

# Legal and Regulatory Complexities in the Governance of Indonesian Migrant Worker Deployment: The Role of BP3MI in Overseas Worker Deployment

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## Abstract

**Purpose:** This study examines the legal and regulatory complexities surrounding the overseas departure process of Indonesian Migrant Workers (PMI), focusing on the pre-departure phase of migration governance and the role of the Indonesian Migrant Worker Protection Agency (BP3MI).

**Research Methodology:** A qualitative normative-empirical legal approach was employed. Primary data were collected through in-depth interviews with 25 informants, including BP3MI officials, representatives of licensed placement agencies (P3MI), legal aid practitioners, and migrant worker advocates. Secondary data were obtained from court decisions, regulations, and institutional reports. Data were analyzed using content and thematic analysis, with validity ensured through source and method triangulation.

**Results:** The findings reveal three key dimensions of legal complexity: regulatory fragmentation caused by overlapping legal instruments and unclear institutional authority; coordination challenges arising from BP3MI's dual role as regulator and service provider; and limited access to justice for migrant workers due to inadequate legal awareness and ineffective complaint mechanisms.

**Conclusions:** Strengthening migrant worker protection requires regulatory harmonization, improved inter-agency coordination, more effective law enforcement, and greater legal empowerment. Reform efforts should prioritize clarifying institutional functions and simplifying the legal framework governing migrant worker deployment.

**Limitations:** The study is limited by its qualitative design, relatively small sample size, and focus on selected regions and the pre-departure stage.

**Contributions:** This study contributes to migration governance scholarship by combining normative legal analysis with empirical evidence and offers practical recommendations for improving migrant worker protection.

**Keywords:** BP3MI, Institutional Coordination, Legal Complexity, Migration Governance, Migrant Worker Protection

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## 1. Introduction

Cross-border labor mobility has become an inevitable feature of contemporary economic globalization. Indonesia regards overseas labor migration as a key development strategy, and remittances from Indonesian Migrant Workers (PMI) amount to billions of U.S. dollars annually, making them among the country's most important sources of foreign exchange. Despite these economic contributions, the migration process remains beset by complex legal and regulatory challenges, particularly concerning the role of the Indonesian Migrant Workers Protection Agency (BP3MI), the institution legally mandated to oversee the placement and protection of migrant workers abroad.

Legal issues surrounding the governance of Indonesian labor migration have evolved alongside successive rounds of policy reform. During 2023, numerous violations attracted public attention, including document forgery, illegal recruitment outside official BP3MI procedures, exploitation by unauthorized brokers, and excessive placement fees. These recurring incidents demonstrate that although the enactment of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers introduced significant institutional reforms, including the establishment of BP3MI as the primary placement authority, considerable challenges remain in translating legal provisions into effective implementation.

Empirical evidence illustrates a persistent gap between the regulatory framework and its implementation. In 2023, dozens of prospective workers in Indramayu, West Java were blocked from departure because their documents violated Article 6 of Law Number 18 of 2017, which requires P3MI to hold official licenses and follow standardized procedures. Similarly, in West Nusa Tenggara in 2022, workers destined for Malaysia were dispatched on tourist visas in violation of Article 33, which prohibits deployment without complete documentation, thereby exposing them to exploitation and trafficking risks.

A further source of legal complexity is the fragmentation of institutional authority. Although BP3MI was established under Article 28(1) of Law Number 18 of 2017 as the central institution for a one-stop placement and protection system, the departure process continues to involve the Ministry of Manpower, the Ministry of Foreign Affairs, the National Police, the Directorate General of Immigration, and local governments, each exercising partial authority. [Harkins \(2016\)](#) argues that such fragmented authority creates regulatory loopholes exploitable by irresponsible actors. From a theoretical perspective, [Rodriguez and Schwenken \(2013\)](#) conceptualize international labor migration as a complex "migration industry" involving governments, recruitment agencies, financial intermediaries, and informal brokers. Within the Indonesian context, [Rudnyckyj \(2019\)](#) warns that overly restrictive regulatory systems may inadvertently expand informal recruitment networks, a pattern that empirical evidence continues to confirm.

These dynamics point to three interrelated dimensions of legal complexity. First, regulatory fragmentation arising from overlapping legal instruments and unclear institutional authority. Second, coordination challenges stemming from BP3MI's dual role as regulator and service provider. Third, limited access to justice for migrant workers due to inadequate legal awareness and ineffective complaint mechanisms. A comprehensive legal analysis is therefore required to identify the root causes of these challenges and formulate evidence-based policy recommendations to strengthen protection from the earliest stages of migration.

Accordingly, this study aims to provide a comprehensive analysis of the legal and regulatory complexities surrounding the overseas deployment of Indonesian Migrant Workers within the institutional framework of BP3MI. Specifically, the study seeks to identify the legal instruments governing Indonesian migrant worker placement and examine potential overlaps, inconsistencies, and regulatory gaps are evaluate the implementation of these regulations in the operational practices of BP3MI while identifying recurring forms of legal violations, investigate the institutional, procedural, and socio-cultural factors contributing to legal complexity in migrant worker governance, and formulate policy recommendations to improve the effectiveness of legal protection during the

pre-departure phase. By addressing these objectives, this study contributes both theoretically, by enriching the literature on international labor migration law and migration governance in Indonesia, and practically, by offering evidence-based recommendations for policymakers and relevant stakeholders.

