

Ratification without Harmonisation: Fragmented Domestication of the 1990 Migrant Workers Convention in Indonesia

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Article history:

Received 2026-05-12

Revised 2026-07-04

Accepted 2026-08-01

Keywords:

Fragmentation of Norms;
Harmonisation; ICRMW;
Ratification.

DOI:

doi.org/10.26905/idjch.v17i2.17168.

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Abstract: Indonesia's ratification of the 1990 ICRMW through Law No. 6 of 2012 obliges it to align domestic law with the Convention's broader, rights-based standards. Yet Law No. 18 of 2017 on migrant worker protection addresses only part of this obligation, focusing almost exclusively on Indonesian citizens working abroad. Using normative legal research with statutory and conceptual approaches, this article maps how far the Convention's remaining obligations covering foreign migrant workers in Indonesia, undocumented migrants, migrant families, and due process in detention and deportation, are accommodated across Indonesia's sectoral laws on immigration, labour, human rights, child protection, citizenship, social security, and trafficking. Applying a three-tier criterion (harmonised, partially accommodated, not accommodated), it finds these obligations dispersed across sectoral laws but not coherently integrated. This fragmentation produces four structural loopholes: an incomplete framework for foreign migrant workers, a rights vacuum for undocumented migrants, an underdeveloped family-protection regime, and administratively ather than rights-based due process in detention and deportation. With the 2026 Domestic Worker Protection Law now enacted, the article argues that closing these loopholes through a systematic harmonisation audit is a timely legislative priority, since ratification without harmonisation risks reducing the Convention to diplomatic formality rather than enforceable domestic rights.

1. Introduction

Ratification of an international treaty fundamentally extends beyond the formal act of a state binding itself. Ratification entails further consequences, specifically the obligation to ensure that the norms, principles, and standards accepted within the treaty can operate effectively within the national legal system. In the context of migrant worker protection, this becomes critically important, as labour migration is not merely an issue of labour mobility but also one of human rights, social justice, family protection, and cross-border state responsibility.

Indonesia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 through Law No. 6 of 2012. This ratification signi-

fies Indonesia's acknowledgment of the importance of protecting the rights of all migrant workers and their families. The Convention not only regulates protection for documented migrant workers but also establishes fundamental rights standards for migrant workers in irregular situations. Furthermore, the Convention views states not solely as countries of origin, but also as transit and destination countries, which bear the obligation to respect, protect, and fulfil the rights of migrant workers within their jurisdiction.

Normatively, the Convention requires every ratifying state to ensure that migrant workers and members of their families, irrespective of documentation status, sector of employment, or whether the state functions as a country of origin, transit, or destination, enjoy the substantive and procedural rights it sets out, and to give those rights effect through coherent domestic law. Empirically, however, Indonesia's principal implementing statute, Law No. 18 of 2017, is framed almost entirely around the state's role as a country of origin protecting its own citizens abroad, leaving the Convention's broader destination-state and rights-based obligations to be absorbed, if at all, by an uncoordinated array of sectoral laws. It is this tension between the Convention's normative demand for coherent, rights-based domestication and the empirical reality of a narrowly framed, origin-country-oriented implementing statute that this article investigates.¹

Existing scholarship on Law No. 18 of 2017 has largely examined the statute's implementation and effectiveness in protecting Indonesian citizens working abroad, including its alignment with the principles of the 1990 Migrant Convention and international labour standards more generally.² These studies, however, tend to treat Law No. 18 of 2017 as the primary yardstick of compliance and focus predominantly on outbound Indonesian migrant workers, leaving underexplored how far the Convention's broader obligations, namely those concerning foreign migrant workers within Indonesia, undocumented migrants, migrant detention and deportation, and migrant families, are accommodated across Indonesia's wider legal system.³

This literature can usefully be grouped by analytical focus. A first cluster evaluates Law No. 18 of 2017's internal implementation and effectiveness for Indonesian citizens abroad, exemplified by Iqbal and Wiryani's assessment of the Law's alignment with Convention principles. A second cluster examines the synergy between international labour standards and human rights protection more broadly, without isolating the sectoral gaps addressed here. A third, more recent cluster extends the inquiry outward: Arbaoui and Semaoui examine how the non-binding Global Compact for Migration has been used to build political momentum for ICRMW ratification in a non-ratifying state, a reminder that ratification itself remains a live international question even where, as in Indonesia, this article can take ratification as its starting point; Prasasti, Nugroho, and Fahririn revisit the implementation of Law No. 18 of 2017 but, consistently with the first cluster, confine

¹ Alan Desmond, "A New Dawn for the Human Rights of International Migrants? Protection of Migrants' Rights in Light of the UN's SDGs and Global Compact for Migration," *International Journal of Law in Context* 16, no. 3 (2020): 222-38, <https://doi.org/10.1017/S1744552320000282>; Desmond, "From Complementarity to Convergence," 83-104.

² Muhammad Iqbal and Fifik Wiryani, "Implication of Principles in the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families in Law No. 18 of 2017 in an Effort to Protect Indonesian Migrant Workers Abroad," *Audito Comparative Law Journal* 1, no. 2 (2020): 85-93, <https://doi.org/10.22219/audito.v1i2.13761>.

