will be vulnerable to arrears payroll, and exploitation of Indonesian workers.

On April 1, 2022, the President of the Republic of Indonesia, Joko Widodo, and Prime Minister Ismail Sabri Yakoob held a discussion on the issues regarding the use of MOS. On July 13, 2022, Indonesia had a moratorium on Malaysia, as Malaysia had violated the MOU signed by Indonesia and Malaysia.¹⁵ The MOU is intended to prevent violations faced by Indonesian domestic workers in Malaysia, including long hours of work, salary reductions, no salary, as well as health and mental checks. In the MoU, the two countries are required to implement a one-channel system to replace the MOS. As a result of the good reprimand from Indonesia, Malaysia finally implemented such a one-channel system not only for workers from Indonesia but also for workers from other countries who immigrated to Malaysia.

Indonesia's moratorium on Malaysia is under pressure, as Malaysia is the second largest palm oil exporter in the world. Post-moratorium workers have been reduced to 1.2 million foreign workers to recover their economy.¹⁶ However, in this case, Indonesia will still dispatch 10,000 workers who have gone through the delivery stage, which will be placed in plantations and infrastructure.

Labor activists at *Migrant Care Malaysia* argued that Malaysian authorities had not shown seriousness in dealing with migrant workers.¹⁷ It is shown by the unfit conditions of detention centers for migrants that can result in death. They also contended with the policy of Kuala Lumpur, which issued visas to illegal workers from Indonesia without an agreement with Indonesia. Furthermore, dressing up is faced with the difficulty of access to supervision and protection of workers from Indonesia so it will be vulnerable to being a victim of exploitation and neglect.

In 2021, the number of Indonesian workers in Malaysia reached 2.7, and 50% of them were illegal.¹⁸ This will result in many illegal workers in Malaysia getting detention measures up to neglect.¹⁹ In this regard, the Indonesian government has requested to repatriate undocumented workers to Malaysia. This request was made at a meeting between the Consulate General of the Republic of Indonesia and the Consulate of the Republic of Indonesia in Sabah, Malaysia. With the Immigration Steering of the Sabah region and the steering of Sabah State Health Malaysia.

The dynamics of relations between Indonesia and Malaysia can increasingly be seen in the presence of illegal immigrants from Indonesia. So, Malaysia must provide confinement measures for immigrants without complete immigration files²⁰. But this detention will also have an impact on the Republic of Indonesia's concerns about security and safety guarantees for workers without the follow-up of the files

¹⁵ Arisman, A. & Jaya, R. K, "Labour migration in ASEAN: Indonesian migrant workers in Johor Bahru, Malaysia", *Asian Education and Development Studies*, Vol. 10 No. 1, 2021, p. 32.

¹⁶ Muhammad Amir Arham and Stella Junus, "Contributing Factors of Labor Productivity in the Industrial Sector in Indonesia: A Comparative Study Among Regions", *Jurnal Perspektif Pembiayaan dan Pembangunan Daerah*, Vol. 8 No. 3, 2020, p. 273.

¹⁷ Rohani Abdul Rahim, Muhammad Afiq bin Ahmad Tajuddin, and Kamaruddin bin Abu Bakar, "Migrant Labour and Issues on Outsourcing System in Malaysia", *EDP Sciences*, Vol. 18, 2015, p. 3.

Lusius Genik Ndaou Lendong, February, 20, 2022, "2.7 Juta Pekerja dari Indonesia 50% adalah Ilegal", Available on website: <https://www.tribunnews.com/nasional/2022/02/20/pmi-jadi-korban-kerja-paksa-selama-9-tahun-sang-majikan-di-malaysia-diputus-bebas>, Accessed on July 30, 2022.

¹⁸ Lusius Genik Ndaou Lendong, February, 20, 2022, "2.7 Juta Pekerja dari Indonesia 50% adalah Ilegal", Available on website: <https://www.tribunnews.com/nasional/2022/02/20/pmi-jadi-korban-kerja-paksa-selama-9-tahun-sang-majikan-di-malaysia-diputus-bebas>, Accessed on July 30, 2022.

¹⁹ Mardiansyah, D, "The Corona Virus and Labor Rights Issues: How Do Workers Get Their Rights?", *The Indonesian Journal of International Clinical Legal Education*, Vol.2 No.2 2020, p. 135.

²⁰ Luisa Marin, Simone Penasa, and Graziella Romeo, "Migration Crises and the Principle of Solidarit in Times of Sovereignism: Challenges for EU Law and Polity", *European Journal of Migration*, Vol. 40 No. 22, 2020, p. 5.

or the completeness of the immigration files. Based on data from the Sabah Immigration Detention Depot, from 2021 to June, as many as 25 immigration workers from Indonesia were declared dead.²¹ The greater the number of migrants detained, the more vulnerable they will become victims of violence in Malaysia. So that Indonesia and Malaysia immediately have an attitude in terms of increasing supervision of departure and acceptance of immigration from each country.

