



CRIMINAL LAW PROTECTION OF INDONESIAN MIGRANT WORKERS AGAINST HUMAN TRAFFICKING: A NORMATIVE ANALYSIS

Taufan

Program Studi Ilmu Hukum, Fakultas Hukum, Ilmu Sosial dan Ilmu Politik, Universitas Mataram, Indonesia
; taufan.abadi@unram.ac.id

*correspondence author: taufan.abadi@unram.ac.id

Abstract. Human trafficking remains a serious threat to Indonesian migrant workers, and Indonesia stayed in Tier 2 of the US Trafficking in Persons Report throughout 2015–2024. This article examines how criminal law protects Indonesian migrant workers against trafficking and where that protection falls short. It asks (1) how national legislation protects migrant workers from prevention before and during work through to the criminal justice process, and (2) what gaps separate the norms from their implementation and how those gaps can be closed, including in light of maqasid al-shariah. Using normative legal research with statute and conceptual approaches, the study analyzes the Anti-Trafficking Law (Law No. 21 of 2007), the Migrant Worker Law (Law No. 18 of 2017), the witness and victim protection legislation, and the National Criminal Code (Law No. 1 of 2023, in force since 2 January 2026), and compares these norms with implementation data reported by the U.S. Department of State and Indonesian sources. The findings show that the normative framework is largely adequate: it defines the offense, extends liability to corporations and organized groups, and recognizes victims' rights to restitution, compensation and rehabilitation. The main weaknesses lie in implementation: complaints showing trafficking indicators are rarely referred to law enforcement, oversight of recruitment is weak, restitution is seldom pursued, and data are fragmented. Maqasid al-shariah, through the protection of religion, life, intellect, family and property, supports treating these gaps as failures to protect basic human interests. The article closes with recommendations on referral, recruitment oversight, restitution, data integration and legal harmonization.

Keyword: Criminal Law Protection, Indonesian Migrant Workers, Human Trafficking, Restitution, Maqasid al-Shariah.

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A. Introduction

Human trafficking is a crime against human dignity that thrives on poverty (Rochmah & Simangunsong, 2023, p. 233), and in Indonesia the placement of migrant workers abroad is one of its main channels. The U.S. Department of State's Trafficking in Persons Report 2024 again lists Indonesia as a Tier 2 country, meaning that it does not fully meet the minimum standards for eliminating the Crime of Human Trafficking (TPPO) but is making efforts to do so, and the ranking has stayed at Tier 2 throughout 2015–2024. The report also observes that the government continues to handle most potential trafficking cases involving migrant workers through administrative mediation, without criminal accountability or adequate deterrence for traffickers (U.S. Department of State, 2024).

The COVID-19 pandemic added to the complexity of the problem. The June 2023 edition of the global report showed that traffickers, from individuals to well-resourced criminal syndicates, adapted to the pandemic and even prospered during it (U.S. Department of State, 2023). The reports issued from 2022 to 2024 consistently conclude that Indonesia has not fully met the minimum standards, mainly because of weaknesses in the legal instruments that address the substance of the offense, in institutions, and in the adequacy of data. The 2024 report adds that the government increased law enforcement efforts but took no significant steps against corruption and official involvement in trafficking, and that weak coordination among agencies and the lack of a centralized database leave data incomplete and possibly duplicated (U.S. Department of State, 2024).

Indonesian figures illustrate the distance between what is reported and what is prosecuted. During a three-month operation from 5 June to 10 September 2023, the national anti-trafficking task force arrested 998 suspects, and the central and regional task forces received 831 reports in the same period (Kompas.com, 2023). The complaint channel for migrant workers, by contrast, appears to feed the criminal process poorly. In 2023, the BP2MI hotline and complaint system received 707 complaints from Indonesian workers abroad; BP2MI assessed 28 of them as suspected trafficking cases and 529 as showing trafficking indicators such as illegal recruitment and false documentation. In 2022 it received 1,987 complaints, 60 of which were suspected trafficking cases. The report notes that BP2MI did not report referring these cases to law enforcement, and that between 2020 and 2022 BP2MI reached 80,000 Indonesian migrant workers in distress and assessed 90 percent of them as victims of exploitation, including trafficking (U.S. Department of State, 2024). Many of these cases involve fraud by syndicates that promise jobs to prospective migrant workers but ultimately traffic them, and the crime is committed covertly by organized groups operating at national and international levels. It is a violation of the human rights inherent in every person, among them the rights to life, family, self-development, justice, freedom, communication, security and welfare (Munthe, 2015, pp. 191–192).

Indonesia's legal response has developed in stages. Presidential Decree No. 88 of 2002 set out the National Action Plan for the Elimination of Trafficking in Women and Children. The subject was then addressed in Law No. 23 of 2002 on Child Protection, Law No. 39 of 1999 on Human Rights and, specifically, Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking (the TPPO Law). Law No. 12 of 2017 ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, and Presidential Regulation No. 69 of 2008, amended by Presidential Regulation No. 22 of 2021, established a task force. Philosophically, the recognition and protection of human rights rest on the 1945 Constitution and on Pancasila as the repository of the nation's

moral and ethical values, harmonized with the Universal Declaration of Human Rights. The most recent step is the National Criminal Code (Law No. 1 of 2023), in force since 2 January 2026, which also regulates trafficking (Sekretariat Negara Republik Indonesia, 2026).

