

Criminal Liability for Human Trafficking Offenders Through the Non-Procedural Placement of Indonesian Migrant Workers

Alya Silva Baskara^{1*}, Hartiwiningsih², Rehnalemken Ginting³

¹Universitas Sebelas Maret, Solo, Jawa Tengah

Correspondence e-mail; alysilva04@student.uns.ac.id

Article history

Submitted: 2026/02/01; Revised: 2026/03/11; Accepted: 2026/06/06

Abstract

The non-procedural placement of Indonesian Migrant Workers (PMI) remains a serious issue because it has the potential to result in exploitation, violence, and the crime of trafficking in persons. Such practices are generally carried out through illegal recruitment, the use of forged documents, and the deployment of migrant workers without complying with applicable legal procedures. This study aims to analyze the regulation of Indonesian positive law concerning the criminal offense of non-procedural placement of PMI and to examine the construction of criminal liability of its perpetrators from the perspectives of criminal law and trafficking in persons. This research employs a normative legal research method using statutory, conceptual, and case approaches. The findings indicate that the regulation of non-procedural placement of PMI is governed by Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and is closely related to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Criminal liability may be imposed where the elements of criminal responsibility, fault, and the absence of grounds for the exclusion of criminal liability are fulfilled. Furthermore, where elements of exploitation, fraud, or abuse of the victim's vulnerable position are present, perpetrators may also be prosecuted under the Anti-Trafficking Law. Therefore, the complementary application of both laws is necessary to ensure optimal legal protection for Indonesian Migrant Workers.

Keywords

Indonesian Migrant Workers; non-procedural placement; trafficking in persons.



© 2026 by the authors. Submitted for possible open access publication under the terms and conditions of the Creative Commons Attribution 4.0 International (CC BY SA) license, <https://creativecommons.org/licenses/by-sa/4.0/>.

INTRODUCTION

Indonesia is one of the largest labor-sending countries in the world. Demographic pressures in the form of labor force growth that exceeds the absorption capacity of domestic employment opportunities have encouraged millions of Indonesian citizens to seek livelihoods abroad as Indonesian Migrant Workers (PMI).

Data from the Indonesian Migrant Worker Protection Agency (BP2MI) indicate that millions of PMI are distributed across various destination countries, ranging from the Asia-Pacific region to the Middle East, and are employed in diverse sectors, the majority of which are within vulnerable informal segments (M. Yusuf Samad et al., 2023). The vulnerability of PMI to various forms of rights violations, exploitation, and even trafficking in persons increases when the placement process is not carried out through lawful and procedural mechanisms. Non-procedural placement namely, placement conducted outside the system and procedures prescribed by law has long been a structural issue that remains unresolved. In practice, non-procedural placement is often carried out by individuals who lack legal authorization and authority, taking advantage of the limited knowledge and vulnerable economic conditions of prospective PMI. The Trafficking in Persons Report, periodically published by the United States Department of State, has consistently placed Indonesia in the Tier 2 category, indicating that the Government of Indonesia has not yet fully met the minimum standards for combating trafficking in persons. One of the primary trafficking pathways identified is the use of illegal employment placement schemes that exploit weaknesses in the pre-departure monitoring system for PMI. Therefore, the non-procedural placement of PMI is not merely an administrative violation but may also constitute a serious criminal offense that must be addressed firmly.

Indonesia's positive legal system has, in fact, established relatively comprehensive normative instruments to address this issue. Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (PMI Protection Law) expressly prohibits individuals from conducting the placement of PMI and imposes criminal sanctions of up to ten years' imprisonment and fines of up to IDR 15 billion for violations. On the other hand, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (Anti-Trafficking Law) criminalizes various

modes of operation that result in exploitation, including illegal employment placement schemes (Romli & Rahayu, 2024).

Nevertheless, at the level of law enforcement, these two legal instruments have not always been implemented optimally and coherently. In practice, prosecutions concerning non-procedural PMI placement are often based on only one of these laws, without considering the possibility of applying legal provisions cumulatively or complementarily. This condition indicates that the normative regulatory framework and the criminal liability of perpetrators of non-procedural PMI placement still require more comprehensive examination, particularly regarding the harmonization of criminal law provisions contained in various relevant legislative instruments. Based on the foregoing background, this study formulates two research questions: (1) How does Indonesian positive law regulate the criminal offense of non-procedural placement of PMI? and (2) How is the Construction of Criminal Liability for Perpetrators of the Criminal Offense of Non-Procedural Placement of Indonesian Migrant Workers Viewed from the Perspective of the Crime of Trafficking in Persons? This research aims to contribute normative-conceptual insights to the development of criminal law scholarship, particularly in the context of the protection of Indonesian Migrant Workers.