³ See e.g. Muhammad Abdul Azis, Muhammad Syaprin Zahidi, and David Pradhan, "Synergising International Labour Laws and Human Rights for Protection of Indonesian Migrant Workers," *Lampung Journal of International Law* 2, no. 2 (2020): 109-20, <https://doi.org/10.25041/lajil.v2i2.2036>; Lalu Husni, Rr. Cahyowati, and Mansur, "Legal Protection for Indonesian Migrant Workers Based on Law Number 18 of 2017," *Journal of Legal, Ethical and Regulatory Issues* 23, no. 2S (2020): 1-6; Siti Hajati Hoesin and Fitriana Fitriana, "The Documents Requirements for Employing Foreign Workers: Impact on Local Workers in Indonesia," *International Journal of Law Reconstruction* 6, no. 1 (2022): 105, <https://doi.org/10.26532/ijlr.v6i1.18413>.

their assessment to the placement-and-return framework; and Agusmidah et al. situate Indonesia's sectoral, uncoordinated approach within a wider ASEAN pattern of migrant-rights policy deadlock, comparing it unfavourably with the European Union's more integrated framework. None of these studies, individually or collectively, traces the Convention's obligations across the whole of Indonesia's sectoral legal system in the manner undertaken here.⁴

This gap is not merely a matter of emphasis. Iqbal and Wiryani, for example, confine their Convention-compliance analysis to the obligations already mirrored in Law No. 18 of 2017's pre-departure, placement, and return framework; obligations concerning foreign migrant workers in Indonesia, undocumented migrants, family reunification, and detention due process fall outside that framework and, consequently, outside their analysis.⁵

The novelty of this article lies in mapping that fragmentation across sectoral regimes, rather than confining the assessment to Law No. 18 of 2017 alone, and in showing that the central problem is not the absence of norms but the absence of coherent, rights-based harmonisation following ratification. This mapping carries two consequences that prior sectoral studies, taken individually, do not yield. Practically, it equips legislative drafters and oversight bodies, such as the House of Representatives (DPR) and the National Agency for the Placement and Protection of Indonesian Migrant Workers (BP2MI), with a consolidated evidence base for a targeted harmonisation audit, rather than a diffuse general call for reform. Doctrinally, it demonstrates that treaty-compliance analysis in Indonesian legal scholarship cannot rest on a single domesticating statute alone, but must trace each Convention obligation across whichever sectoral regime, if any, in fact absorbs it.

Five years after this ratification, Indonesia enacted Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. This law is often understood as a significant step in strengthening the protection of Indonesian migrant workers, particularly through the expansion of state responsibility, the reinforcement of local government roles, the regulation of protection before, during, and after employment, and the limitation of private sector involvement in the placement process. From a national policy perspective, this law clearly represents an advancement compared to the previous regime, which focused more heavily on the overseas placement of workers.⁶

Nevertheless, a fundamental issue arises when Law No. 18 of 2017 is examined in relation to the 1990 Migrant Convention. The Law No. 18 of 2017 primarily focuses on the protection of Indonesian citizens working abroad. Consequently, this law largely represents Indonesia's position as a country of origin for migrant workers. In contrast, the 1990 Migrant Convention has a significantly broader scope, as it protects all migrant workers and their families without restriction based on specific nationality. The Convention also requires state parties to address foreign migrant workers

⁴ Younous Arbaoui and Amina Semaoui, "Global Migration Law in Tunisia: The Potential of the Global Compact for Migration to Support the Ratification of the United Nations Convention on Migrant Workers Rights," *Laws* 13, no. 6 (2024): 73, <https://doi.org/10.3390/laws13060073>; Ashyfa Prasasti, Wahyu Nugroho, and Fahririn, "The Implementation of Legal Protection for Migrant Workers in Indonesia," *Veteran Law Review* 7, no. 2 (2024): 128–40, <https://doi.org/10.35586/velrev.v7i2.9161>; Agusmidah, Martono Anggusti, Fithriatus Shalihah, Rajali H. Aji, and Abdulrahman Sama-Alee, "ASEAN's Migrant Rights Policy Dilemma and Deadlock on Migrant Worker Protection," *Journal of Human Rights, Culture and Legal System* 5, no. 3 (2025): 714–48, <https://doi.org/10.53955/jhcls.v5i3.581>.

⁵ Cf. Iqbal and Wiryani, "Implication of Principles," 85–93. The characterisation of the scope of their analysis offered here is the present author's own reading of that article's focus, not a direct quotation.

⁶ Salman Al Farisi, Muhadjir Darwin, Mochtar Mas'ood, and Sukamdi, "Protection of Indonesian Migrant Workers: Strategies for Sustainable Policies and Best Practices," *Politik Indonesia: Indonesian Political Science Review* 7, no. 1 (2022), <https://doi.org/10.15294/ipsr.v7i1.35917>.

within their territory, undocumented migrant workers, migrant workers' children and families, and procedural safeguards in detention, deportation, and immigration administrative actions.