## 2. Literature Review

### *2.1 International Migrant Worker Protection Framework*

The legal protection of international migrant workers has become a central issue in contemporary labour law and global migration studies. From a theoretical perspective, migrant worker protection refers to a comprehensive set of legal, institutional, and policy mechanisms designed to safeguard the fundamental rights of individuals who cross national borders in search of employment. This protection extends beyond regulating overseas placement; it encompasses the entire migration cycle, including pre-departure preparation, employment abroad, and reintegration upon return. Recent international scholarship has increasingly emphasized that an effective legal framework should provide continuous protection throughout every stage of the migration process rather than focusing solely on employment placement.

Leading studies have examined migrant worker protection from various legal and governance perspectives. For example, [Cholewinski and Taran \(2018\)](#) argue that international legal frameworks addressing human trafficking and forced labour provide an essential normative foundation for protecting migrant workers, particularly by promoting ethical recruitment practices and responsible labour mobility. According to this perspective, comprehensive legislation should regulate not only recruitment and deployment but also workers' rights before departure, during employment overseas, and after repatriation. [Oishi \(2020\)](#), analyzing evolving migration policies across Asia, concludes that although many governments have ratified international conventions, a significant implementation gap continues to undermine the effectiveness of these legal commitments. Consequently, strengthening institutional capacity remains as important as expanding the legal framework itself.

The human rights dimension has become another major focus of contemporary migration scholarship. [Cholewinski and Taran \(2018\)](#) contend that a rights-based approach to labour migration governance is no longer merely a policy option but a legal and ethical necessity for both labour-sending and labour-receiving countries. Their research demonstrates that countries adopting rights-based migration policies generally establish more effective protection mechanisms, particularly regarding access to justice, legal remedies, and institutional support for migrant workers who experience exploitation. Within the Southeast Asian context, [Jureidini \(2019\)](#) highlights that the continued implementation of the kafala sponsorship system in several Middle Eastern destination countries creates structural dependency between employers and migrant workers, thereby increasing workers' vulnerability to labour rights violations. [Mantouvalou \(2020\)](#), through a comparative analysis of Europe and Asia, concludes that the effectiveness of migrant worker protection largely depends on the strength of labour inspection systems, accessible complaint mechanisms, and the consistent enforcement of sanctions against labour law violations.

Bilateral and multilateral regulatory arrangements also play a crucial role in strengthening migrant worker protection. [Oishi \(2020\)](#) evaluates the effectiveness of bilateral Memoranda of Understanding (MoUs) between labour-sending and labour-receiving countries and finds that such agreements can establish clear responsibilities and legal obligations for both parties. Nevertheless, their implementation is frequently constrained by unequal political influence and economic bargaining power between sending and receiving states. Complementing this perspective, [Wickramasekara \(2016\)](#) examines the influence of international labour standards developed by the International Labour Organization (ILO), particularly Convention No. 189 concerning Domestic Workers and Convention No. 181 concerning Private Employment Agencies. His findings indicate that the ratification of international conventions significantly improves the quality of domestic labour migration legislation. However, these legal improvements often fail to produce meaningful outcomes without effective institutional enforcement, adequate administrative capacity, and sustained political commitment from national governments.

## **2.2 Labour Migration Governance**

Labour migration governance involves a complex network of actors, institutions, and regulatory mechanisms operating across local, national, and international levels. From a theoretical standpoint, migration governance encompasses the legal frameworks, public policies, institutional arrangements, and administrative practices that regulate cross-border labour mobility. Rather than functioning as a single, centralized system, migration governance represents a multidimensional process in which governments, private recruitment agencies, international organizations, employers, and civil society collectively shape migration outcomes. Consequently, the effectiveness of migrant worker protection depends not only on the quality of legislation but also on the degree of coordination among these diverse stakeholders.

In their influential study, [Skeldon \(2012\)](#), developed an analytical framework explaining the complexity of migration governance through the interaction of state institutions, non-state actors, and market forces. Their findings suggest that fragmentation is an inherent characteristic of international migration governance because different legal regimes, institutional mandates, and policy objectives often operate simultaneously without full coherence. This fragmented governance structure frequently creates regulatory overlaps, institutional ambiguity, and implementation gaps that weaken the protection of migrant workers. Complementing this perspective, [Xiang and Lindquist \(2014\)](#) introduced the concept of migration infrastructure, referring to the extensive network of services, technologies, institutions, recruitment agencies, brokers, and intermediaries that facilitate international labour mobility. Their framework emphasizes that migration should be understood not merely as the movement of workers but as an institutionalized process supported by an interconnected migration industry.