Existing scholarship examines parts of this problem. Munthe (2015) treats trafficking as a violation of human rights; Rochmah and Simangunsong (2023) focus on the criminal liability of perpetrators; Hidayati (2012) examines the role of international and positive law in prevention and eradication; and Siku (2016) discusses the rights of witnesses and victims in criminal proceedings. What these works, as far as the sources reviewed for this article show, do not offer is an integrated reading of how criminal law protects Indonesian migrant workers as a specific group across the migration cycle, one that takes account of the National Criminal Code now in force, tests the norms against reported implementation data, and evaluates the protection from an Islamic normative perspective, which is relevant to the readers of this journal. This article seeks to fill that gap.

Two research questions guide the analysis. First, how do Indonesian criminal law and related legislation protect migrant workers against trafficking, from prevention before and during work to the criminal justice process? Second, what gaps separate these norms from their implementation, and how can they be addressed, including in light of *maqasid al-shariah*? The article contributes (1) a consolidated map of protection across the migration cycle that incorporates the National Criminal Code; (2) an analysis of the gap between norms and practice based on reported data, with particular attention to the neglected remedy of restitution; and (3) a *maqasid*-based reading that links legal protection to the values of dignity, religion, life, intellect, family and property, followed by concrete recommendations.

B. Method

This study is normative (doctrinal) legal research. Law is understood either as what is written in statutory regulations (law in books) or as rules and norms that serve as benchmarks for appropriate human behavior (Amiruddin & Asikin, 2004, p. 118). Two approaches are applied. The statute approach examines the relevant legislation and its hierarchy, while the conceptual approach draws on theories, doctrines and expert opinion to build the concepts and legal principles relevant to the issues examined.

The legal materials fall into three groups. Primary materials are the binding sources: the 1945 Constitution; Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking; Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers; Law No. 13 of 2006 on the Protection of Witnesses and Victims, as amended by Law No. 31 of 2014; Law No. 39 of 1999 on Human Rights; Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014; Law No. 1 of 2023 on the Criminal Code; the former Criminal Code (Law No. 1 of 1946) and Criminal Procedure Code (Law No. 8 of 1981); Law No. 20 of 2025 on the new Criminal Procedure Code and Law No. 1 of 2026 on the Adjustment of Criminal Provisions; Government Regulation No. 7 of 2018 as amended by Government Regulation No. 35 of 2020; Supreme Court Regulation No. 1 of 2022; the presidential decree and regulations on trafficking; and the laws ratifying international instruments. Secondary materials are books and journal articles on legal protection, victimology and trafficking. Supporting non-legal materials, used to compare norms with practice, are the Trafficking in Persons Reports of 2023 and 2024, a news report on the task force operation, and a published sample of court decisions on restitution.

The materials were collected through document study, then identified, classified according to the hierarchy of sources, and systematized. The analysis proceeded in three steps: (1) grammatical and systematic interpretation of the provisions in order to describe the protection available at each stage; (2) a comparison of norms and implementation, in which the content of each norm is set against reported enforcement and victim-assistance data; and (3) an evaluation of the resulting protection through *maqasid al-shariah*, using the classical five essential objectives (al-Ghazali, 1993) and the contemporary emphasis on human dignity and rights (Auda, 2008). The analysis is qualitative and prescriptive: it aims to state what the law should do to protect migrant workers better, not only what it says.

The study has limits. It does not examine individual case files or interview practitioners, so the evidence on implementation comes from secondary reports that themselves acknowledge gaps in data. The legal position is stated as at the time of writing: the National Criminal Code, the new Criminal Procedure Code and Law No. 1 of 2026 took effect on 2 January 2026, and their effects on trafficking cases are still developing (Sekretariat Negara Republik Indonesia, 2026).

C. Results and Discussion

The discussion has seven parts. It begins with the concept of legal protection that frames the analysis, then maps the criminal law framework, the protection under the Migrant Worker Law and the protection of witnesses and victims. It then compares these norms with implementation, considers the lessons of international standards, and evaluates the protection from the perspective of *maqasid al-shariah*.

Legal Protection: A Conceptual Framework

Legal protection is the protection of dignity and the recognition of the human rights held by legal subjects in a state governed by law, on the strength of applicable provisions and so as to prevent arbitrary action. In this sense law protects a person's interests by granting power to act on their behalf (Rahardjo, 2014, p. 5). It also serves as a benchmark for how effectively law is applied in a diverse society such as Indonesia's. Historically in the West, the recognition of human rights was aimed at placing limits and obligations on society and government (Soeroso, 2006, p. 38). For Salmond, as cited by Fitzgerald, law integrates and coordinates the many interests in society, because protecting some interests means limiting others (Rahardjo, 2000, p. 53). Rahardjo himself defines legal protection as protecting human rights that others have harmed and extending that protection to the community so that people can enjoy every right the law grants (Rahardjo, 2000, p. 69).