The urgency of closing this gap is no longer only theoretical. On 21 April 2026, Indonesia enacted its long-delayed Domestic Worker Protection Law, addressing one of the sectoral gaps mapped in Table 1 below after almost two decades of advocacy and several failed legislative attempts, and after leaving ILO Convention No. 189 on Decent Work for Domestic Workers unratified throughout that period. Recent scholarship on this delay identifies a recurring pattern in Indonesian migrant-worker governance: sector-specific protection tends to be enacted only after prolonged advocacy or a public crisis, rather than through a systematic, *ex ante* audit of Convention obligations. With the domestic-worker gap now closed, the question this article asks is whether Indonesia will address its remaining sectoral gaps, concerning foreign migrant workers, undocumented migrants, migrant families, and detention due process, through the same reactive, sector-by-sector logic, or through the more systematic harmonisation recommended in this article. This makes 2026 a timely, rather than an arbitrary, moment for the present analysis.⁷

This discrepancy raises a crucial question : has the ratification of the 1990 Migrant Convention been adequately followed by the harmonisation of national law? This question cannot be answered solely by assessing the existence of Law No. 18 of 2017. This is because some Convention obligations can indeed be found in various other regulations, such as labour law, immigration law, human rights law, child protection, citizenship, population administration, social security, and the eradication of human trafficking. However, the dispersal of norms across these diverse legal regimes does not necessarily indicate coherent harmonisation. Legal fragmentation can result in migrant worker protection becoming dependent on administrative status, type of employment, country of origin, or the legal sector invoked by authorities.

This article operates on the premise that the primary issue in the implementation of the 1990 Migrant Convention in Indonesia is not the complete absence of norms, but rather the lack of a comprehensive, systematic, and rights-based national legal framework. Law No. 18 of 2017 can be understood as a form of partial domestication of the Convention, but it is insufficient to address the entirety of Indonesia's obligations as a state party. In this context, the critical question "why ratify if not harmonise?" becomes relevant for examining whether ratification has led to substantive changes in migrant worker protection, or if it has merely remained a normative commitment not yet fully translated into the national legal system.

This article aims to analyse the relationship between the ratification of the 1990 Migrant Convention and the harmonisation of Indonesia's national law, specifically by positioning Law No. 18 of 2017 as the primary entry point. The article also investigates whether Convention obligations not directly accommodated in the Indonesian Migrant Worker Protection Law have been regulated in other legal instruments, and to what extent these regulations reflect a rights-based protection approach. Thus, this article not only assesses the existence of norms but also examines the coherence, scope, and effectiveness of the domestication of the 1990 Migrant Convention within Indonesian law.

⁷ Andrian Liem, Sabina Satriyani Puspita, Fajar, and Lita Anggraini, "Securing the Rights and Health of Domestic Workers: The Importance of Ratifying the ILO's C189," *Globalization and Health* 20 (2024): 58, <https://doi.org/10.1186/s12992-024-01065-5>; Laras Medina Pranitiaz and Citraesmi Widoretno Putri, "Protection of Domestic Workers in a Comparison of the Laws of Indonesia and the Philippines," *Journal of Law, Politic and Humanities* 6, no. 1 (2025): 791–802, <https://doi.org/10.38035/jlph.v6i1.2633>.

2. Method

This article employs normative legal research, using a statutory approach and a conceptual approach. The primary legal materials analysed comprise the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Law No. 6 of 2012 on its ratification, and Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers. Secondary legal materials consist of related Indonesian legislation on immigration, manpower, human rights, child protection, citizenship, population administration, social security, and the eradication of human trafficking, together with relevant scholarly literature. Secondary statutory instruments were purposively selected using two criteria: (a) the instrument must contain a provision capable of substantively affecting at least one right recognised by the Convention, for instance wages, due process, family unity, or access to basic services, and (b) the instrument must be currently in force and of general national application, rather than a purely local or ad hoc regulation. Applying these criteria yielded the seven categories of unaccommodated Convention obligations examined in Section 3.1: these were identified by reading the Convention's substantive provisions, principally Part III (Articles 8–35) and the category-specific provisions of Part VI, against the material scope of Law No. 18 of 2017, and retaining every obligation for which the fit between the Convention and the Law was, on this reading, incomplete or absent. Obligations already substantially mirrored in Law No. 18 of 2017, such as pre-departure documentation, placement procedures, and repatriation, were excluded from the mapping because they do not present a harmonisation question.

These materials are analysed using a qualitative-descriptive technique of statutory and conceptual interpretation, operationalised through a comparative-matrix technique. Each of the seven Convention obligations identified above is checked, first, against Law No. 18 of 2017 and, second, where that Law does not accommodate it, against Indonesia's other sectoral legislation. The results of this check are classified using three tiers: harmonised, meaning the obligation is substantively and procedurally reflected in Indonesian law; partially accommodated, meaning an applicable instrument exists but leaves a material gap in scope, rights-content, or enforceability; and not accommodated, meaning no applicable Indonesian instrument was identified. This three-tier classification underlies the assessments summarised in Table 1 and the four structural loopholes discussed in Section 3.2.

