

GLOBAL RATIFICATION GAPS IN THE UN MIGRANT WORKERS CONVENTION: LEGAL RISKS FOR INDONESIAN MIGRANT WORKERS ABROAD

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ABSTRACT:

This article aims to examine the legal and human rights consequences of the low number of countries that have ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the reasons behind the limited participation of labor-receiving countries. This research employs a normative legal approach, analyzing international legal instruments and the practices related to the protection of migrant workers. The results show that the small number of ratifications has made migrant workers in non-ratifying countries more vulnerable to various human rights violations, such as unpaid wages, exploitative working hours, physical or sexual abuse, and arbitrary deportation. Countries that have ratified the convention have a legal obligation under international law to apply the protection rules stated in the convention, thereby strengthening the guarantee of rights for migrant workers. Moreover, the low level of

ratification also prevents the formation of a global standard. It creates an imbalance of responsibility, where sending countries are often more proactive in legal protection, even though they do not have direct control over the conditions faced by their workers abroad. One of the main reasons for the slow ratification by receiving countries is that migrant worker protection is still not seen as a political priority. In addition, ratification is often viewed as a burden on the legal and financial system because it requires the fulfillment of many social, economic, and cultural rights, including those for undocumented migrant workers. Therefore, the low rate of ratification of this convention has created a significant gap in protection and warrants more attention from the international community.

Keywords: *Migrant Workers, UN Convention, Legal Protection, Ratification*

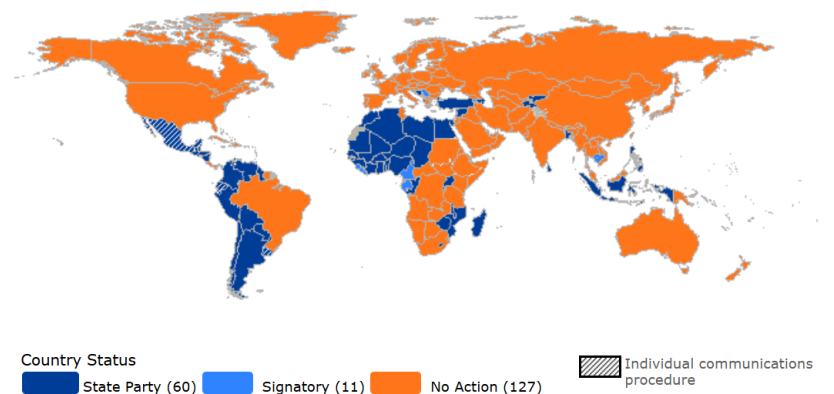
A. Introduction

Protecting migrant workers is a complex issue that includes both legal and human rights aspects. In today's globalized world, where people frequently move across countries to work, migrant workers play a crucial role in both national and international development. They are valuable to their home countries because they support the economy through remittances and other social contributions. For this reason, migrant workers require proper protection from their governments to ensure that their rights are respected and fulfilled by employers in the countries where they work.¹

Indonesia has shown its commitment to this issue by signing the Migrant Workers Convention in 2004 and ratifying it in 2012 through Law Number 6 of 2012. This ratification is not just a symbolic act, but a concrete expression of Indonesia's legal and political commitment to promote justice, equality, and comprehensive protection for migrant workers, especially Indonesian citizens working abroad. But many other countries still haven't made the same commitment. As shown in the map below:

¹ Undang-Undang Dasar 1945 (Indonesian Constitution), Article 28D paragraph (2).

Figure 1: Status of Ratification of the Migrant Workers Convention²



The map shows that only 60 countries have officially joined the convention, while around 127 countries have not yet ratified it.³ This is important because when a country ratifies an international human rights treaty, it takes on a legal responsibility to ensure that the rights outlined in the treaty are respected and protected within its territory. This means the government must either create or adjust national laws and policies to match the requirements of the treaty. The country must also submit regular reports to a special committee that monitors compliance with the treaty.⁴ The fact that many countries have not yet signed or ratified the Migrant Workers Convention has a significant impact on their responsibility to protect the rights of migrant workers within their borders.

This concern becomes even more critical when looking at the destinations of Indonesian migrant workers. According to data from the Indonesian Migrant Worker Protection Agency (BP2MI) for January to April 2025, the leading countries to which Indonesian migrant workers are sent include Hong Kong, Taiwan, Malaysia, Japan, and Singapore.⁵ These countries are main destinations because they have a high demand for labor in domestic work, healthcare, and manufacturing sectors. However, none of them have

² A "State party" is a country that has officially agreed to follow a treaty by completing the process of ratification, accession, or succession, and the treaty has already come into effect for that country. Sometimes, it also refers to a country that is in the process of becoming a party after the United Nations has formally received its intention to join. A "signatory" is a country that has shown initial support for the treaty by signing it, which means the country agrees with its goals and plans to review it domestically to decide whether to ratify it. "No action" means that the country has not taken any formal steps to support, sign, or join the treaty.