The role of governments in managing labour migration has undergone significant transformation over the past several decades. Rather than acting solely as regulators, governments increasingly function as facilitators, coordinators, and protectors within increasingly globalized labour markets. [Babar \(2014\)](#) examined migration governance in Gulf Cooperation Council states and demonstrated that citizenship and belonging frameworks in destination countries significantly shape the legal status and vulnerability of migrant workers, illustrating how receiving-country institutional arrangements interact with sending-country regulatory efforts to determine overall worker protection outcomes. This comparative insight is reinforced by cross-national studies showing that labour-sending countries have adopted diverse institutional models, ranging from highly centralized government-controlled systems to decentralized governance structures that involve substantial participation from the private sector, and that no single governance model can be considered universally superior; instead, institutional effectiveness depends largely on each country's political environment, administrative capacity, economic conditions, and migration patterns.

The decentralization of migration governance has also received considerable scholarly attention. [Kern and Müller-Böcker \(2015\)](#) argue that empowering local governments to participate in labour migration management can improve responsiveness to local labour market conditions and the specific needs of prospective migrant workers. Local authorities are often better positioned to provide pre-departure services, disseminate information, and monitor recruitment practices within their respective jurisdictions. Nevertheless, decentralization also presents significant challenges. Differences in administrative capacity, financial resources, and policy priorities across regions frequently lead to inconsistent implementation of migration policies and unequal standards of public service delivery. Such inconsistencies may ultimately reduce the effectiveness of national migrant worker protection strategies.

In addition to government institutions, private actors have become increasingly influential in contemporary migration governance. [Constable \(2020\)](#) highlights the growing role of private recruitment agencies in shaping international labour migration, particularly in relation to worker recruitment, documentation, overseas placement, and employer matching. Although these agencies provide essential services that facilitate labour mobility, they often operate within regulatory grey

areas where legal oversight remains limited. As a result, inadequate supervision may create opportunities for unethical recruitment practices, excessive placement fees, contract substitution, document falsification, and various forms of labour exploitation. These findings underscore the necessity of establishing robust regulatory mechanisms capable of balancing private sector participation with effective government oversight.

Monitoring and accountability mechanisms constitute another critical component of effective labour migration governance. [Lindquist \(2019\)](#) investigated the supervision of migrant worker recruitment practices in Indonesia and the Philippines and found that, despite comprehensive licensing systems for recruitment agencies, enforcement remains relatively weak due to limited institutional capacity, insufficient human resources, and inadequate monitoring mechanisms. Consequently, numerous unauthorized brokers continue to operate outside formal regulatory systems, exposing migrant workers to significant legal and financial risks.

[Piper and Foley \(2021\)](#) examined various regulatory instruments designed to improve compliance among recruitment agencies, including labour inspections, certification systems, complaint mechanisms, and ethical recruitment standards. Their research demonstrates that multi-stakeholder governance involving governments, labour organizations, employers, civil society organizations, and international agencies generally produces better regulatory outcomes than traditional top-down enforcement approaches. Collaborative governance encourages transparency, shared responsibility, and greater accountability across the recruitment process, thereby strengthening overall protection for migrant workers.

[Brunovskis and Surtees \(2012\)](#) emphasize that weaknesses in migration governance create opportunities for human trafficking networks and forced labour practices to flourish. Their study reveals that fragmented supervision, poor institutional coordination, and inadequate information sharing frequently enable traffickers to exploit regulatory loopholes during recruitment and overseas placement. Consequently, they advocate integrating labour migration governance with national anti-trafficking systems, allowing migration authorities, law enforcement agencies, immigration officials, and labour inspectors to coordinate more effectively in preventing exploitation and protecting migrant workers throughout the migration cycle.

Overall, the contemporary literature demonstrates that effective labour migration governance requires far more than comprehensive legislation. It depends on coherent institutional arrangements, strong inter-agency coordination, effective regulatory oversight, meaningful stakeholder collaboration, and sufficient administrative capacity to translate legal norms into practical protection. These governance dimensions are particularly relevant in the Indonesian context, where the implementation of migrant worker protection involves multiple government institutions, private recruitment agencies, and local authorities operating within an increasingly complex regulatory environment.

### ***2.3 Recruitment and Placement of Migrant Workers***

The recruitment and placement process is one of the most critical stages in international labor migration because it largely determines the level of protection available to migrant workers and their vulnerability to exploitation. Academic studies consistently identify recruitment as the phase during which migrant workers face the greatest risks of deception, coercion, and abusive labor practices. [Gammeltoft-Hansen and Sørensen \(2013\)](#), in their study of Ethiopian migrant workers traveling to the Middle East, found that information asymmetry between prospective migrants and recruitment brokers often leaves workers without accurate knowledge about working conditions, wages, and legal rights in destination countries. Their findings highlight the importance of comprehensive pre-departure orientation programs and access to reliable information as essential safeguards during recruitment. [Amner \(2022\)](#) examined recruitment fees charged to migrant workers and concluded that excessive recruitment costs are a major indicator of forced labor, as defined under ILO Convention No. 29 on Forced Labour.