As a normative-doctrinal study, this article is subject to an important limitation: it assesses the coherence of legal norms on their face and does not verify how those norms are applied in practice by administrative agencies, courts, or law enforcement officials. The extent to which formally “harmonised” obligations are, in practice, effectively enforced therefore remains an empirical question beyond this article's scope, and is identified as a priority for future field-based research in the concluding recommendations.

3. Partial domestication of the 1990 Migrant Convention within Indonesian national law

3.1. Scope limitations of Law No. 18 of 2017 in implementing the 1990 Migrant Convention

Indonesia demonstrates its serious commitment to protecting migrant workers by ratifying the 1990 Migrant Workers Convention into Law No. 6 of 2012 concerning the Ratification of the

International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families. Furthermore, Indonesia also enacted Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. The core principle of the 1990 Migrant Workers Convention is that migrant workers and their families must be treated as subjects of human rights, not merely as foreign labourers or objects of state immigration policy.

The main ideas of the Migrant Workers Convention include: 1) Protection applies to all migrant workers and their families. This Convention protects migrant workers, both documented and undocumented, although certain rights are indeed more broadly extended to migrants with regular status. 2) Non-discrimination. States must not differentiate treatment based on nationality, gender, race, religion, language, social status, or other status in fulfilling the basic rights of migrant workers. 3) Fundamental rights are not forfeited due to migration status. Even undocumented migrant workers retain fundamental rights, such as the right to life, freedom from torture, freedom from forced labour, the right to due process, the right to fair wages, and access to consular protection. 4) Protection against exploitation and arbitrary treatment. The Convention targets practices such as human trafficking, migrant smuggling, arbitrary detention, document confiscation, unpaid wages, and inhumane working conditions. 5) Families of migrant workers are also protected. The Convention views workers not merely as economic individuals but also as part of a family unit. Consequently, children's rights, education, family reunification, and family social protection are significant concerns. 6) Obligations of countries of origin, transit, and destination. Countries of origin are obligated to protect their citizens before departure and after return. Countries of destination are obligated to ensure fair treatment during employment. Transit countries must also respect the fundamental rights of migrants. 7) Migration must be regulated humanely and lawfully. The Convention does not abolish state sovereignty in regulating immigration but affirms that immigration control must be subject to human rights principles, due process, and non-discrimination.

In a single sentence, it is stated that the 1990 Migrants Convention affirms that the status of "migrant" or even "undocumented" must not negate human dignity and fundamental human rights. It justifies that the 1990 Migrant Convention provides protection that covers all migrant workers regardless of their migration status. Migration status means that protection for migrant workers should not prioritise protection only for those who are documented but for all, whether documented or undocumented, because the placement of migrant workers abroad is vulnerable to inhumane treatment or other exploitative treatment in receiving countries, and becomes increasingly vulnerable to exploitation and human rights violations for those who fall into the category of undocumented or irregular migrant workers.

However, Migrants Convention 1990 also expressly states that no part of the Convention should be interpreted as intending to normalise illegal migrant workers and their family members who are undocumented, or in an irregular situation. Yet, the Migrants Convention 1990 also makes it clear that it should not ignore policies intended to ensure good and equitable conditions for international migration as specified in section VI of the Convention, namely the promotion of good, equitable, humane and lawful conditions in respect of the international migration of workers and their family members. It should also be noted that the phenomenon of illegal migrant workers is not entirely the fault of the workers, the government also needs to evaluate itself why this phenomenon is still not resolved.

Some of the obvious reasons stated for the continued use of irregular migration routes are as follows:⁸ 1) Those seeking to become migrants have limited access to accurate and reliable information; 2) They lack the time to look for legal channels; 3) Very limited, complicated, time-consuming or very expensive legal migration procedures; 4) Restrictive migration policies result in migrant workers and potential migrant workers seeking illegal recruitment channels, making them more vulnerable to the traffickers' traps; 5) They lack the financial resources to pay for legal recruitment fees; 6) The nature of the work sometimes forces potential migrants to rely on fraudulent recruiters and agents; 7) Illegal, dishonest recruiters may also actively seek out women because they are more innocent compared to men.

Generally, this matter continues to be a significant concern regarding migrant workers, and specifically, it is also an issue highlighted in relation to the consistency of Law No. 18 of 2017 with the 1990 Migrant Convention. Simply put, the 1990 Migrant Convention is a comprehensive international human rights framework, whereas Law No. 18 of 2017 is an Indonesian national regulation that operationalises protection for Indonesian Migrant Workers. However, certain provisions of the 1990 Migrant Convention have not been fully accommodated by Law No. 18 of 2017. The following are several provisions of the 1990 Migrant Convention that have not been fully incorporated into Law No. 18 of 2017.