³ United Nations Office of Legal Affairs, *UN Treaty Collection: Database of Treaties*, <https://treaties.un.org>, diakses 31 Juni 2025, pukul 23.36 WIB

⁴ Office of the United Nations High Commissioner for Human Rights, *Ratification of the 18 International Human Rights Treaties: Concepts and Definitions*, OHCHR, Jenewa, 2020, hlm. 2. https://indicators.ohchr.org/Stock/Documents/MetadataRatificationTotal_Dashboard.pdf

⁵ BP2MI, *Data Penempatan dan Perlindungan Pekerja Migran Indonesia Periode Januari–April 2025*, <https://www.bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-periode-januari-april-2025>, diakses 31 Juni 2025, pukul 00.13 WIB.

signed or ratified the Migrant Workers Convention, meaning they are not legally bound to follow its guidelines. This lack of commitment increases the vulnerability of Indonesian workers in those countries, as there is no strong legal framework to guarantee their rights and protection.

This phenomenon raises serious concerns about the legal protection and safety of Indonesian migrant workers. When destination countries are not legally bound by international rules that protect the rights of migrant workers, the risk of human rights violations becomes much higher, such as unpaid wages, exploitative working conditions, and discriminatory treatment, etc. Without a legal commitment from these countries, a protection gap exists. However, Indonesia faces limitations in monitoring and intervening in how its citizens are treated abroad, especially when they are outside its legal jurisdiction. This lack of shared responsibility between sending and receiving countries highlights the urgent need for stronger global cooperation and wider ratification of the Migrant Workers Convention. Without it, the protection of migrant workers will remain unequal and insufficient.

Several previous studies have explored the topic of the Migrant Workers Convention. For example, an article by Lahia Jeremy Candra (2024), titled "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Menurut Konvensi Internasional tentang Hak-Hak Pekerja Migran," focuses more on the normative aspects of the convention, primarily how it provides legal guarantees for the protection of Indonesian migrant workers.⁶ On the other hand, Lalu Hadi Adha highlights the urgency of ratifying the 1990 International Convention, emphasizing the importance of active participation from both sending and receiving countries in the ratification process to ensure the fulfillment of the rights of migrant workers.⁷ These studies demonstrate that although a legal framework for migrant worker protection exists at the international level, its effectiveness largely depends on whether countries are willing to ratify and implement it. Without broader ratification, the risks and vulnerabilities faced by migrant workers will continue, as previously discussed. Unlike the two previous studies, this article focuses more on an in-depth analysis of the legal and human rights consequences resulting from the low level of ratification, particularly for Indonesian migrant workers employed in countries that are not parties to the convention. In addition,

⁶ Lahia Jeremy Candra, "Perlindungan Hukum terhadap Pekerja Migran Indonesia Menurut Konvensi Internasional Tahun 1990," *Lex Privatum*, Vol. 13, No. 01, 2024.

⁷ L.H. Adha, "Urgensi Ratifikasi Konvensi Internasional Tahun 1990 Tentang Perlindungan Buruh Migran dan Keluarganya," *Kajian Hukum Keadilan*, Vol. 01, No. 02, 2013.

this article also examines the underlying factors behind the reluctance of many labor-receiving countries to ratify the convention, such as domestic political interests and concerns about the potential economic and legal implications of committing to international obligations. Therefore, this study aims to make a new contribution to the discourse on migrant workers' legal and human rights the protection of by providing a critical perspective on the imbalance in international commitments to ensuring migrant labor protection. This approach builds upon the foundation laid by earlier research. Still, it goes further by highlighting the practical consequences of limited global ratification, especially for sending countries like Indonesia, whose citizens remain vulnerable in uncommitted host nations.

This article focuses on the following main questions What are the legal and human rights impacts caused by the low number of countries that have ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Their Families? And Why are many countries that receive migrant workers still unwilling to ratify the convention?

B. Research Method

This article employs a normative legal research method, a scientific approach that seeks to find the truth through legal logic from a normative perspective. The research focuses on analyzing positive legal norms, legal doctrines, and international legal principles related to the protection of migrant workers, especially in the context of the ratification of the Migrant Workers Convention. The object of study in this paper encompasses legal concepts and normative doctrines relevant to the issue of low ratification rates of the convention by migrant-receiving countries. The legal sources used comprise primary legal materials, such as international conventions and national laws, as well as secondary legal materials, including academic literature and reports from international organizations.