The role of intermediaries or brokers in migrant worker recruitment has received significant attention in migration studies. [Lindquist, Xiang, and Yeoh \(2012\)](#) introduced the concept of migration brokerage to explain the complex networks of actors involved in facilitating international labor migration. Their research shows that brokers operate at multiple levels, ranging from village recruiters to international placement agencies, creating lengthy and often opaque recruitment chains. Each actor typically charges a commission or fee, resulting in substantial cumulative costs that place a heavy financial burden on migrant workers. From a gender perspective, [Elias and Rai \(2019\)](#) demonstrated how the recruitment of women into the care sector is shaped by social constructions that portray women as “natural caregivers,” a perception that often justifies lower wages and exploitative working conditions. [Jureidini \(2020\)](#) study of Southeast Asian domestic workers revealed that practices such as passport confiscation, contract substitution, and debt bondage remain widespread despite existing regulations prohibiting such abuses.

The promotion of ethical recruitment and the prevention of exploitation have become central priorities within global migration governance. [Piper and Foley \(2021\)](#) assessed the implementation of the ILO General Principles and Operational Guidelines for Fair Recruitment, introduced in 2016 as a global benchmark for ethical recruitment practices. Although these guidelines have been adopted by many governments and multinational corporations, practical implementation remains challenging, particularly in monitoring and enforcing compliance among subcontractors and local brokers. [Martin \(2009\)](#) compared recruitment regulatory models across Asian countries and found that systems combining strict licensing requirements, financial guarantees for recruitment agencies, accessible complaint mechanisms, and strong penalties tend to be more effective in reducing exploitation. [Baxter-Reid \(2019\)](#) explored certification schemes and ethical recruitment initiatives developed through multi-stakeholder partnerships. The study concluded that while voluntary certification programs can improve recruitment standards, their effectiveness remains limited without strong regulatory frameworks and consistent government enforcement.

#### ***2.4 Migration Costs and Economic Exploitation***

The costs associated with migration are a major factor influencing migrant workers' vulnerability to exploitation. In migration literature, the concept of migration costs extends beyond direct expenses such as recruitment fees, documentation, transportation, and training. It also includes opportunity costs and various indirect financial burdens. [Marino, Roosblad, and Penninx \(2015\)](#) analyzed migration cost structures for workers from developing countries and found that total migration expenses can amount to several times a worker's expected monthly income in the destination country. As a result, many migrants rely on loans from family members, moneylenders, or recruitment agencies. This indebtedness often creates situations of debt bondage, limiting workers' ability to leave exploitative jobs or negotiate better working conditions. Supporting this view, [Harkins, Lindgren, and Suravoranon \(2020\)](#) reported that migrant workers in Malaysia and Thailand paid recruitment fees equivalent to ten to fifteen months of wages, far exceeding the standards recommended under the ILO employer-pays principle.

The financing mechanisms used to support migration have also been extensively studied due to their implications for worker vulnerability. [Bylander \(2014\)](#) examined how Cambodian migrants finance their journeys to Thailand, identifying common strategies such as borrowing from informal lenders, selling assets, and taking loans from recruitment brokers. The study found that informal lenders often charge interest rates of five to ten percent per month, creating severe financial pressure on workers and their families. [Bylander \(2014\)](#) further identified that advance payment systems and salary deductions used by recruitment agencies to recover recruitment costs can constitute a form of modern slavery, as workers are effectively forced to remain employed until their debts are repaid. These financial pressures are particularly acute for female migrant workers concentrated in lower-paid sectors such as domestic and care work, who frequently bear a disproportionate migration-cost burden relative to their earnings.

Governments in both sending and receiving countries have increasingly focused on regulatory measures to reduce migration costs. [Czaika and Hobolth \(2016\)](#) examined several policy approaches,

including fee caps, government subsidies, and the employer-pays model, under which employers rather than workers cover recruitment expenses. Their findings suggest that the employer-pays approach has shown promising results in reducing migrant indebtedness, although effective monitoring and enforcement remain challenging. A comparative study by [Harkins et al. \(2020\)](#) found that the most successful interventions combine realistic fee caps, transparent cost structures, accessible complaint mechanisms, and strong sanctions for violations. [Kaur \(2010\)](#) explored the role of digital technologies and online recruitment platforms in reducing costs by eliminating intermediaries. However, the study cautioned that without adequate regulation, digital platforms may generate new forms of exploitation and fail to address the underlying power imbalances between migrant workers and employers.

### ***2.5 Institutions and Migration Policy Implementation***

The effectiveness of migrant worker protection depends heavily on the capacity and performance of institutions responsible for implementing migration policies. From an institutional theory perspective, migration governance is shaped by organizational design, the distribution of authority, coordination mechanisms among agencies, and the availability of human and financial resources. [Gammeltoft-Hansen and Tan \(2017\)](#) analyzed the evolution of migration governance structures in Asia and identified a growing trend toward establishing specialized migration agencies dedicated exclusively to labor migration management. While these agencies often possess stronger expertise and focus, they may also create fragmented authority and more complex coordination challenges. [Czaika and Hobolth \(2016\)](#) examined the factors contributing to policy implementation gaps and found that inconsistencies between policy objectives and implementation incentives, limited institutional capacity, and resistance from vested interests frequently undermine policy effectiveness.