The Convention obliges signatory states to respect and ensure the rights of all migrant workers and their families within their territory or jurisdiction, without discrimination. The Law No. 18 of 2017 is not designed to regulate foreign migrant workers operating within Indonesia. It specifically governs Indonesian Migrant Workers, defined as Indonesian citizens working abroad. This implies that Indonesia's obligations concerning foreign migrant workers within its borders are not addressed by the Law No. 18 of 2017. Instead, these obligations must be derived from labour law, immigration law, human rights law, social security, health, education, and other regulations pertaining to foreign workers. Consequently, if foreign migrant workers in Indonesia experience exploitation, unpaid wages, workplace accidents, discrimination, or inadequate access to basic services, their protection cannot rely on the Law No. 18 of 2017. A robust alternative legal framework must exist to meet the standards set forth by the Convention.⁹ Indonesia's ratification of the Convention makes this an obligation of result, not merely of effort: as a state party, Indonesia is expected to demonstrate concrete legal accommodation of foreign migrant workers' rights, not simply the absence of a contrary rule.¹⁰

The Convention explicitly recognises both documented and undocumented migrant workers. Migrants are considered undocumented or in irregular status if they do not meet the legal requirements for entry, residence, or employment in the host country. The Convention nonetheless safeguards their fundamental rights. For instance, the right to wages and decent working conditions should not be forfeited solely due to irregular migratory status; employers likewise should not be absolved of their legal or contractual obligations on the grounds that their workers possess irregular status. The Law No. 18 of 2017 places a stronger emphasis on procedural migration, encompass-

⁸ ILO, Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: And Information Guide, Booklet 3 – Recruitment & Journey for Employment Abroad, ILO Gender Promotion Programme, Geneva, 2003, p. 17.

⁹ Ayu Putri Rainah Petung Banjaransari, "Addressing Foreign Worker Regulations in Indonesia Post-Job Creation Law: Challenges and Solutions," *Constitutionale* 3, no. 1 (2022): 39-50, <https://doi.org/10.25041/constitutionale.v3i1.2558>.

¹⁰ Zati Rizqi Muhammad, "Pertanggungjawaban Indonesia Sebagai Negara Peratifikasi Konvensi Perlindungan Hak-Hak Seluruh Pekerja Migran dan Anggota Keluarganya," *Jurist-Diction* 7, no. 1 (2024): 167-88, <https://doi.org/10.20473/jd.v7i1.55051>.

ing complete documentation, employment contracts, work visas, registration, social security, and official placement mechanisms. Article 5 mandates, among other things, social security participation and comprehensive documentation for Migrant Workers intending to work abroad. Consequently, undocumented Migrant Workers or those departing through non-procedural channels often find themselves in a grey area. While the state remains obligated to protect their fundamental rights, the Law No. 18 of 2017 tends to be more effective when migration is formally recorded and procedural. This presents a practical challenge, as undocumented groups are frequently among the most vulnerable.¹¹

The Convention prohibits collective expulsion. Each expulsion case must be individually examined, decided by competent authorities in accordance with the law, communicated in a language the individual understands, and an opportunity for judicial review of the decision must be provided. The Law No. 18 of 2017 does not comprehensively regulate due process for foreign migrant workers deported from Indonesia, nor for foreign migrants detained for immigration violations. The Law No. 18 of 2017 primarily addresses the protection of migrant workers abroad through legal assistance, access to communication, retention of travel documents, and repatriation. Consequently, this aspect must be fulfilled by Indonesia's prevailing immigration law and procedural law. Should immigration law place undue emphasis on detention and deportation without robust due process standards, Indonesia risks not fully complying with the Convention.¹²

The Convention stipulates that every child of a migrant worker is entitled to a name, birth registration, and nationality. Children of migrant workers are also entitled to access education on an equal basis with citizens, and access to schooling must not be denied due to the irregular status of their parents or the child itself. While the Law No. 18 of 2017 acknowledges the rights of migrant workers' families, the family rights outlined in Article 6, Paragraph (3) are more circumscribed. These include obtaining information regarding the migrant workers' condition, issues, and repatriation; receiving the deceased migrant workers' assets; acquiring copies of documents/employment agreements; and access to communication. Consequently, the protection of migrant workers' children is insufficient if solely based on the Law No. 18 of 2017. Rights pertaining to education, birth registration, nationality, and child protection must be guaranteed through population administration law, education law, nationality law, child protection law, and the services provided by Indonesian diplomatic missions abroad.¹³

The Convention regards the family as a fundamental unit requiring protection. States are urged to take measures to safeguard family unity and facilitate the reunification of migrant workers with their spouses and dependent children. The Law No. 18 of 2017 defines a migrant worker's family as a husband, wife, child, or parent, including relationships established by court decisions or decrees. However, Law No. 18 of 2017 does not extensively develop the rights to family reunification, the integration of children in host countries, or language and cultural education, as emphasised in the Convention. Implication: While Law No. 18 of 2017 is more protective of workers as

¹¹ Wayne Palmer and Antje Missbach, "Enforcing Labour Rights of Irregular Migrants in Indonesia," *Third World Quarterly* 40, no. 5 (2019): 908-25, <https://doi.org/10.1080/01436597.2018.1522586>.

¹² Mariette Grange and Izabella Majcher, "Using Detention to Talk about the Elephant in the Room: The Global Compact for Migration and the Significance of Its Neglect of the UN Migrant Workers Convention," *International Journal of Law in Context* 16, no. 3 (2020): 287-303, <https://doi.org/10.1017/S1744552320000324>.