Hadjon distinguishes preventive protection, which seeks to stop disputes before they arise and steers government to act carefully when exercising discretion, from repressive protection, which seeks to resolve disputes, including through judicial institutions (Hadjon, as cited in Rahardjo, 2000, p. 54). Rasjidi and Putra add that protection should be not only adaptive and flexible but also predictive and anticipatory (Rasjidi & Putra, 1993, p. 118). Basah argues that legal protection and law enforcement each depend on the other for the law to fulfill its function (Basah, 1992, pp. 12–14), and Kusumaatmadja sees the role of law as structuring the whole process of development so that certainty and order are assured, on the condition that people understand the rules and feel their usefulness (Kusumaatmadja, as cited in Mulyadi, n.d.; compare Mulhadi, 2006).

These views are used in this article as a three-part analytical lens. The preventive function keeps workers out of exploitative placements through information,

documentation and verification. The repressive function punishes perpetrators, including corporations and organized groups. A remedial function, which builds on the preventive and repressive functions, restores the victim through restitution, compensation and rehabilitation. Protection is complete only if all three work, and the discussion below asks which of them fails in practice.

The Criminal Law Framework: The TPPO Law and the National Criminal Code

Criminal law protection has three components: the formulation of prohibited acts, criminal responsibility, and sanctions. Substantive criminal law sets these out, while formal criminal law (criminal procedure) determines how the state exercises its right to punish in concreto, that is, how criminal law in abstracto is applied in reality. The state's right to punish must rest on substantive criminal law, and procedural law is what makes its application possible. Protecting migrant workers against trafficking therefore involves both the offense provisions and the work of law enforcement institutions in dealing with perpetrators and victims.

Before 2007, trafficking was addressed only in Articles 297 and 324 of the former Criminal Code (KUHP). Article 297 punished trafficking in women and in male minors with up to six years' imprisonment, and Article 324 punished dealing in purchased slaves with up to twelve years. Both provisions were inadequate: they did not define trafficking comprehensively and could not reach trafficking across national borders. The TPPO Law was enacted to fill this gap and repealed both articles (Republik Indonesia, 2007). Its recitals show that it is itself a form of state protection: every person, as a creature of God, has basic rights befitting human dignity; trafficking, especially of women and children, violates those rights and must be eradicated; trafficking has spread through organized and unorganized networks within and across states and threatens society and the state; and prevention and response rest on national and international commitment to prevent early, act against perpetrators, protect victims and strengthen cooperation.

The TPPO Law defines trafficking through three elements: an act (recruiting, transporting, harboring, sending, transferring or receiving a person); a means (threat or use of violence, kidnapping, confinement, forgery, fraud, abuse of power or of a position of vulnerability, debt bondage, or the giving of payments or benefits to obtain the consent of a person who has control over another); and a purpose, which is exploitation (Republik Indonesia, 2007, Article 1). The offense covers trafficking within the country and between countries and, unlike Article 297 of the former Code, is not limited to women and underage boys. The core offense is set out in Article 2(1), which punishes such acts committed to exploit a person within Indonesia with three to fifteen years' imprisonment and a fine of Rp120 million to Rp600 million; Article 2(2) applies the same penalty when the act results in exploitation. Article 4 is the provision most relevant to migrant workers: it punishes anyone who takes an Indonesian citizen outside the territory of Indonesia to exploit him or her abroad, with the same penalties. Further articles extend liability to those who prompt others to commit trafficking even where it does not occur (Article 9), those who assist or attempt it (Article 10), those who plan or conspire (Article 11), and those who exploit victims through sexual intercourse or other indecent acts (Article 12). Table 1 summarizes the provisions that matter most for migrant workers.

Table 1: Key Provisions of the TPPO Law Relevant to Migrant Workers

Provision	Conduct covered	Sanction
Article 2(1)–(2)	Recruiting, transporting, sheltering, sending, transferring or receiving a person by prohibited means for exploitation in Indonesia; same penalty if exploitation results	Imprisonment 3–15 years; fine Rp120–600 million
Article 4	Taking an Indonesian citizen outside Indonesia to exploit him or her abroad	Same as Article 2(1)
Articles 13 and 15	Trafficking committed by or for a corporation; investigation and prosecution of the corporation and/or its management	Fine increased threefold; additional penalties (revocation of business permit and legal-entity status, confiscation of assets, dismissal of management, ban on management re-establishing a corporation in the same sector)
Article 16	Trafficking committed by an organized group	Penalty of Article 2 plus one third
Article 19	Entering false information into, or falsifying, state or other documents to facilitate trafficking	Imprisonment 1–7 years; fine Rp40–280 million
Article 20	False testimony, false evidence or unlawful influence on witnesses at trial	Imprisonment 1–7 years; fine Rp40–280 million
Article 21(1)	Physical attack on a witness or court officer in a trafficking case	Imprisonment 1–5 years; fine Rp40–200 million