Inter-agency coordination remains one of the most persistent challenges in migration governance. [Kalir and Sur \(2018\)](#) highlighted the complexity of coordinating multiple stakeholders, including national ministries, local government agencies, recruitment companies, and civil society organizations. Their research revealed that unclear coordination mechanisms, overlapping responsibilities, and competition for resources often hinder effective policy implementation. Within Southeast Asia, significant variations in political commitment and institutional capacity persist among member states despite the existence of a common regional framework for migrant worker protection. Vertical coordination between central and local governments is another important issue. [Yeoh and Huang \(2020\)](#) demonstrated that decentralized migration governance in countries such as Indonesia and the Philippines can result in unequal levels of service quality and worker protection depending on migrants' regions of origin.

Institutional capacity and bureaucratic quality are also crucial determinants of migration policy outcomes. [Gibson and McKenzie \(2014\)](#) examined the role of labor attachés and welfare officers stationed in embassies of migrant-sending countries and found that staff shortages, inadequate training, and limited resources often restrict their ability to provide effective protection and support. [Czaika and Hobolth \(2016\)](#) further argued that countries with stronger bureaucratic capacity are generally more successful in negotiating favorable bilateral labor agreements and enforcing ethical recruitment standards. In addition, [Beduschi \(2021\)](#) explored how technology and digitalization can strengthen migration governance through tools such as online registration systems, digital complaint mechanisms, and integrated data-management platforms. Their findings suggest that technology can significantly improve efficiency and transparency. However, successful implementation requires substantial investment in infrastructure, human resource development, and strategies to address the digital divide that may exclude rural migrant workers or individuals with limited digital literacy.

Taken together, the existing literature demonstrates that migration governance research has predominantly focused on macro-level regulatory frameworks, bilateral agreements, and destination-country enforcement mechanisms. However, a critical gap remains: few studies have examined the legal complexity of the pre-departure phase from the perspective of the sending-country institution responsible for implementing departure clearance procedures. In the Indonesian context, while Law Number 18 of 2017 and its derivative regulations have been widely analyzed at the normative level,

empirical evidence regarding how BP3MI navigates its dual mandate as both regulator and operator in practice and how this institutional ambiguity affects migrant workers' access to justice in the pre-departure phase remains limited. This study seeks to fill this gap by integrating normative legal analysis with empirical findings drawn from key institutional actors, thereby providing a more contextually grounded understanding of the governance challenges facing Indonesian migrant worker deployment.

### **3. Research Methodology**

This study employs a qualitative approach combining normative and empirical legal research methods. The normative dimension involves the systematic analysis of primary legal materials, including Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Government Regulation Number 59 of 2021 concerning the Placement of Indonesian Migrant Workers, and relevant ministerial regulations governing the operational procedures of BP3MI. The empirical dimension involves the collection of primary data through fieldwork conducted at three BP3MI regional offices located in Jakarta, Surabaya, and Medan between January and February 2024. These locations were selected purposively to represent the three regions with the highest volume of Indonesian migrant worker departures, thereby ensuring the relevance and representativeness of the findings within the pre-departure governance context.

Primary data were collected through in-depth semi-structured interviews with 25 key informants, comprising BP3MI officials at both headquarters and regional levels, officials from the Ministry of Manpower, the Ministry of Foreign Affairs, and the Directorate General of Immigration, representatives of licensed Indonesian Migrant Worker Placement Companies (P3MI), civil society organization representatives engaged in migrant worker advocacy, and former migrant workers who had undergone the BP3MI departure process. Interview participants were selected using purposive and snowball sampling techniques to ensure the inclusion of informants with direct and substantive knowledge of the departure process governance. Informed consent was obtained from all participants prior to data collection, and confidentiality was maintained throughout the research process in accordance with applicable research ethics standards.

In addition to interviews, the study involved documentary analysis of 47 court decisions issued between 2020 and 2023 involving legal violations related to the departure of Indonesian migrant workers. These decisions were accessed through the Supreme Court's online case information system (SIPP Mahkamah Agung) and the decisions database of the Indonesian Judicial Commission. The documentary analysis was conducted to identify recurring patterns of legal violations and to assess the extent to which judicial outcomes reflect the regulatory framework established under Law Number 18 of 2017. Secondary data were obtained through a systematic review of academic literature, government reports, and official statistics from BP3MI, the Ministry of Manpower, and Bank Indonesia.

Data analysis was conducted through three complementary approaches. Qualitative content analysis was applied to interview transcripts and legal documents to identify recurring themes, patterns, and contradictions within the data. Thematic analysis was employed to develop substantive analytical categories addressing the study's research objectives, following the inductive approach described by [Braun and Clarke \(2019\)](#). Legal interpretation was applied to examine the normative dimensions of the regulatory framework, assess consistency between legal provisions and implementation practices, and evaluate gaps in legal protection. To ensure the credibility and trustworthiness of the findings, source triangulation was employed by systematically cross-referencing interview data, documentary evidence, and the existing scholarly literature, consistent with the triangulation principles outlined by [Braun and Clarke \(2019\)](#) and the trustworthiness criteria established by [Lincoln and Guba \(1985\)](#).