¹³ Rini Fathonah, Heni Siswanto, and Denny Harnova, "Legal Protection of Children of Migrant Workers," *Revista de Gestão Social e Ambiental* 18, no. 7 (2024): e08138, <https://doi.org/10.24857/rgsa.v18n7-164>.

subjects of employment placement, it has not fully embraced labour migration as a transnational family phenomenon.¹⁴

The Convention stipulates equal treatment with nationals of the host country in various aspects: remuneration, working hours, occupational safety and health, termination of employment, and other terms of employment. The Convention also regulates the right to association, certain social security rights, access to emergency healthcare services, transfer of earnings and savings, and the protection of humane working and living conditions. While Law No. 18 of 2017 acknowledges rights to wages, legal assistance, travel documents, association, communication, and repatriation, the effectiveness of these rights is highly dependent on the laws of the destination country. Indonesia cannot unilaterally impose labour standards in Malaysia, Saudi Arabia, Taiwan, Singapore, or other destination countries, except through bilateral agreements, diplomacy, consular assistance, and law enforcement cooperation. Implication: While Law No. 18 of 2017 may be strong on paper, some substantive protections remain contingent upon the willingness of the destination country. This is not solely a weakness of Law No. 18 of 2017 but rather a structural characteristic of transnational labour migration.

The Convention identifies several categories of migrant workers, including frontier workers, seasonal workers, project-tied workers, specified-employment workers, and self-employed workers. Law No. 18 of 2017 regulates categories of Indonesian Migrant Workers employed by legal entities, individual/household employers, as well as seafarers and fishing crew. Law No. 18 of 2017 also excludes certain categories, including Indonesian citizens operating independent businesses abroad. Implication: Cross-border workers, seasonal workers, self-employed workers, transnational digital platform workers, and new forms of transnational labour may fall outside the classic design of Law No. 18 of 2017. This is significant because labour migration patterns are evolving more rapidly than legal categories.

Indonesia's ratification of the 1990 Migrant Convention through Law No. 6 of 2012 demonstrates the nation's commitment to protecting the rights of all migrant workers and their families. However, this commitment has not been fully complemented by systematic national legal harmonisation. While Law No. 18 of 2017 serves as a crucial instrument for protecting Indonesian Migrant Workers, its scope remains limited as it primarily positions Indonesia as a country of origin for migrant workers. In contrast, the 1990 Migrant Convention mandates broader protection, encompassing foreign migrant workers in Indonesia, undocumented migrants, children and families of migrant workers, and migrants facing detention, deportation, or other administrative immigration measures.¹⁵

3.2. Fragmentation of norms and the urgency of harmonising migrant worker protection

From the perspective of legislative drafting techniques, it poses no issue if Law No. 18 of 2017 does not encompass the entirety of the 1990 Migrant Convention's content. However, it could present a challenge from the standpoint of fulfilling international obligations. This implies that it would

¹⁴ Alan Desmond, "From Complementarity to Convergence: The UN Global Compact for Migration and the UN Migrant Workers Convention," *Verfassung in Recht und Übersee* 55, no. 1 (2022): 83-104, <https://doi.org/10.5771/0506-7286-2022-1-83>.

¹⁵ Achmad Zulfikar, Satria Sukananda, Hamza Baharuddin, and Said Sampara, "Harmonisation of International Law in Indonesian Legal System: The Study of Indonesian Migrant Workers Protection Overseas," *LawArXiv preprint*, Center for Open Science, 2018, <https://doi.org/10.31228/osf.io/g5kqw>.

not be problematic if the Law No. 18 of 2017 were intended to serve merely as one implementing instrument, with other provisions of the Convention being implemented through the Immigration Law, Manpower Law, Human Rights Law, Child Protection Law, Population Administration Law, Anti-Trafficking in Persons Law, social security regulations, bilateral agreements, and consular policies. Conversely, an issue arises if the provisions of the Convention not integrated into the Law No. 18 of 2017 are also found to be inadequately regulated by other existing legislation.¹⁶

The prevailing question is whether other aspects not encompassed by Law No. 18 of 2017 have been addressed within alternative legal frameworks. The response indicates that some elements have been accommodated in other regulations, though not comprehensively or systematically. Consequently, the issue is not merely that “Law No. 18 of 2017 does not encompass all provisions”, but rather that the domestication of the 1990 Migrant Convention in Indonesia is fragmented across numerous legal regimes. These include human rights, labour law, immigration, social security, child protection, citizenship, population administration, human trafficking, and regulations pertaining to domestic workers. The details are presented in the following table:

Table 1. Fragmentation of Migrant Worker Protection Norms across Indonesian Legislation