Source: Republik Indonesia (2007)

Three features matter for migrant workers. First, Article 4 recognizes the route by which many Indonesian workers are trafficked, namely recruitment for work abroad. Second, corporate liability (Articles 13 and 15) and the enhanced penalty for organized groups (Article 16) give a legal basis for reaching recruitment companies and syndicates instead of only individual recruiters, which matters given the pattern of job-offer fraud described in the introduction. Third, Article 19 criminalizes falsified documents, and false documentation is among the indicators named in the BP2MI complaint assessments alongside illegal recruitment (U.S. Department of State, 2024). Definitional gaps nevertheless remain: the 2024 report recommends amending the 2007 law to remove the requirement to prove force, fraud or coercion in child sex trafficking, because that requirement is hard to satisfy and leaves victims unprotected (U.S. Department of State, 2024).

The National Criminal Code (Law No. 1 of 2023) restates the trafficking offense in Article 455, in Chapter XIX on crimes against the freedom of persons. Its formulation follows that of Article 2 of the TPPO Law: recruiting, transporting, sheltering, sending, transferring or receiving a person by the listed means, for the purpose of exploitation within the territory of the Republic, is punishable with three to fifteen years' imprisonment and a fine of at least category IV and at most category VII, and the same penalty applies when the act results in exploitation. The Code was promulgated on 2 January 2023 and entered into force on 2 January 2026 after the three-year transition provided in its closing provisions; acts committed before that date remain governed by

the former provisions, in line with the principle of non-retroactivity (Sekretariat Negara Republik Indonesia, 2026).

The General Provisions of the new Code are important for trafficking cases. Book One regulates conspiracy, preparation, attempt, complicity, repetition, justification, excuses, criminal liability and corporate liability, as well as the objectives and guidelines of punishment and the types of principal penalties, additional penalties and measures. Article 187 extends Chapters I to V of Book One to acts punishable under other laws and regulations unless a law provides otherwise, and the former Code contained a comparable rule in Article 103, which applied Chapters I to VIII of its first book. The general part of the new Code therefore also applies to offenses under the TPPO Law.

Two related developments deserve mention. The new Criminal Procedure Code (Law No. 20 of 2025) took effect on the same date (Sekretariat Negara Republik Indonesia, 2026), and cases in which the examination of the defendant in court had already begun continue under the former procedure (Mahkamah Agung Republik Indonesia, 2026). Law No. 1 of 2026 on the Adjustment of Criminal Provisions was enacted to align the criminal provisions of sectoral laws with the system of the new Code, including the types of penalty, limits on fines, substitute penalties and the punishment of corporations (Mahkamah Agung Republik Indonesia, 2026). The parallel formulation of the trafficking offense in Article 455 of the National Criminal Code and Article 2 of the TPPO Law, and the effect of those adjustments on the sanctions in Table 1, call for harmonization. The sanctions in Table 1 are stated as enacted in Law No. 21 of 2007 and should be read subject to them.

Protection under the Migrant Worker Law

Law No. 18 of 2017, which replaced Law No. 39 of 2004, organizes protection around institutions and around the stages of migration. It separates the policy-making role of the ministry from the implementing role of an Agency established by the President, responding to problems that arose from the former dual authority. Local governments, from village to provincial level, take part before and after employment, including by providing information on job orders from Indonesian representatives, employers and business partners abroad. The law guarantees prospective migrant workers a set of rights: to obtain and choose work according to their competencies; to have access to education and job training; to receive accurate information on the job market, placement procedures and working conditions abroad; to be served professionally and humanely and without discrimination before, during and after work; to worship according to their religion and beliefs; to receive wages according to the standards of the destination country or the agreement; to receive protection and legal assistance; to receive an explanation of the employment agreement; to have access to communication and keep control of their travel documents; to associate and gather in line with local law; and to be guaranteed safety on return to their areas of origin.

The law divides protection into three phases: before, during and after work. Protection before work has an administrative side, which concerns the completeness and validity of placement documents and the setting of working conditions, and a technical side, which covers outreach and information, education and training, social security, facilitation of rights, the role of functional officers, integrated one-stop services, and guidance and supervision. To be placed abroad, prospective workers must hold a set of documents: a certificate of marital status (with the marriage certificate for those who are married), a permission letter from a spouse, parents or guardian acknowledged by the village or sub-district head, a work competency certificate, a health and psychological

certificate, a passport, a work visa, a placement agreement and an employment agreement.

Information is a central preventive device. Information on work abroad comes from the Indonesian representative in the destination country, from business partners there and from prospective employers, and information and requests originating from partners and employers must be verified by the labor attaché or a designated foreign service official. On the basis of that verification the attaché places problematic employers and business partners on a list and announces the list periodically, and the results serve as a recommendation when placement permits are granted to Indonesian Migrant Worker Placement Companies that partner with problematic business partners. The Central Government passes information and requests to district and city governments through the provinces, and these relay them to the community with the involvement of village officials.