### **4. Results and Discussions**

#### ***4.1 Regulatory Fragmentation and Legal Overlaps in the Departure Process***

The findings reveal that the governance of Indonesian migrant worker departures through BP3MI is characterized by substantial regulatory fragmentation at both horizontal and vertical levels. Although

Law Number 18 of 2017 establishes BP3MI as the primary institution responsible for implementing a one-stop service system, the departure process in practice requires coordination with at least seven ministries and government agencies, each exercising partial authority over different stages of the migration process. These include the Ministry of Manpower, which oversees competency standards and vocational training certification; the Ministry of Foreign Affairs, which manages bilateral labor agreements and issues notes verbales to destination countries; the Directorate General of Immigration, which processes travel documentation; the National Police, which conducts criminal background verification; the Financial Services Authority (OJK), which regulates insurance products for migrant workers; local governments, which provide pre-departure orientation services; and BP3MI itself, which is responsible for final departure clearance.

The documentary analysis of 47 court decisions issued between 2020 and 2023 identified recurring patterns of legal violations across four principal categories, as summarized in Table 1. Regulatory ambiguity and unclear competency boundaries between institutions accounted for the largest share of violations at 35 percent (n=17), reflecting the structural fragmentation of authority among multiple agencies involved in the departure process. This category encompasses cases in which overlapping mandates between BP3MI, the Ministry of Manpower, and local governments created situations in which no single institution assumed clear responsibility for monitoring compliance, enabling violations to persist undetected. Unauthorized or irregular placement outside official BP3MI procedures constituted 28 percent of violations (n=13), involving prospective migrant workers dispatched through informal channels, tourist visa arrangements, or unlicensed intermediaries operating beyond the reach of formal regulatory oversight. Excessive recruitment and placement fees imposed in violation of the limits established under Government Regulation Number 59 of 2021 accounted for 22 percent of cases (n=10), while document falsification including falsified identity documents and competency certificates represented 15 percent (n=7) of violations. Taken together, these four categories suggest that the most prevalent forms of legal violation are structurally rooted in institutional fragmentation and weak enforcement rather than in the absence of legal provisions.

Table 1. Typology of Legal Violations Identified in Court Decisions and Administrative Rulings (2020–2023)

No	Type of Violation	Frequency (n=47)	Percentage
1	Regulatory ambiguity / unclear competency boundaries	17	35%
2	Unauthorized or irregular placement	13	28%
3	Excessive recruitment and placement fees	10	22%
4	Document falsification (including identity and competency certificates)	7	15%
Total		47	100%

Table 1 shows the analysis further reveals that regulatory overlaps between BP3MI and the Ministry of Manpower regarding the supervision of placement companies (P3MI) create significant enforcement gaps. While BP3MI holds authority over departure clearance and placement company licensing, the Ministry of Manpower retains supervisory authority over labor standards, wage compliance, and employment contract verification. The absence of clearly defined boundaries between these mandates results in situations in which neither institution exercises effective oversight, enabling non-compliant placement companies to operate with limited accountability. This finding is consistent with the fragmented governance dynamics described by [Harkins \(2016\)](#) and the migration infrastructure analysis of [Xiang and Lindquist \(2014\)](#), both of whom identify regulatory boundary ambiguity as a primary source of exploitation risk in labor migration systems.

#### 4.2 Institutional Coordination Challenges

The study identifies institutional coordination as the most persistent structural challenge in BP3MI's governance of migrant worker departures. Although the one-stop service mandate under Article 28 of Law Number 18 of 2017 is intended to centralize departure administration within BP3MI, the

implementation of this mandate is constrained by the continued fragmentation of functional authority across multiple agencies. Interviews with BP3MI officials at both the headquarters and regional levels consistently identified inter-agency data sharing as a significant operational weakness, with multiple agencies maintaining separate and incompatible databases that prevent effective real-time monitoring of prospective migrant workers across the departure pipeline.

The dual mandate of BP3MI as both regulator and service provider creates additional coordination tensions. As a regulator, BP3MI is responsible for enforcing compliance among placement companies and other migration intermediaries. As a service provider, BP3MI operates the one-stop departure service system that processes migrant workers through pre-departure procedures. These functions are inherently in tension because BP3MI's institutional performance metrics are partly measured by departure volume, creating incentive structures that may discourage rigorous enforcement against non-compliant placement companies whose operations contribute to departure statistics. This dual mandate tension, identified by [Gammeltoft-Hansen and Tan \(2017\)](#) as a common characteristic of specialized migration agencies, is compounded by significant variations in service quality and enforcement capacity across BP3MI's regional offices.

Vertical coordination between BP3MI headquarters and regional offices, as well as between BP3MI and local governments authorized under Article 56 of Law Number 18 of 2017 to provide pre-departure services, emerged as another significant governance challenge. Interviews with regional officials revealed that national policy directives are not consistently translated into uniform operational procedures at the local level, resulting in disparate standards of documentation requirements, training quality, and enforcement intensity across regions. These variations create regulatory arbitrage opportunities in which prospective migrant workers or placement companies may strategically select departure points based on the perceived leniency of local oversight, a phenomenon documented by [Kern and Müller-Böker \(2015\)](#) in their analysis of decentralized migration governance in Nepal and similar labor-sending countries.