Non-dominant provisions of the Migrant Convention within Law No. 18 of 2017.	Is this covered under other regulations?	Assessment
The fundamental rights of all individuals, including foreign nationals and migrants.	Yes, particularly in Law No. 39 of 1999 concerning Human Rights	It possesses considerable normative strength, as the Human Rights Law employs the phrase “every person” rather than exclusively “Indonesian citizens”. However, its scope remains general, not specifically tailored to migrant workers.
Foreign migrant workers in Indonesia	Indeed, through the Manpower Act, the Job Creation Law, Government Regulation No. 34 of 2021, and Minister of Manpower Regulation No. 8 of 2021	It is regulated, but primarily as a foreign worker utilisation regime, rather than a migrant worker rights regime. Government Regulation No. 34 of 2021, for instance, stipulates Foreign Worker Utilisation Plan, residence permits, employer obligations, reporting, guidance, supervision, and administrative sanctions.
Equal treatment in employment relationships	Partially, through Law No. 13 of 2003 concerning Manpower	The Manpower Law recognises equal opportunity and treatment without discrimination, but its protection is most effective for workers within formal and legally recognised employment relationships.
Social security for foreign workers	Yes, through Law No. 24 of 2011 concerning the Social Security Administering Body	The requirements are clear for foreign workers who have been employed in Indonesia for a minimum of six months and pay contributions. However, undocumented workers, short-term workers, and informal workers face greater difficulties in entering this system.
Human trafficking and severe exploitation	Yes, through the Human Trafficking Law and the Immigration Law.	The legal framework is relatively strong. The Human Trafficking Law establishes the foundation for victim prevention and support, while the Immigration Law provides special provisions for victims of human trafficking and human smuggling.

¹⁶ Zainal Amin Ayub and Zuryati Mohammed Yusoo, “Harmonisation of ASEAN Laws on Protection of Migrant Workers against Human Trafficking,” *University of Bengkulu Law Journal* 3, no. 2 (2018): 99-108, <https://doi.org/10.33369/ubelaj.v3i2.6898>.

Non-dominant provisions of the Migrant Convention within Law No. 18 of 2017.	Is this covered under other regulations?	Assessment
Deportation, detention, and administrative measures concerning foreign nationals	Yes, through the Immigration Law	While regulations are in place, the predominant approach emphasises national sovereignty and immigration control. The Immigration Act stipulates administrative actions, written decisions, the grounds for such decisions, appeals to the Minister, and immigration detention facilities.
Rights of migrant workers' children: birth registration, personal status, nationality	In part, through the Child Protection Law, the Population Administration Law, and the Citizenship Law	Legal frameworks exist, but they are fragmented. The Law on Population Administration acknowledges that residents comprise both Indonesian citizens and foreign nationals residing in Indonesia. Furthermore, the Nationality Law addresses various circumstances involving children who may potentially encounter challenges regarding their citizenship status.
Access to education for foreign migrant/refugee children.	Partially	The National Education System Law primarily addresses 'citizens', whereas access for refugee and asylum-seeking children largely relies on the 2019 Ministry of Education and Culture Circular Letter, subsequently amended in 2022. While this circular provides access, its normative standing is weaker than that of a formal law.
Domestic Workers	Enhanced accommodation effective 2026.	The Domestic Worker Protection Bill was enacted into law on April 21, 2026. This is significant as domestic work constitutes one of the most vulnerable sectors within labour migration.

Source: Author's analysis of statutory instruments, 2026.

Under international law, treaty obligations do not necessarily have to be implemented through a single piece of legislation. States may implement their treaty obligations through various regulations, policies, institutions, and administrative mechanisms. However, this decentralised model has the potential for four major loopholes: First, There is no single comprehensive framework governing foreign migrant workers in Indonesia. What exists is the "Foreign Workers" framework. The distinction is important: "Foreign Workers" typically refers to foreign workers who are legal, documented, and subject to work permit requirements. In contrast, the 1990 Migrant Convention addresses a broader scope of migrant workers and their family members, including those who are vulnerable, in the informal sector, or irregular. Second, Undocumented migrant workers have not yet obtained a robust framework for rights protection. The Immigration Law regulates violations of stay permits, detention, deportation, and administrative measures. However, the 1990 Migrant Convention mandates that irregular status should not nullify fundamental rights, such as the right to wages, the right to due process, protection from violence, and access to consular assistance. In Indonesia, these rights can be derived from the Human Rights Law or the Anti-Trafficking Law if elements of human trafficking are present, but there is no specific instrument that explicitly guarantees the rights of undocumented migrant workers as workers.

Third, the rights of migrant workers' families have not been comprehensively developed. While the Law No. 18 of 2017 acknowledges the rights of migrant workers' families, it primarily focuses on aspects such as information, documentation, repatriation, and communication. The 1990

Migrant Convention is broader, encompassing children, education, birth registration, nationality, family unity, and even the social conditions of transnational families. In Indonesia, this protection is dispersed across various laws, including the Child Protection Law, the Population Administration Law, the Citizenship Law, the National Education System Law, and sectoral policies. Fourth, due process in migrant detention and deportation remains predominantly administrative. The Immigration Law indeed stipulates written decisions and reasons, and provides avenues for objections to the Minister. However, the standards of the 1990 Migrant Convention place greater emphasis on individual examination, the prohibition of collective expulsion, access to review, notification in a language understood by the individual, and consular protection. Thus, while regulations exist, they are not yet fully rights-based in character.