Protection during work consists of data collection and registration by the labor attaché or an appointed foreign service official; monitoring and evaluation of employers, jobs and working conditions; facilitation of the fulfillment of workers' rights and of the settlement of employment cases; consular services; assistance, mediation, advocacy and legal aid, including guardianship in accordance with local law; guidance; and facilitation of repatriation. This protection does not take over the criminal or civil liability of the worker and is carried out in accordance with Indonesian law, the law of the destination country, and international law and custom. The government's role is reinforced by strengthening bilateral relations on employment and by placing labor attachés in the Indonesian representative offices of certain countries. The ILO's guide for migrant workers likewise stresses intervention across the whole migration cycle: awareness of safe migration before departure, effective migration policies and mechanisms, fair recruitment, decent working conditions in the destination country, and economic empowerment and reintegration into the home community (Organisasi Perburuhan Internasional [ILO], 2016).

Read against the TPPO Law, the Migrant Worker Law works mainly at the preventive layer. It tries to keep workers out of exploitative placements through documentation, information and verification. These are precisely the controls that illegal recruitment and false documents defeat, which helps explain why the trafficking indicators reported by BP2MI center on them (see Table 2). Where prevention fails, the criminal provisions summarized in Table 1 become the operative protection, and the link between the two regimes is the referral of complaints to law enforcement.

Protection of Witnesses and Victims: Restitution, Compensation and Rehabilitation

Chapter V of the TPPO Law deals with the protection of witnesses and victims. Under Article 43, protection of witnesses and victims in trafficking cases is carried out in accordance with Law No. 13 of 2006 on the Protection of Witnesses and Victims, except where the TPPO Law provides otherwise, and Articles 44 to 55 address the rights of witnesses and victims, the services available to them and the institutions involved. Restitution stands out: the Law covers the right to restitution and its forms, requires restitution to be included in the court decision, and regulates the victim's right to rehabilitation (Republik Indonesia, 2007). The concept of victim protection also reaches not only actual but also potential victims. Alongside the Migrant Worker Law and the TPPO Law, the protective framework includes Law No. 39 of 1999 on Human Rights, Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014, and Law No. 13 of 2006 as amended by Law No. 31 of 2014.

The forms of protection for crime victims that apply to trafficking victims include restitution and compensation, counseling and medical services, legal aid, and the provision of information (Mansur & Gultom, 2007, p. 166; Yulia, 2010, p. 59). The terms need to be distinguished. Compensation, as the term is used in Article 99 of the former Criminal Procedure Code, emphasizes reimbursement of the costs borne by the injured party; from the victim's perspective it has two benefits, covering material losses and expenses and satisfying the victim's emotions, while from the perpetrator's perspective the duty to make good the loss is felt as something concrete and directly tied to the wrong committed. Restitution is directed more at the perpetrator's responsibility for the consequences of the crime, so that all losses suffered by the victim are made good, and compensation may also be understood as a form of assistance grounded in humanity and human rights (Yulia, 2010, p. 59).

Schafer identifies four ways in which restitution and compensation can be provided to crime victims (Abdussalam, 2010, p. 275). The first is civil damages awarded through a civil process, which separates the victim's claim from the criminal process. The second is civil compensation provided within criminal proceedings. The third is compensation of a mixed civil and criminal character, provided through criminal proceedings; restitution here remains civil in nature but has an undeniable criminal element, and one form is the compensatory fine, a monetary obligation on the convicted person. The fourth is civil compensation awarded through criminal proceedings and funded from state revenue: it has no criminal element, and the state meets the obligation the court has placed on the perpetrator, thereby acknowledging that the state failed in its duty to protect the victim and to prevent the crime. Indonesian trafficking law places the obligation on the perpetrator, which is why the practical weaknesses discussed below matter.

One weakness is historical. Under the former Criminal Code, compensation for victims was available only as a special condition attached to a conditional sentence, so it could not be imposed as a stand-alone sanction, could be set only where the judge imposed a prison sentence of no more than one year or a confinement sentence, and was merely optional (Barda Nawawi Arief, as cited in Siku, 2016, p. 102). Because Article 2 of the TPPO Law sets a minimum of three years, and a conditional sentence under the former Code was limited to short sentences, that route was never available in trafficking cases, so the special-condition route to compensation was closed. If restitution is not pursued by other means, victims' interests are neglected and judges concentrate only on sending perpetrators to prison. Victims are then treated mainly as evidence in court, as provided in Article 184 of the former Criminal Procedure Code, without regard to their rights, which must be protected (Siku, 2016).

The regulatory position has improved. Supreme Court Regulation No. 1 of 2022, in force since 1 March 2022, sets out the procedure for applying for and awarding restitution and compensation to victims of certain crimes, trafficking included (Mahkamah Agung Republik Indonesia, 2022), and it works alongside Government Regulation No. 7 of 2018 as amended by Government Regulation No. 35 of 2020. Together with Article 50 of the TPPO Law, it requires the judgment in a trafficking case to state the term of substitute imprisonment or confinement that applies if the assets of the defendant and of third parties are insufficient to pay restitution (Yudhistira, 2025). A small sample of 41 decisions examined by a Hukumonline research team between 9 June and 4 July 2023 found that judges granted 95 percent of restitution applications (Hukumonline, 2024). The sample is small and not necessarily representative of trafficking cases, but it suggests that where applications reach a judge they are usually granted, so the bottleneck may lie

earlier, in the identification of victims, the assessment of losses and the filing of the claim, and later, in payment.