RESEARCH METHOD

This study employs a normative legal research method, which focuses on examining legal norms contained in legislation, legal doctrines, and judicial decisions as primary legal materials. Normative legal research is selected because the issues under examination are juridical in nature, namely the construction of positive legal regulations and criminal liability in cases involving the non-procedural placement of Indonesian Migrant Workers (PMI). Accordingly, the study requires a systematic and coherent analysis of legal norms. The research utilizes three complementary approaches. First, the statutory approach is employed by examining all legislation

relevant to the research topic, including Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*), the Indonesian Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana*), and other related implementing regulations. Second, the conceptual approach is applied through the analysis of criminal law concepts relevant to the subject matter, particularly theories of criminal liability, the doctrine of *mens rea*, and the doctrine of *actus reus*. Third, the case approach is conducted by reviewing relevant court decisions in order to obtain a comprehensive understanding of the practical application of legal norms within judicial proceedings.

The legal materials used in this study consist of three categories. The first category comprises primary legal materials, namely prevailing legislation, including Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, the Indonesian Criminal Code, the Indonesian Code of Criminal Procedure, and Government Regulation Number 59 of 2021. The second category consists of secondary legal materials, including scholarly literature, academic journal articles, and other legal works relevant to the research topic. The third category includes tertiary legal materials, such as legal dictionaries and legal encyclopedias, which are utilized to clarify technical legal terminology. The collected legal materials are analyzed qualitatively through the application of systematic, grammatical, and teleological interpretation methods. Systematic interpretation is employed to examine the relationship between legal provisions within the broader legal framework; grammatical interpretation is used to determine the meaning of legal norms based on the wording of statutory provisions; and teleological interpretation is applied to identify the objectives and purposes underlying the enactment of the relevant legal norms (Marzuki, 2017).

DISCUSSION

Regulation of Indonesian Positive Law on the Criminal Offense of Non-Procedural Placement of Indonesian Migrant Workers

a. The Normative Framework Prohibiting the Non-Procedural Placement of Indonesian Migrant Workers

The regulation of the criminal offense of the non-procedural placement of Indonesian Migrant Workers (PMI) is fundamentally based on Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter referred to as the PMI Protection Law). The principal provision governing such prohibition is stipulated in Article 69 of the PMI Protection Law, which explicitly provides that individuals are prohibited from conducting the placement of PMI. This formulation demonstrates the existence of an absolute prohibition, as the placement of PMI may only be carried out by legal subjects expressly authorized by law (Jannah, 2023).

This provision must be interpreted systematically in conjunction with Article 49 of the PMI Protection Law, which stipulates that the placement of PMI may only be conducted by the Government, Indonesian Migrant Worker Placement Companies (Perusahaan Penempatan Pekerja Migran Indonesia or P3MI), or companies placing migrant workers for their own interests. Consequently, parties outside these legally recognized entities possess no authority to undertake the placement of PMI. Therefore, any recruitment, document processing, departure arrangement, or deployment of PMI carried out by individuals without official authorization constitutes non-procedural placement and is contrary to the law.

Furthermore, the prohibition of non-procedural PMI placement is reinforced through government policies imposing moratoria on the placement of PMI in certain destination countries. One such policy is embodied in Minister of Manpower Regulation Number 260 of 2015 concerning the Suspension and Prohibition of the

Placement of Indonesian Workers with Individual Employers in Middle Eastern Countries. This policy was enacted as a form of state protection for PMI in response to the high risks of violence, exploitation, and human rights violations in specific destination countries. Accordingly, the placement of PMI in countries subject to a placement moratorium may also be categorized as a form of non-procedural placement because it contravenes prevailing legal policies (M. Yusuf Samad et al., 2023).

b. Criminal Liability for Perpetrators of Non-Procedural Placement of Indonesian Migrant Workers

Criminal liability for perpetrators involved in the non-procedural placement of PMI is governed by Article 81 of the PMI Protection Law. This provision stipulates that any person who violates Article 69 shall be subject to imprisonment for a maximum of ten years and a fine of up to IDR 15,000,000,000 (fifteen billion rupiah). The severity of these sanctions reflects the State's view that non-procedural placement constitutes a serious criminal offense that not only harms individual victims but also undermines the broader system of protection afforded to Indonesian migrant workers. From the perspective of criminal law, criminal liability arises when both the constituent elements of a criminal offense and the element of fault (*schuld*) are present. Simons argues that criminal liability is based upon the existence of criminal responsibility, a mental relationship in the form of intent or negligence, and the absence of grounds for excuse. Consequently, a person may only be subjected to criminal punishment when it is proven that the prohibited act has been committed and that the perpetrator bears legal culpability for such conduct (Marella & Nalle, 2025).