C. Discussion

1. Protection Standards under the Migrant Workers Convention

The United Nations General Assembly officially adopted the Migrant Workers Convention on December 18, 1990, and it came into force on July 1, 2003. This follows the provision in Article 87(1), which states that the convention would take effect three months after the deposit of the 20th instrument of ratification or accession.⁸

⁸Office of the United Nations High Commissioner for Human Rights, *Background to the Convention*, <https://www.ohchr.org/en/treaty-bodies/cmw/background-convention>, diakses 1 Juni 2025..

This Convention is an international instrument specifically designed to protect the rights of migrant workers and their families. It emphasizes the strong link between migration issues and human rights. Its adoption marks an essential milestone in the history of recognizing and protecting migrant workers' rights, ensuring these rights are respected and upheld. The substance of this Convention is the result of over three decades of work, including human rights studies conducted by the United Nations, expert meetings, as well as discussions and resolutions adopted in various UN forums on migrant worker issues. Like other international human rights instruments, this Convention establishes legal standards and procedures that must be adhered to by any country that becomes a party. Countries that have ratified the Convention are committed to implementing its principles by taking the necessary steps. They are also required to ensure that migrant workers whose rights are violated have access to justice and proper remedies. This more profound understanding of the Convention helps highlight the serious gap in global commitment, especially among major destination countries for Indonesian migrant workers who have not ratified the treaty. Without being bound by the Convention, these countries are not legally required to provide the protections outlined, leaving many migrant workers vulnerable to abuse and human rights violations.

Although 60 countries have ratified the Convention as of June 2025, many of the leading destination countries for Indonesian migrant workers have yet to approve it. This situation presents a serious challenge to efforts aimed at protecting the rights of Indonesian migrant workers. The low rate of ratification suggests that the protection standards outlined in the Migrant Workers Convention are not yet universally accepted. As a result, many Indonesian migrant workers remain vulnerable to rights violations, with limited access to justice and legal protection mechanisms. This underscores the fact that the lack of commitment by destination countries to ratify the Convention has direct consequences on the welfare and legal protection of migrant workers, particularly for Indonesian citizens working abroad. permit

Although the Migrant Workers Convention has been ratified by 60 countries, many of the leading destination countries for Indonesian migrant workers have not taken similar steps. This low number of ratifications suggests that the protection standards outlined in the convention are not yet universally recognized, leaving gaps that violations of migrant workers' rights in non-party states. In this context, it is essential to realize that the ratification of an international treaty signifies a country's acceptance of international human rights standards at a structural level and its intention to take further action. However, it does not

automatically imply the actual implementation or tangible outcomes of those protections. What about the 11 countries that have signed the Migrant Workers Convention? The act of signing an international treaty does not mean that a state has fully agreed to be legally bound by its provisions. Signing is only an initial form of endorsement (authentication) that demonstrates a state's willingness to proceed toward ratification, which is the stage at which a formal legal commitment is established. Nevertheless, according to the Vienna Convention on the Law of Treaties (1969), signatory states are still morally obligated to refrain from acts that would defeat the object and purpose of the treaty.⁹

2. The Global Ratification Status and Reasons Why Destination Countries Refuse to Ratify

According to the Vienna Convention on the Law of Treaties (1969), a state's consent to be bound by an international treaty can be expressed through several means, including: signature, exchange of instruments, ratification, acceptance, approval, accession, adhesion, and other means agreed upon by the parties.¹⁰

In the context of the Migrant Workers Convention, Article 86 emphasizes that the convention can only enter into force once countries have formally ratified it.¹¹ By ratifying the convention, a state officially declares its legal commitment to be bound by the provisions of the convention. This is further clarified in Article 87, which states that the convention becomes effective only after 20 countries have deposited their instruments of ratification or accession.¹² This directly ties in with the previous discussion: while signing a treaty signals a state's good faith and intention to continue the treaty process, ratification represents a binding legal commitment. Therefore, despite 11 countries having signed the Migrant Workers Convention without ratifying it, their obligations remain limited. In contrast, countries that have ratified the treaty, such as the 60 states as of June 2025, are legally bound to uphold its standards. The lack of ratification by major migrant-receiving countries, such as Hong Kong, Taiwan, and Malaysia, indicates a significant gap in enforceable protection for Indonesian migrant workers in those jurisdictions.