Rehabilitation completes the remedial layer. Legal protection through rehabilitation may be medical, psychological and social, and repatriation and reintegration are obligations of the state, above all for victims who have suffered physical, psychological and social harm from trafficking. The Law also assigns the prevention and handling of trafficking victims to the government, local governments, communities and families, and provides for a task force to carry out integrated measures (Farhana, 2010, p. 31).

Norms and Implementation: Where Protection Fails

Setting the norms against reported practice shows that the main weaknesses lie less in the absence of rules than in their execution. Table 2 summarizes the gaps at five points of the protection chain.

Table 2: Norm–Implementation Gaps in the Protection of Migrant Workers against Trafficking

Stage	Norm	Reported implementation	Gap
Prevention (before work)	Law No. 18 of 2017: accurate information, complete documents, verification of employers and partners by the labor attaché	Illegal recruitment and false documents appear as trafficking indicators in complaints (529 of 707 complaints in 2023)	Preventive controls are bypassed at the recruitment stage
Detection and referral	Complaint mechanisms; TPPO Law; anti-trafficking task force	28 of 707 complaints (about 4%) assessed as suspected trafficking in 2023 and 60 of 1,987 (about 3%) in 2022; no reported referral to law enforcement	Complaints with indicators are not converted into criminal cases
Prosecution and deterrence	TPPO Law Articles 2, 4, 13, 15, 16 and 19; Article 455 of the National Criminal Code	Most cases involving migrant workers handled administratively; no significant steps against official complicity; Tier 2 ranking throughout 2015–2024	Weak criminal accountability of recruiters, corporations and officials
Victim remedies	Restitution, compensation and rehabilitation; Supreme Court Regulation No. 1 of 2022	Restitution underused; victims treated mainly as evidence; conditional-sentence route closed in trafficking cases under the former Code	Rights exist but are seldom claimed or enforced
Data and coordination	Task force under Presidential Regulations No. 69 of 2008 and No. 22 of 2021	No comprehensive victim-identification system; data incomplete and possibly duplicated; no centralized database	Cases cannot be tracked from complaint to remedy

Source: Author's analysis based on Republik Indonesia (2007, 2017), U.S. Department of State (2024) and Siku (2016)

The clearest gap lies between detection and referral. Of the 707 complaints received in 2023, 529 (about 75 percent) showed trafficking indicators and 28 (about 4 percent) were assessed as suspected trafficking cases; if the two categories do not overlap, together they account for nearly 79 percent of complaints. In 2022 only 60 of 1,987 complaints (about 3 percent) were assessed as suspected trafficking cases. An indicator is not proof of an offense, so these figures do not mean that hundreds of trafficking cases went unprosecuted. They do show a wide distance between complaints that display recognized indicators and complaints that are treated as suspected crimes, and the report's observation that BP2MI did not report referring these cases to law enforcement suggests that the complaint channel functions mainly as an administrative service and not as an entry point to the criminal process (U.S. Department of State, 2024).

The preventive layer fails at the same point. The Migrant Worker Law relies on complete documents and on verification of employers and partners, but illegal recruitment and false documentation are the very indicators that dominate the complaint assessments. The repressive tools that answer this pattern already exist: Article 19 of the TPPO Law penalizes falsified documents, Articles 13 and 15 reach corporations, and Article 16 raises the penalty for organized groups. The 2024 report nevertheless recommends more effective monitoring of labor recruitment agencies, including in the fisheries sector, closer oversight of sectors at risk of labor trafficking, and vigorous investigation and prosecution of trafficking crimes, officials included (U.S. Department of State, 2024). The task force figures show that enforcement capacity exists when a coordinated operation is mounted, since 998 suspects were arrested in about three months in 2023 (Kompas.com, 2023). The problem the report identifies is that this capacity is not routinely applied to the cases that arise through the migrant worker system, where administrative mediation prevails and complicit officials are not prosecuted.

The remedial layer shows a different kind of gap: rights that exist but are seldom claimed. Restitution depends on the perpetrator's ability to pay, as the substitute confinement mechanism itself recognizes. Where the proceeds of a syndicate are hidden or held abroad, victims may receive nothing. Schafer's fourth model, in which the state meets the compensation obligation, therefore deserves consideration as a safety net for trafficking victims, and it would express the acknowledgment that the state has failed to protect the victim. Finally, without a centralized database that tracks a case from complaint to remedy, none of these gaps can be measured, which is why the 2024 report places such a database among its priority recommendations (U.S. Department of State, 2024).