#### **4.3 Access to Justice and Legal Empowerment**

The study finds that Indonesian migrant workers continue to face significant barriers in understanding their legal rights and accessing available complaint and legal aid mechanisms before departure. Analysis of pre-departure orientation program content across BP3MI's three regional offices reveals that training sessions devote an average of less than two hours to legal rights education out of a total orientation duration of approximately three to five days. The content of legal rights modules is largely procedural in nature, focusing on documentation requirements and agency contact information rather than substantive legal empowerment, including information about workers' rights to refuse coercive contract terms, challenge excessive recruitment fees, or withdraw from the departure process without financial penalty.

Interviews with former migrant workers confirmed that awareness of formal complaint mechanisms available through BP3MI, the Ministry of Manpower's labor dispute resolution system, and civil society organizations remains limited. Respondents consistently reported that the primary sources of information about migration procedures were recruitment agents or informal community networks rather than official BP3MI communications, a finding that highlights the continued dominance of informal migration industry actors in shaping workers' understanding of the departure process. This pattern is consistent with the information asymmetry dynamics identified by [Gammeltoft-Hansen and Sørensen \(2013\)](#) in their study of Ethiopian migrants, as well as the structural dependency analysis of [Jureidini \(2019\)](#) regarding migrant workers' reliance on intermediary networks in the absence of accessible official information channels.

The analysis of the 47 court decisions further indicates that migrant workers who experienced legal violations during the departure process rarely initiated formal legal proceedings independently. In the majority of cases, legal actions were initiated by civil society organizations, labor unions, or government officials acting on workers' behalf following media reports or family complaints. This pattern suggests that the practical barriers to accessing justice, including limited legal literacy,

financial constraints, fear of retaliation from placement companies, and unfamiliarity with formal complaint procedures, substantially reduce migrant workers' effective exercise of the legal rights formally guaranteed under Law Number 18 of 2017.

#### **4.4 Discussion**

The findings confirm that the effectiveness of migrant worker protection governance in Indonesia is determined not merely by the existence of legal regulations but by the quality of their implementation in practice. While Law Number 18 of 2017 provides a normatively comprehensive framework for departure-stage protection, three interconnected dimensions of legal complexity, namely regulatory fragmentation, institutional coordination failure, and limited access to justice, collectively undermine the framework's effectiveness.

The pattern of regulatory fragmentation corresponds with the theoretical framework of [Skeldon \(2012\)](#), who describe fragmentation as an inherent characteristic of international migration governance. The involvement of at least seven government agencies in the departure process creates conditions for regulatory overlaps and accountability gaps, as documented in the court decision analysis. The finding that 35 percent of violations involve regulatory ambiguity suggests that fragmentation actively generates opportunities for exploitative actors to exploit institutional blind spots.

Institutional coordination challenges reinforce the conclusions of [Lindquist \(2019\)](#), who found that comprehensive licensing systems do not guarantee effective enforcement without adequate monitoring capacity. The dual mandate tension within BP3MI, whereby departure volume incentives may conflict with rigorous compliance enforcement, reflects the governance challenge identified by [Piper and Foley \(2021\)](#) regarding regulatory institutions that simultaneously function as service providers. Structural separation between BP3MI's regulatory and operational functions may therefore be necessary to align institutional incentives with effective protection outcomes.

The findings on limited access to justice confirm that legal rights on paper do not translate into meaningful protection without accessible enforcement mechanisms. Reconceptualizing pre-departure programs as empowerment tools incorporating legal literacy content, consistent with the approach advocated by [Cholewinski and Taran \(2018\)](#), would represent a significant improvement in practical protection effectiveness. At the international level, the analysis confirms the conclusion of [Cholewinski and Taran \(2018\)](#) that international legal commitments are only as effective as the political commitment and institutional capacity of both sending and receiving states. Taken together, the three dimensions of legal complexity identified in this study are not independent failures but structurally interconnected phenomena. Regulatory fragmentation creates the institutional conditions for coordination failure, which in turn generates governance vacuums that limit migrant workers' access to justice. This interconnection suggests that piecemeal reform targeting any single dimension in isolation is unlikely to produce durable improvements. Rather, as [Xiang and Lindquist \(2014\)](#) argue in their migration infrastructure framework, effective governance must address the entire institutional architecture through which migration is organized, including the formal legal framework, the agencies responsible for its implementation, and the intermediary networks that shape workers' practical experiences of the migration process.

The gender dimension of legal complexity, while not a primary focus of this study, warrants particular attention in future reform efforts. [Elias and Rai \(2019\)](#) demonstrate that the structural conditions enabling exploitation are often shaped by gendered assumptions embedded in recruitment practices and regulatory frameworks. The findings of this study, particularly regarding the inadequacy of legal rights modules in pre-departure orientation programs, are consistent with the observation of [Silvey and Parreñas \(2020\)](#) that Indonesian women employed in the domestic work sector are disproportionately exposed to exploitation due to insufficient pre-departure preparation and the absence of gender-responsive legal support mechanisms. From a comparative governance perspective, the challenges documented in this study reflect broader patterns observed across labor-sending countries in Asia. [Czaika and Hobolth \(2016\)](#) identify a persistent implementation gap between formal

legal commitments and practical outcomes as a defining characteristic of migration governance, a pattern particularly pronounced in labor-sending countries in Asia. The Indonesian case illustrates that this gap is not merely a product of legal inadequacy but is generated and maintained by institutional design features, including fragmented authority, misaligned incentives, and inadequate investment in legal empowerment infrastructure. Addressing these structural drivers, rather than adding new regulatory layers to an already complex system, represents the most promising path toward effective protection of Indonesian migrant workers in the pre-departure phase.