The offense stipulated under Article 81 in conjunction with Article 69 of the PMI Protection Law constitutes a formal offense (*formeel delict*), meaning that the offense is deemed complete at the moment the prohibited act is committed,

regardless of whether a specific harmful consequence has occurred. Accordingly, perpetrators may still be held criminally liable even when the migrant workers involved have not yet suffered actual harm. It is sufficient to establish that the perpetrator has carried out the placement of PMI without lawful authority or through procedures that contravene applicable legal provisions. Criminal liability may also extend to parties who knowingly participate in the process of non-procedural placement, including brokers, illegal sponsors, and individuals involved in the falsification of migrant worker departure documents. In practice, the most frequently encountered form of culpability is intentional conduct (*dolus*), particularly where perpetrators are aware that the placement process is conducted without official authorization, utilizes forged documents, or involves placement in countries subject to a moratorium, yet nevertheless continue the deployment process for the purpose of obtaining economic benefits (Suban et al., 2025).

c. The Relationship Between the PMI Protection Law and the Anti-Trafficking Law

The regulation of non-procedural PMI placement is not solely governed by the PMI Protection Law but is also closely related to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (Anti-Trafficking Law). In practice, non-procedural placement frequently serves as an entry point to trafficking in persons, particularly where elements of exploitation, fraud, abuse of power, or the exploitation of a victim's vulnerable condition are present. Normatively, the PMI Protection Law and the Anti-Trafficking Law regulate different yet interconnected legal domains. The PMI Protection Law focuses on the procedures governing the placement and protection of migrant workers, whereas the Anti-Trafficking Law concentrates on acts of human exploitation. Consequently, where elements of exploitation or trafficking in persons are identified within the context of non-procedural placement, perpetrators may be prosecuted under both legal regimes

simultaneously.

This relationship may be understood through the principle of *lex specialis derogat legi generali*. The PMI Protection Law functions as a special legal framework governing migrant worker placement, while the Anti-Trafficking Law constitutes a specialized legal regime addressing trafficking in persons. Under certain circumstances, the cumulative application of both laws is legally permissible where the constituent elements of the offenses prescribed by each statute are fulfilled. Accordingly, the enforcement of criminal law against perpetrators of non-procedural PMI placement may be conducted in a more comprehensive manner, thereby ensuring optimal legal protection for victims while simultaneously creating a stronger deterrent effect against future offenders (Romli & Rahayu, 2024).

Construction of Criminal Liability for Perpetrators of the Criminal Offense of Non-Procedural Placement of Indonesian Migrant Workers from the Perspective of the Crime of Trafficking in Persons

a. Capacity for Criminal Responsibility as the Basis of Criminal Liability

In principle, criminal liability may only be imposed upon a person who possesses the capacity for criminal responsibility (*toerekeningsvatbaarheid*). Capacity for criminal responsibility refers to an individual's psychological condition that enables him or her to understand the nature and consequences of an act, recognize that such conduct is contrary to the law, and determine his or her will in accordance with that awareness. Within Indonesian criminal law, the capacity for criminal responsibility constitutes a fundamental prerequisite in determining whether an individual may be held criminally accountable for an act committed.

In the context of the non-procedural placement of Indonesian Migrant Workers (PMI), the capacity for criminal responsibility generally exists on the part of the perpetrator because the offense is typically carried out through a series of

planned and organized actions, including the recruitment of prospective migrant workers, the processing of documents, the arrangement of departures, and the placement of workers in destination countries. The systematic nature of these activities indicates that perpetrators possess both awareness and the ability to understand the legal consequences of their conduct. Accordingly, perpetrators involved in the non-procedural placement of PMI are generally deemed capable of bearing criminal responsibility for their actions, provided that no grounds for the exclusion of criminal liability are established as stipulated under Article 44 of the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana) (Budiman, 2024).

b. Fault (*Mens Rea*) in the Non-Procedural Placement of Indonesian Migrant Workers

Criminal liability requires not only the existence of a criminal act (*actus reus*) but also the presence of fault (*mens rea*) on the part of the perpetrator. In cases involving the non-procedural placement of PMI, the predominant form of fault is **intentional conduct (*dolus*)**. Such intent is reflected in the conscious willingness of perpetrators to recruit, deploy, or place migrant workers without complying with the legal procedures prescribed by applicable laws and regulations. Intentional conduct in this offense may be observed where perpetrators continue to carry out placement activities despite being aware that such placement lacks official authorization, utilizes invalid documents, or involves destination countries that are subject to a placement moratorium.