International Standards and Their Lessons

International law has addressed trafficking for more than a century. Early instruments include the 1910 International Convention for the Suppression of the White Slave Traffic, the 1921 International Convention for the Suppression of the Traffic in Women and Children and the 1933 International Convention for the Suppression of the Traffic in Women of Full Age, followed by the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). International conventions require states to play an active role in preventing trafficking, protecting victims and enforcing the law against it within their territories. As a UN member, Indonesia ratified CEDAW through Law No. 7 of 1984 (State Gazette 1984 No. 29) (Hidayati, 2012).

The central instrument today is the United Nations Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25 on 15 November 2000,

signed by states on 12–15 December 2000 and in force since 29 September 2003. It is not concerned only with human rights; it was designed to create a system of international cooperation against, among other things, the movement of illicit drugs and people, and it is complemented by three protocols: on the smuggling of migrants, on firearms, and on trafficking in persons, especially women and children, known as the Palermo Protocol (United Nations, 2000a, 2000b). Indonesia ratified the Convention through Law No. 5 of 2009 and the Palermo Protocol through Law No. 14 of 2009 on 5 March 2009, with a declaration on Article 5 paragraph (2) letter c and a reservation on Article 15 paragraph (2) (Hidayati, 2012, p. 164); Law No. 15 of 2009 ratified the protocol against the smuggling of migrants by land, sea and air. The Palermo Protocol is designed to strengthen international cooperation to prevent and combat trafficking and to improve protection of and assistance to victims. It covers prevention, investigation, prosecution and protection of victims of transnational crimes involving organized criminal groups, criminalizes attempts, participation and the ordering of others to commit the offense, and specifically regulates assistance to and protection of victims, their status in the receiving country and their repatriation. Cooperation among states strengthens victim protection: the most common practice is to house victims and then repatriate them at the receiving state's expense, and the country of origin may assist its citizens who later face legal problems in obtaining justice.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 defines victims as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate the criminal laws operative in a member state, including laws proscribing criminal abuse of power (United Nations, 1985). Arif similarly understands victims as those who suffer physical and spiritual harm as a result of the actions of others who pursue their own or others' interests in ways that conflict with the interests and human rights of the injured party (Mintarsih, n.d., p. 7). Historically, women and children have been in a very vulnerable position as victims of trafficking, and legislation such as Law No. 23 of 2002 on Child Protection and Law No. 7 of 1984 on the ratification of CEDAW did not by itself provide a comprehensive legal basis for dealing with the crime.

For employment, the basic reference is the fundamental ILO conventions, which fall into four groups: freedom of association (Conventions No. 87 and No. 98), discrimination (Conventions No. 100 and No. 111), forced labor (Conventions No. 29 and No. 105) and child protection (Conventions No. 138 and No. 182). They set core labor standards aimed at promoting decent and productive work in conditions of equality, non-discrimination, security, freedom and human dignity, and the proposed indicators track ratification of and compliance with the eight fundamental conventions, including freedom of association and collective bargaining, the elimination of forced labor, a minimum age for employment, the elimination of the worst forms of child labor and the elimination of discrimination in employment, equal pay included (Badan Pusat Statistik, 2014, p. 83).

Finally, the Kyoto Declaration adopted at the 14th UN Congress on Crime Prevention and Criminal Justice, held in Kyoto from 7 to 12 March 2021 with more than 5,000 participants, including 152 member states, 114 non-governmental organizations, 37 intergovernmental organizations and 600 individual experts, encourages states to uphold human rights, especially human dignity, through a comprehensive strategy of crime prevention aimed at social and economic development and an integrated approach to the challenges facing criminal justice systems. Its multidimensional approach to advancing

the rule of law includes access to justice for all; effective, accountable, impartial and inclusive institutions; and social, educational and other measures, including a culture of law-abidingness that respects cultural identities, in line with the Doha Declaration, and it places crime prevention and criminal justice in the context of the Sustainable Development Goals (United Nations Office on Drugs and Crime [UNODC], 2021, n.d.).

Three lessons follow for Indonesia. First, victim protection must not depend on the success of prosecution, which supports pursuing restitution and rehabilitation as independent rights. Second, cooperation with destination states is part of protection, which gives operational meaning to the labor attaché's verification role. Third, effective, accountable and inclusive institutions are a condition of the rule of law, which points to inter-agency coordination and shared data as core requirements and not as administrative details.

An Islamic Perspective: Maqasid al-Shariah

Islamic sources condemn trafficking on grounds that are consistent with the national framework. The Qur'an affirms that God has honored the children of Adam (Q.S. al-Isra' [17]: 70), which makes dignity the starting point. A hadith recorded by al-Bukhari (no. 2227) reports that God declares that He will be the adversary, on the Day of Resurrection, of a person who sells a free person and consumes the price, and of a person who hires a worker, takes full work from him and does not pay his wages (al-Bukhari, 1422 H). The two wrongs named in the hadith correspond closely to the two faces of labor trafficking: treating a free person as a commodity and withholding the worker's wages.