⁹ Office of the United Nations High Commissioner for Human Rights, *Ratification of the 18 International Human Rights Treaties: Concepts and Definitions*, OHCHR, Jenewa, 2020, hlm. 2.
https://indicators.ohchr.org/Stock/Documents/MetadataRatificationTotal_Dashboard.pdf

¹⁰ I Dewa Gede Palguna, *Hukum Internasional: Aspek-Aspek Teoretik dan Penerapannya*, Rajagrafindo Persada, Depok, 2019, hlm. 75.

¹¹ ICMW, Article 86.

¹² ICMW, Article 87.

Furthermore, Article 14 of the Vienna Convention on the Law of Treaties stipulates that ratification becomes mandatory when a treaty explicitly requires it or when the negotiating parties have agreed that ratification is necessary.¹³ In this context, the provisions of Articles 86 and 87 of the Migrant Workers Convention demonstrate that ratification is not merely a formal procedure, but a concrete commitment by States to prioritize the protection of migrant workers within the framework of international cooperation.

Although 60 countries have ratified the Convention, this number remains relatively low compared to the total number of United Nations member states, which stands at 193. This indicates that the majority of countries have yet to ratify the Convention, reflecting a limited global commitment to providing comprehensive legal protection for migrant workers. Furthermore, most of the countries that have ratified the Migrant Workers Convention are migrant-sending countries. In contrast, major migrant-receiving countries, including those in Western Europe, North America, Australia, and several Gulf and East Asian states, have not ratified the Convention. The main reasons for their reluctance include concerns about economic and legal implications, as well as the perception that ratification may limit national sovereignty in regulating immigration policies.

While many countries have ratified various UN treaties aimed at protecting specific vulnerable groups, such as women, children, and victims of human trafficking, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not received the same level of support. This disparity highlights the unique political and legal sensitivities surrounding migrant labor. Several key obstacles contribute to this limited ratification, including:

a) Protection for Undocumented Migrant Workers

The Migrant Workers Convention extends rights to all migrant workers, including those without legal documentation. However, this provision has become one of the primary reasons many migrant-receiving countries refuse to ratify the Convention, as they fear it may encourage irregular or undocumented migration. On the other hand, proponents of the Convention view this provision as a vital expression of universal human rights protection, emphasizing that the safeguarding of basic human dignity should not depend on one's legal status.

¹³ Vienna Convention on the Law of Treaties (VCLT) 1969, Article 14.

b) Economic Concerns and State Capacity Limitations

Another significant reason for the reluctance of many destination countries to ratify the Migrant Workers Convention lies in economic considerations and institutional capacity constraints. Several countries consider that granting equal rights to migrant workers and nationals would place an excessive burden on their national budgets, particularly in sectors such as healthcare, education, and social security. Developing countries or those facing economic crises often struggle to meet these standards even for their citizens. As a result, the expectation to extend these protections to migrant populations is viewed as unrealistic and financially unsustainable, further reinforcing the hesitation to ratify the Migrant Workers Convention.

c) Incompatibility with Modern Migration Realities

The Migrant Workers Convention was drafted at a time when migration was still primarily regulated by states. Today, however, migration is increasingly managed by private agencies and informal networks. As a result, many of the Convention's provisions are perceived as outdated and no longer fully aligned with current migration patterns, thereby reducing ~~its~~ their perceived relevance and effectiveness in addressing contemporary challenges.

d) Administrative Burden

The implementation of the Migrant Workers Convention requires a strong bureaucratic system, which not all countries have. Even rich countries sometimes struggle with the demands of managing immigration. For countries with limited resources, it's even harder. Some countries also believe that their national laws already adequately protect migrant workers, so they don't see the need to send submit additional reports to the United Nations Political Situation and Anti-Immigrant Sentiment

Global political conditions also play a role. In some countries, especially in Europe, rising immigration has led to strong anti-immigrant sentiments and concerns about its impact on jobs and local culture. As a result, many governments are hesitant to ratify the convention.

e) Weakness of the Enforcement Mechanism

The Migrant Workers Convention lacks a robust system to enforce its rules. The complaint mechanism is voluntary, and so far, no country has chosen to activate it.

f) Expectations and Positive Impacts

Although the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not yet been widely ratified, the principles it promotes have already influenced national policies in certain countries. For instance, Italy incorporated several provisions of the Convention into its national legislation in 1998. Moreover, international institutions such as the European Parliament and the Organization of American States (OAS) continue to advocate for broader ratification. This suggests that the Convention has the potential for positive change, provided there is sufficient political commitment from migrant-receiving countries.¹⁴

Although the Convention was designed as a comprehensive international legal instrument to protect the rights of migrant workers, its global ratification rate remains relatively low. The fact that most ratifying countries are migrant-sending states suggests that the demand for protection tends to come from the more vulnerable parties, rather than from migrant-receiving countries. Several key challenges, including the protection of undocumented migrants, economic concerns, and the lack of a strong international enforcement mechanism, have significantly hindered the Convention's broader implementation. In addition, domestic political dynamics, administrative limitations, and the perceived mismatch between the Convention and current migration patterns further explain the reluctance of many states to ratify it. Nevertheless, the principles enshrined in the Convention continue to exert a positive influence on national policies in some countries and serve as a foundation for migrant rights advocacy at the international level. Therefore, collective efforts and more substantial political commitment are still needed to promote wider acceptance and effective implementation of the Convention on a global scale.