## **5. Conclusions**

### **5.1 Conclusion**

This study set out to examine the legal and regulatory complexities governing the overseas departure process of Indonesian Migrant Workers through BP3MI, with particular attention to the pre-departure phase of migration governance. The findings reveal that these complexities are not incidental but structurally embedded within three interconnected dimensions that collectively undermine the effectiveness of the legal framework established under Law Number 18 of 2017.

The first dimension, namely regulatory fragmentation, reflects a systemic mismatch between the one-stop service mandate assigned to BP3MI and the reality of a departure process that involves at least seven ministries and agencies with overlapping and often ambiguous authorities. The analysis of 47 court decisions demonstrates that this fragmentation is not merely procedural, as regulatory ambiguity directly enables exploitative actors to operate within institutional blind spots, as evidenced by the high incidence of unauthorized deployment (28%) and excessive recruitment fees (22%) among documented violations.

The second dimension, namely institutional coordination failure, reveals that the effectiveness of migrant worker protection depends as much on incentive alignment as on legal design. BP3MI's dual mandate as both regulator and service provider creates structural tensions that weaken enforcement, while vertical fragmentation between national and regional offices produces unequal and inconsistent protection standards across migrant-sending regions. The third dimension, namely limited access to justice, highlights that rights guaranteed on paper remain practically inaccessible to many workers. Pre-departure orientation programs remain largely procedural rather than empowering, and formal complaint mechanisms are underutilized due to low legal literacy, financial barriers, and fear of retaliation. The finding that most legal proceedings in the sampled court decisions were initiated by third parties rather than by the workers themselves powerfully illustrates this gap.

Taken together, these three dimensions are not independent failures but mutually reinforcing structural conditions, in which fragmentation generates coordination vacuums, which in turn marginalize workers' ability to seek redress. This interconnection carries an important policy implication, as piecemeal reform targeting any single dimension is unlikely to produce durable improvements. Effective protection of Indonesian migrant workers therefore requires a holistic reform agenda that simultaneously addresses regulatory harmonization, institutional restructuring, enforcement capacity, and legal empowerment, grounded in sustained political commitment and multi-stakeholder collaboration across the entire pre-departure governance system.

### **5.2 Research Limitations**

Several limitations should be considered when interpreting the findings of this study. First, the research employed a qualitative approach involving a limited number of informants and focused on BP3MI offices in Jakarta, Surabaya, and Medan. Consequently, the findings may not fully represent conditions across Indonesia, where regional capacities and migration patterns vary considerably. In addition, limited access to migrant workers currently employed abroad meant that much of the migrant worker perspective was obtained from returnee migrants, which may introduce recall bias. The study was also conducted during a specific period and therefore reflects the regulatory and institutional conditions existing at that time. Given the dynamic nature of migration governance, subsequent legal and institutional developments may affect the continued relevance of some findings.

A further limitation relates to data availability and research scope. Access to comprehensive quantitative data was constrained by institutional and documentation limitations, requiring reliance on secondary sources and information provided by key informants. Moreover, the study focused primarily on the pre-departure stage of migrant worker protection and did not comprehensively examine legal issues arising during overseas employment or post-return reintegration. Resource and time constraints also prevented fieldwork in destination countries, meaning that the analysis largely reflects the perspective of Indonesian institutions and stakeholders rather than those of employers, authorities, and agencies operating abroad.

### **5.3 Suggestions and Directions for Future Research**

Based on the findings of this study, several recommendations can be proposed to strengthen the protection of Indonesian migrant workers and improve migration governance. Regulatory harmonization and clearer institutional responsibilities among agencies involved in migrant worker governance are necessary to reduce overlapping authority and improve coordination. BP3MI should further strengthen its institutional capacity through standardized procedures, enhanced human resources, and improved service quality across regional offices. In addition, pre-departure orientation programs should be developed into comprehensive empowerment initiatives emphasizing legal literacy, financial management, problem-solving skills, and preparedness for challenges in destination countries. Access to complaint mechanisms should also be expanded through integrated digital platforms, while enforcement efforts should be reinforced through regular inspections, stricter sanctions, and greater transparency regarding enforcement outcomes.

Future research should examine migrant worker governance from a broader perspective by conducting comparative studies with other labor-sending countries, adopting longitudinal approaches that follow workers throughout the migration cycle, and utilizing mixed-methods designs to generate both quantitative and qualitative insights. Further studies should also explore gender dimensions of migration, the implementation of protection mechanisms in destination countries, and the role of digital technologies in recruitment, monitoring, and migrant worker protection systems to support the development of more effective and evidence-based migration governance policies.

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### **Author Contributions**

RH contributed to the conceptualization, methodology, formal analysis, and preparation of the original draft. VNP contributed to writing, review and editing, as well as supervision of the research process. MSB was responsible for data curation and investigation. All authors have read and approved the final version of the manuscript.

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