3. Indonesia and Malaysia Memorandum of Understanding in 2006–2011

The beginning of this bilateral agreement about the Indonesian Workers between Indonesia and Malaysia came in 2004²². When Indonesia and Malaysia entered into a cooperation agreement regarding the placement of Indonesian workers. To assist in the management of workers, there is the Indonesian Embassy in Kuala Lumpur to make it easier for workers to get legal protection. In 2006, Indonesia and Malaysia signed an MoU in the field of labor. Unfortunately, in the year of signing itself, many cases of violence occurred against Indonesian migrant workers in Sarawak, namely 322 cases followed by 284 cases with female victims. This case made the President of Indonesia at that time, Susilo Bambang Yudhoyono, issued Presidential Instruction Number 6 of 2006, one of which contained "taking the necessary steps by their respective duties, functions, and authorities, in the context of implementing the Policy on Reform of the Indonesian Labor Placement and Protection System."²³ This Presidential Instruction arose because of the many complaints from Indonesian migrant workers in Malaysia.²⁴

Indonesia has many Bilateral Cooperation Relations with Malaysia, one of which is regarding the Recruitment and Placement of Indonesian Domestic Workers, whose MoU was signed in Bali, Indonesia, on May 13, 2006. The MoU serves as a medium to reduce uncertainty in the agreement. The MoU also provides transparency on agreed and unapproved rules²⁵. In this case, Malaysia was found to have violated the MoU on the Recruitment and Placement of Indonesian Domestic Workers Article 5 Paragraph A(i), Article 5 Paragraph A(iii), ILO Convention No. 189 Article 12.²⁶ and ILO Convention No. 97 article 4. Malaysia, as the country that signed the MoU, should respect the agreements that have been agreed upon in the MoU. Malaysia, as a member state of the ILO (International Labour Organization) since 1957, should also respect the rules in the ILO convention.²⁷

As previously explained, Malaysia violates several Articles in the MoU on Recruitment and Placement of Indonesian Domestic Workers, namely the first in Article 5 Paragraph A(i), which contains "The employer shall be responsible personally or through and authorized MRA, to obtain approval from the relevant authorities in Malaysia for the purpose of recruitment or employment of the domestic worker". However, the Malaysian government violated the agreement on the use of the *One Channel System* method in the departure of migrants to Malaysia and instead used the *Maid Online System* method.²⁸ One of the reasons why the Indonesian government chose the One Channel System is because there is an agency to train Indonesian migrant workers, while in the Online Maid System, Indonesian

²¹ Darminto Hartono and Indranila Kustarini Samsuria, "Legal Protection of Indonesian Migrant Workers: International Law, National Regulations, and Contemporary Problems", *International Journal of Criminology and Sociology*, Vol. 10. 2021, p. 860.

²² A. Widyawati, "Legal Protection Model for Indonesian Migrant Workers", *Journal of Indonesian Legal Studies*, Vol 3 No. 3, 2018, p. 291.

²³ Tom Finaldin and Nisa Nur Yulianti, "Implementasi Kerjasama Indonesia dan Malaysia dalam Penanganan Tenaga Kerja di Malaysia pada Pemerintahan Priode Kedua Susilo Bambang Yudhoyono(2009-2014)", *Scientific Journal of International Relations*, Vol 3 No. 1, 2021, p. 3.

²⁴ A Wahab, "The Outbreak of Covid-19 in Malaysia: Pushing Migrant Workers at the Margin", *Social Sciences & Humanities Open*, Vol. 2 No. 1, 2020, p. 10.

²⁵ Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia Regarding the Recruitment and Placement of Indonesian Domestic Workers.

²⁶ Konvensi ILO No. 189 of 2011.

²⁷ Konvensi ILO No. 97 of 1949.

²⁸ T Sa, "A Study of Legal and Illegal Indonesian Migrant Workers in Malaysia and Their Problems: Finding a Solution from the Violence and Protecting Their Rights", *International Journal of Innovation, Creativity, and Change*, Vol. 6 No. 11, 2019, p. 140.

migrant workers do not get an Agency to prepare themselves.