Consequently, perpetrators knowingly understand that their actions are unlawful yet persist in carrying them out for the purpose of obtaining economic benefits. This circumstance demonstrates the existence of a psychological connection between the perpetrator and the prohibited act, thereby satisfying the element of fault as a basis for criminal liability. Moreover, criminal law doctrine recognizes the principle of *ignorantia juris non excusat*, which provides that ignorance of the law does

not exempt an individual from criminal liability. Therefore, a claim that the perpetrator was unaware of the prohibition against non-procedural placement of PMI cannot, in principle, serve as a valid excuse, particularly where the perpetrator has prior experience or involvement in the field of migrant worker placement (Suyanto, 2018).

c. Criminal Liability from the Perspective of the Anti-Trafficking Law

Under certain circumstances, the non-procedural placement of PMI may develop into the crime of trafficking in persons where the placement process involves elements of exploitation, fraud, abuse of power, abuse of a position of vulnerability, or other actions intended to generate benefits from victims. Consequently, the construction of criminal liability for perpetrators is not solely based upon Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, but may also be examined under Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (Anti-Trafficking Law). This is because non-procedural placement frequently serves as a mechanism through which migrant workers are exploited, particularly where workers are deployed abroad without adequate legal protection (Rahaditya, 2022).

Pursuant to Article 2 paragraph (1) of the Anti-Trafficking Law, trafficking in persons occurs where a person undertakes the recruitment, transportation, harboring, shipment, transfer, or receipt of another person through threats of violence, use of force, abduction, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, or the provision of payments or benefits to obtain the consent of a person having control over another person, whether conducted domestically or transnationally, for the purpose of exploitation or resulting in exploitation. Accordingly, the offense of trafficking in persons consists of three essential elements: the process element, the means element, and the purpose of exploitation element.

The process element is reflected in activities such as the recruitment, transportation, transfer, or placement of migrant workers abroad. In cases involving the non-procedural placement of PMI, this element is generally fulfilled because perpetrators actively recruit prospective migrant workers, arrange departures, provide transportation, and connect victims with parties in destination countries. Such activities demonstrate concrete actions aimed at relocating individuals from their places of origin to destination countries for employment purposes.

The means element may be evidenced through the use of forged documents, deception regarding the nature of employment, promises of high wages, or the exploitation of victims' economic vulnerability. Many prospective migrant workers are recruited through persuasion and promises of decent employment opportunities, only to be placed in positions that differ from those initially agreed upon or to receive no labor protection whatsoever. Furthermore, the use of forged documents, identity alterations, or departures facilitated through tourist visas illustrates unlawful means employed to carry out illegal migrant worker placement. In certain cases, perpetrators also exploit victims' vulnerable circumstances, particularly where victims originate from impoverished families or possess limited educational backgrounds, making them more susceptible to accepting employment offers without fully understanding the legal risks involved.

The purpose of exploitation element constitutes the most crucial component of the offense of trafficking in persons. Under the Anti-Trafficking Law, exploitation encompasses sexual exploitation, forced labor, slavery, organ harvesting, and other forms of exploitation that violate human dignity. Within the context of non-procedural placement of PMI, exploitative purposes may be identified where migrant workers are deployed without clear employment contracts, are denied promised wages, are compelled to work beyond lawful working hours, suffer physical or psychological abuse, or are deprived of the freedom to leave their

employment. Such circumstances demonstrate that non-procedural placement is no longer merely an administrative labor violation but has evolved into a form of human exploitation (Weriansyah et al., 2023)

Accordingly, where the non-procedural placement of PMI is conducted through unlawful recruitment, accompanied by fraud or the exploitation of victims' vulnerable conditions, and intended to exploit victims in destination countries, such conduct fulfills the constituent elements of trafficking in persons as regulated under the Anti-Trafficking Law. The application of the Anti-Trafficking Law to such practices demonstrates that the State regards non-procedural placement as a serious criminal offense that not only violates labor administrative regulations but also threatens the human rights, dignity, and safety of Indonesian migrant workers.