¹⁴ Jennifer Yau, "The Promise and Prospects of the UN's Convention on Migrant Workers," *Migration Policy Institute*, January 2005, <https://www.migrationpolicy.org/article/promise-and-prospects-uns-convention-migrant-workers?> .

3. The Implications of Low Ratification Rates for Indonesian Migrant Workers

Indonesia's commitment to protecting migrant workers is reflected in its national regulations, particularly through Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. This law adopts the spirit and principles of the Migrant Workers Convention, including the recognition of fundamental rights of migrant workers, protection throughout the migration process, and the enforcement of the right to fair and non-discriminatory treatment.

However, a significant challenge arises when Indonesian migrant workers are placed in countries that have not ratified the Migrant Workers Convention, such as Taiwan, Malaysia, Singapore, Hong Kong, Japan, and others. In this context, a crucial question emerges: to what extent can national regulations in these countries guarantee the protection of migrant workers' rights? Although some countries claim to have domestic legal frameworks regulating the protection of foreign labor, these frameworks do not necessarily align with the standards set by the Convention. This discrepancy raises concerns about the effectiveness of the protection provided to migrant workers, particularly in terms of non-discrimination, fair treatment, access to justice, and protection throughout the migration process. Consequently, the position of Indonesian migrant workers in non-ratifying countries remains vulnerable, with their protection relying more on the unilateral policies of host countries rather than on binding international legal guarantees.

Several scholars and researchers have expressed critical views regarding the challenges in protecting Indonesian migrant workers (IMWs) in countries that have not ratified the Convention. They point out that although destination countries may have national regulations concerning migrant workers, such regulations often fall short of the international standards established by the Migrant Workers Convention. For instance, Zachariah Su, in his thesis, highlights that countries such as Singapore and Canada have not ratified the Convention because they perceive migrant workers, especially low-skilled workers, as functional economic entities to fill labor shortages. As a result, their policies tend to prioritize the interests of citizens and employers, often at the expense of the rights of migrant workers.

The low number of countries that have ratified the Migrant Workers Convention is primarily due to a lack of political will, as noted by Alan Desmond, a scholar in immigration and refugee law. One of the main reasons is that Part III of the Convention guarantees fundamental rights to all migrant workers, including those in an irregular or undocumented

status. Many states are reluctant to recognize these rights due to concerns over the potential legal and social consequences.

Interestingly, most countries that have ratified the Convention are developing nations. In contrast, developed countries, which generally possess greater legal and institutional capacity to implement the Convention effectively, have yet to ratify it. These same countries also serve as major destinations for migrant workers. The lack of participation from developed states significantly undermines the Convention's overall effectiveness. This situation not only limits migrant workers' access to justice but also raises serious questions about the steadfast commitment of Western countries to upholding human rights principles and international standards.

D. CONCLUSION

The low number of ratifications of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has profound implications for the legal and human rights protection of Indonesian migrant workers, particularly in destination countries that are not parties to the Convention. The absence of binding international legal obligations for non-party states renders many migrant workers vulnerable to human rights violations, such as exploitation, discrimination, arbitrary detention, violence, and unpaid wages. As a sending country, Indonesia faces limitations in jurisdiction to ensure the fulfillment of migrant workers' rights abroad, thereby creating a gap in responsibility between sending and receiving states.

The primary factors contributing to the low number of ratifications, particularly among labor-receiving countries, are related to political, economic, and domestic legal considerations. Many states perceive ratification as a burden on their fiscal and administrative systems, as the Convention requires the provision of a wide range of civil, economic, social, and cultural rights to all migrant workers, including those in irregular situations. Furthermore, the protection of migrant workers has yet to become a priority in the foreign or human rights policies of many destination countries, resulting in a weak commitment to this international instrument. Therefore, more substantial efforts from the international community are needed, including through bilateral and multilateral cooperation, to promote wider ratification of the Convention and to strengthen cross-border protection mechanisms that ensure justice and security for Indonesian migrant workers.

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