Because Islamic law prescribes no fixed (hadd) penalty for trafficking, the offense may be treated as a ta'zir crime, for which the ruler may set penalties in the public interest ('Awdah, n.d.). The penalties of three to fifteen years' imprisonment and substantial fines in the TPPO Law and the National Criminal Code can be seen as an exercise of that authority, provided they achieve deterrence and remain proportionate. The classical scheme of five essential objectives, the protection of religion, life, intellect, lineage and property (al-Ghazali, 1993), and contemporary elaborations that add human dignity and rights (Auda, 2008), offer a further test for the legal protection analyzed above. Table 3 maps them.

Table 3: Maqasid al-Shariah and the Protection of Migrant Workers against Trafficking

Objective	How trafficking harms it	Protection in national law
Religion (hifz al-din)	Exploitative conditions can deny workers the freedom to practice their faith	Right of migrant workers to worship according to their religion and beliefs (Law No. 18 of 2017)
Life and body (hifz al-nafs)	Violence, confinement and unsafe working conditions	Criminal sanctions (Articles 2 and 4 of the TPPO Law; Article 455 of the National Criminal Code); witness and victim protection; medical and psychosocial rehabilitation
Intellect (hifz al-'aql)	Deception through false information and false documents; lack of training and knowledge of rights	Rights to accurate information and training; verification of employers; Article 19 of the TPPO Law
Lineage and family (hifz al-nasl)	Separation of families; exploitation of women and children	Permission of spouse, parents or guardian; child protection (Law No. 23 of 2002); TPPO Law

Objective	How trafficking harms it	Protection in national law
Property (hifz al-mal)	Unpaid wages, debt bondage, fraud and loss of savings	Right to wages; restitution and compensation; asset confiscation from corporations
Dignity and freedom	Treating persons as commodities	Constitutional and human rights guarantees; recitals of the TPPO Law

Source: Author's analysis based on al-Ghazali (1993) and Auda (2008)

The mapping yields two observations. First, the national rules address every objective on paper, so the gap identified in Table 2 is a gap of execution. In maqasid terms, a norm that is not enforced does not preserve the objective it names, so weak referral, weak oversight of recruitment and unpaid restitution are failures of protection and not merely administrative shortcomings. Second, restitution has particularly strong support. The hadith links the wrong of trafficking to the taking of the worker's wages, and the objective of protecting property requires that the loss be made good to the victim and not only that the offender be punished. This supports treating the victim's right to restitution as an integral part of the sentence and, where the offender cannot pay, backing it with state funds.

Islamic normative sources also offer resources for prevention. The 2024 Trafficking in Persons Report itself recommends raising awareness of trafficking trends and vulnerabilities among local religious and village leaders (U.S. Department of State, 2024), and the values summarized in Table 3 give those leaders a religious vocabulary with which to explain why recruitment fraud, document falsification and wage withholding are grave wrongs and not ordinary commercial risks.

D. Conclusion

On the first research question, Indonesian criminal law protects migrant workers against trafficking through a layered framework. The Migrant Worker Law works mainly at the preventive stage before and during work through documentation, information and verification. The TPPO Law and, since 2 January 2026, Article 455 of the National Criminal Code define the offense, extend liability to corporations and organized groups, and penalize document falsification and interference with witnesses. The witness and victim protection legislation recognizes victims' rights to restitution, compensation and rehabilitation. Taken together, the norms are largely adequate.

On the second research question, the main gaps lie in implementation. Complaints that show trafficking indicators are seldom converted into criminal cases; recruitment oversight and the prosecution of corporations and complicit officials are weak; restitution remains underused and depends on the perpetrator's ability to pay; and the absence of a centralized database prevents cases from being tracked from complaint to remedy. Through the lens of maqasid al-shariah, these are failures to protect religion, life, intellect, family and property, and the hadith on the sale of a free person and the withholding of wages gives particular force to the victim's claim to restitution.

Six recommendations follow. First, a mandatory referral protocol between the migrant worker protection authority, the police and the task force should ensure that complaints showing trafficking indicators such as illegal recruitment and false documents are referred, tracked and reported. Second, recruitment oversight should use the existing tools: corporate liability, the enhanced penalty for organized groups, the list of problematic employers and business partners in permit decisions, and the investigation

of complicit officials. Third, prosecutors should routinely request restitution and judges should address it in every trafficking judgment, with early loss assessment, and a state-funded compensation mechanism should be considered as a safety net for victims when perpetrators cannot pay. Fourth, an interoperable central database should track cases from complaint to remedy. Fifth, the relationship among Article 455 of the National Criminal Code, the TPPPO Law, the new Criminal Procedure Code and Law No. 1 of 2026 should be harmonized, and the definition of child sex trafficking should be amended as the 2024 report recommends. Sixth, training of officials and outreach with religious and village leaders should draw on the maqasid-based values discussed above.

This study is limited to normative analysis and secondary implementation data. Future research should examine trafficking judgments, including restitution orders, issued after the new criminal codes took effect on 2 January 2026, and should include interviews with victims and practitioners, so that the gaps identified here can be tested against case-level evidence.

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