CONCLUSION

The regulation of the criminal offense of non-procedural placement of Indonesian Migrant Workers under Indonesian positive law is founded upon two complementary legal instruments: Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Article 69 in conjunction with Article 81 of the PMI Protection Law establishes an absolute prohibition against individuals conducting the placement of migrant workers and imposes criminal sanctions of up to ten years' imprisonment and fines of up to IDR 15 billion. As a formal offense, criminal liability may be imposed without the necessity of proving actual harm suffered by migrant workers. Meanwhile, the Anti-Trafficking Law provides an additional layer of protection where elements of exploitation, fraud, or abuse of a victim's vulnerable position are identified in the context of non-procedural placement. The harmonized and cumulative application of these two statutes therefore constitutes a normative necessity in ensuring comprehensive legal protection for migrant workers as victims.

The construction of criminal liability for perpetrators of non-procedural placement of Indonesian Migrant Workers from the perspective of the Anti-Trafficking Law requires the fulfillment of three cumulative conditions: the perpetrator's capacity for criminal responsibility (*toerekeningsvatbaarheid*), the existence of fault in the form of intentional conduct (*dolus*), and the absence of grounds for the exclusion of criminal liability. In practice, the element of intent is generally fulfilled because perpetrators consciously and deliberately engage in conduct despite being aware of the applicable legal prohibitions. The application of the Anti-Trafficking Law further enables a broader scope of criminal liability through the doctrine of participation (*deelneming*), thereby allowing all parties involved in illegal placement networks—from recruiters and harborers to document forgers—to be held criminally accountable in proportion to their respective roles. Effective law enforcement therefore requires the simultaneous and consistent application of both legal instruments, accompanied by strengthened institutional capacity among law enforcement agencies and regulatory harmonization aimed at closing normative loopholes that have long been exploited by offenders.

REFERENCES

- Budiman, A. A. (2024). MISINTERPRETASI HAKIM DALAM PERKARA PERDAGANGAN MANUSIA: Kajian Putusan Nomor15/Pid.Sus/2017/PN.Kpg. *Jurnal Yudisial*, 17(3), 425–446. <https://doi.org/10.29123/jy.v17i3.730>
- Jannah, S. R. (n.d.). *BENTUK PERLINDUNGAN HUKUM YANG DIBERIKAN PEMERINTAH KEPADA PEKERJA MIGRAN INDONESIA ILEGAL YANG MENJADI KORBAN PERDAGANGAN MANUSIA*.
- M. Yusuf Samad, Nicky Amanda, Mahda T. C. Manggabarani, Nadindra Wastitya, Abdul Aziz, & Heny Batara Maya. (2023). Pencegahan dan Penanganan Praktik Pekerja Migran Indonesia Non-Prosedural (PMI-NP) melalui Pendekatan Intelijen Strategis. *Jurnal Lemhannas RI*, 11(4), 260–272. <https://doi.org/10.55960/jlri.v11i4.486>
- Marella, D., & Nalle, V. I. W. (2025). *Inkonsistensi Penerapan Undang-Undang Tindak Pidana Perdagangan Orang dan Undang-Undang Perlindungan Pekerja Migran*

Indonesia dalam Penanganan Tindak Pidana Perdagangan Orang: Kajian Yuridis Normatif.

- Marzuki, P. M. (2017). *PENELITIAN HUKUM* (13th ed.). Kencana. (Original work published 2005)
- Rahaditya, R. (n.d.). *ANALISIS PENERAPAN SANKSI PIDANA TERHADAP PELAKU TINDAK PIDANA PERDAGANGAN ORANG (STUDI KASUS PUTUSAN PENGADILAN NEGERI MATARAM NOMOR 312/PID.SUS/2020/PN.MTR.)*.
- Romli, Moh., & Rahayu, D. (2024). Perlindungan Bagi Pekerja Migran Indonesia Non-Prosedural Terhadap Tindakan Perdagangan Manusia. *Simbur Cahaya*, 172–187. <https://doi.org/10.28946/sc.v31i1.3494>
- Suban, E. A., Pinasang, B., & Muaja, H. S. (2025). *TINDAK PIDANA PERBUATAN ORANG PERSEORANGAN YANG MELAKSANAKAN PENEMPATAN PEKERJA MIGRAN INDONESIA MENURUT UNDANG-UNDANG NOMOR 18 TAHUN 2017*. 14(1).
- Weriansyah, A., Assyifa, A., Rahmawati, M., Nasir, M. A., Warneri, M. R., Ismaya, S., & Praptadina, S. B. (n.d.). *TINJAUAN HUKUM IMPLEMENTASI UNDANG-UNDANG NO. 21 TAHUN 2007 TENTANG PEMBERANTASAN TINDAK PIDANA PERDAGANGAN ORANG (UU PTPPO) DI INDONESIA*.