It might be objected that this sectoral dispersion is unremarkable: under general international law, states are free to choose the domestic instruments through which they discharge treaty obligations, and decentralised, sector-by-sector implementation is a normal and internationally accepted feature of state practice, including among parties to other human rights treaties. This objection has force in the abstract, but it does not fully answer the Indonesian case, for two reasons. First, decentralised implementation is defensible only where the sectoral instruments, taken together, in fact cover the treaty's substantive scope; Section 3.1 shows that for several Convention obligations, most clearly the due-process guarantees in detention and deportation and the rights of undocumented migrant workers, no sectoral instrument currently does so, leaving genuine normative gaps rather than a mere reallocation of the same protection across different statutes. Second, comparative experience among ASEAN states suggests that decentralisation without a coordinating framework tends to entrench rather than resolve fragmentation.¹⁷

As Ayub and Yusoof's comparative study of ASEAN anti-trafficking harmonisation shows more directly, ASEAN member states that rely on purely national, sector-specific transposition of international standards, without a regional coordinating mechanism, tend to reproduce protection gaps closely resembling those identified in Section 3.1, which reinforces the case for a domestic harmonisation audit as the more immediately achievable remedy while regional coordination remains aspirational.¹⁸

A parallel dynamic is visible at the sectoral level. Indonesia's protracted delay in enacting dedicated domestic-worker legislation, only remedied in April 2026, and its continued non-ratification of ILO Convention No. 189 on Decent Work for Domestic Workers, left a category of worker recognised by the Convention without sector-specific protection for close to two decades, a gap only closed once dedicated legislation, rather than reliance on general labour law, was finally enacted; comparative work on Indonesia and the Philippines shows how much earlier and more comprehensively the same gap was closed where a dedicated statute was prioritised. Both examples suggest that, in the Indonesian context, decentralised implementation functions less as a considered division of regulatory labour than as a default that persists until sustained advocacy

¹⁷ Agusmidah et al., "ASEAN's Migrant Rights Policy Dilemma," 714-48; International Labour Organization, Review of International Experience on Protecting Rights of Domestic Workers in Selected Countries (Geneva: ILO, 2025), <https://doi.org/10.54394/VDCU3196>.

¹⁸ Ayub and Yusoof, "Harmonisation of ASEAN Laws," 99-108.

or a public crisis forces sector-specific legislative action – precisely the pattern this article argues should be pre-empted through a systematic harmonisation audit, rather than repeated on an ad hoc basis for each of the Convention’s remaining gaps.¹⁹

Therefore, the true criticism is not directed at the ratification itself or its ‘partial’ accommodation in Law No. 18 of 2017, but rather at a ratification that is not followed by a comprehensive audit and harmonisation of national law. This leads to a gap between ratification and post-ratification national harmonisation, and gives rise to three categories of issues: first, normative issues: national law becomes fragmented. Migrant workers’ rights are scattered across numerous laws but are not always interpreted as integral to the obligations under the 1990 Migrant Convention. Secondly, implementation issues: authorities may treat migrants primarily as subjects of immigration or labour law, rather than as rights-holders. This is particularly hazardous for undocumented migrants, informal sector workers, domestic workers, and migrant children. And third, international accountability issues: ratification creates the expectation that states will align their national laws and practices. If harmonisation is not undertaken, ratification risks becoming merely a diplomatic formality.

4. Conclusion

Indonesia’s ratification of the 1990 Migrant Convention through Law No. 6 of 2012 signals commitment to protecting all migrant workers and their families, but this has not been matched by systematic legal harmonisation. Law No. 18 of 2017, though crucial for protecting Indonesian migrant workers, remains limited, positioning Indonesia mainly as a country of origin. The Convention mandates broader protection, covering foreign migrant workers in Indonesia, undocumented migrants, migrant families, and due process in detention and deportation. Some Convention obligations already appear across other legal frameworks labour, immigration, human rights, child protection, social security, citizenship, and anti-trafficking law but remain fragmented, without a coherent, rights-based framework. The core problem is not ratification itself but the absence of a post-ratification harmonisation agenda.

Addressing this requires concrete, time-bound steps. Within twelve months, the Ministry of Law and Human Rights, Ministry of Manpower, and BP2MI should conduct a national harmonisation audit against the Convention, using this article’s three-tier criteria. Within twenty-four months, the Coordinating Ministry for Human Development and Culture, with Bappenas, should establish an integrated policy framework covering both Indonesian workers abroad and foreign workers in Indonesia. Within eighteen months, the Ministry of Manpower and Ministry of Law and Human Rights should issue regulations clarifying protections for undocumented migrants wages, justice, legal aid, and protection from exploitation. Within twenty-four months, the Directorate General of Immigration and DPR should strengthen immigration law with a due-process, rights-based approach to detention and deportation. On an ongoing basis, the Ministry of Women’s Empowerment and Child Protection, Ministry of Home Affairs, and Ministry of Education should coordinate protection for migrant families across child protection, education, and citizenship regimes. Field-based research should also verify, within thirty-six months, how far these ob-

¹⁹ Liem et al., “Securing the Rights and Health of Domestic Workers,” 58; Pranitiaz and Putri, “Protection of Domestic Workers,” 791–802.

ligations are enforced in practice. Ratification should thus be translated into coordinated, effective harmonisation. Without it, migrant worker protection in Indonesia will remain partial and fragmented, falling short of the Convention's mandate as a rights instrument for all migrant workers and their families.

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