The Constitutional Court stated that although the State of Indonesia has bound itself in an international treaty, Indonesia is still a sovereign state and has the right independently to terminate the agreement with an international treaty that has been made or to which the Indonesian state is bound, after internally considering its advantages or disadvantages either to remain bound or not to be bound by considering the risks of the decision to exit an international treaty. The Constitutional Court stated that this was possible under the provisions of Article 18 letter h of Law Number 24 of 2000 concerning International Treaties.²⁹

The two Malaysian employers also violated Article 5 Paragraph A(iii), which state "Service Users shall provide monthly wages to the PLRT agreed upon in the terms and conditions of the Employment Agreement in the amount prescribed by the market mechanism taking into account the wage range agreed upon by the Parties." In many cases where Indonesian immigrant workers do not get wages. For instance, on February 3, 2022, Indonesian Migrant Workers from West Java with the initials YK (60) were picked up by the Indonesian Embassy in Kuala Lumpur in coordination with the Selangor Manpower Office because their employers were known to have not provided wages for 7.5 years.³⁰ On April 15, 2021, the same thing happened to Indonesian Migrant Workers from West Java who worked as part of Malaysia, the Indonesian Embassy coordinated with PDRM to go to the location to secure Indonesian Migrant Workers who had been working unpaid for five years and were also persecuted.³¹ These two cases are a small part of some of the cases faced by Indonesian Migrant Workers residing in Malaysia. His action proves that there is still a lot going on in the field of TKI who do not get a decent wage or even get no wages at all. This creates uncertainty for Indonesian Migrant Workers residing in Malaysia.

4. **Exploitation and Neglect of Workers Based on ILO Convention No. 97 of 1949 and ILO Convention No. 189 of 2011**

The ILO or the International Labor Organization is a (UN) body that constantly strives to encourage the creation of opportunities for women and men to obtain decent and productive jobs freely, fairly, safely, and with dignity. The main objectives of the ILO are to promote rights in the workplace, encourage the creation of decent employment opportunities, improve social protection and strengthen dialogue to address issues related to the world of work. The ILO is the only tripartite body (an institution that serves as a forum for communication, consultation, and deliberation) of the UN that invites representatives of governments, employers, and workers to jointly formulate policies and programs. The ILO is the global body responsible for drafting and overseeing international labor standards. The ILO, in cooperation with its 181 Member States, the ILO seeks to ensure that these labor standards are respected both in principle and in practice.³²

Malaysia has been a Member State of the ILO since 1957 and has ratified 14 ILO conventions. In this case, Malaysia has violated ILO Convention No. 189 Article 12, which contains, "Payment of wages shall be made in cash, directly to workers, and in a routine period not longer than one month. Payment by cheque or bank transfer permitted by law or mutual agreement, or by consent of workers".³³ Furthermore, Article 4 of the ILO Convention No. 97 contains, "each Member State shall take the

²⁹ Dhiana Puspitawati and Adi Kusumaningrum, *op.cit*, p. 260.

³⁰ Alik Sulistyawati, February 10 2022, "PMI di Malaysia Tak Digaji 7.5 Tahun, Dubes RI Ancam Pidanakan Majikan", Available on Website: <https://www.solopos.com/pmi-di-malaysia-tak-digaji-75-tahun-dubes-ri-ancam-pidanakan-majikan-1253506>, Accessed August 17 2022.

³¹ Muhammad Iqbal, April 18, 2021, "Kacau! TKI Disiksa Lagi di Malaysia, Gaji 5 Tahun tak Dibayar", Available on website: <https://www.cnbcindonesia.com/news/20210418080332-4-238714/kacau-tki-disiksa-lagi-di-malaysia-gaji-5-tahun-tak-dibayar>, Accessed August 17, 2022.

³² Sekilas Tentang ILO.

³³ Konvensi ILO No. 189 of 2011.

necessary measures, within the limits of their respective powers and sovereignty, to facilitate the departure, travel, and reception of migrant workers". In this regard, the ILO Convention has comprehensively regulated the welfare of workers in member states. So concrete measures are needed in providing strict sanctions against countries that violate agreements in international agreements or the ILO Convention.³⁴

CONCLUSION

There are still violations of labor rights committed by Malaysia in terms of investigations and enforcement against individuals who commit criminalization and exploitation of workers from Indonesia. The disrespectful action taken by Malaysia against the MoU with Indonesia and the ILO Convention can be seen in the violation of the MoU on the protocol of change to the memorandum of understanding between the government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian migrant workers. In addition, Malaysia has violated ILO Convention No. 189 Article 12 and ILO Convention No. 97 Article 4.

On such grounds, violations of labor rights in Malaysia should be the center of attention for Indonesia in increasing supervision and enforcement of labor rights violations in Malaysia. Exploitation and neglect are still common without knowledge from the government. Therefore, the two states should work together to form a task force to carry out prevention and enforcement for companies or individuals who are actors of exploitation, neglect, and smuggling by using the legal basis in ILO Convention No. 143 Article 3 "each member state must adopt all necessary and appropriate measures, both within its jurisdiction and in cooperation with other members".

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³⁴ Konvensi ILO No. 97 of 1949.

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