

# The Kafala's Work System and Its Impact on Human Rights Violation towards Indonesian Migrant Workers in Saudi Arabia

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## ABSTRACT

Indonesia is still struggling to protect migrant workers in Saudi Arabia. In 2020, more than 60% cases of Migrant workers happened. The recruitment process of Migrant workers in Saudi Arabia used Kafala Work System. Then, this research aims to analyze the Kafala work system's impact on human rights violations toward Indonesian migrant workers in Saudi Arabia. There is a debate between the kafala system and international law perspective regarding the rights of migrant workers. This is interesting because the implementation of the kafala system that lacks state supervision is vulnerable to human rights violations. The research used a qualitative analysis method and primary data sources are interviews and secondary data through literature reviews from journals and relevant institutions. Based on the analysis of the theory of Human Security, Migration, and Development. The study found that the kafala system implemented by Saudi Arabia has similarities to the ancient culture of slavery in the Arabian Peninsula. In addition, the factors that cause the kafala system to provoke rights are explosive state policies, explosive working conditions, and explosive living conditions. This study also found the fact that the kafala system was replaced with the sharia system, but the kafala practice remained in it. In the end, the results of this study provide recommendations for policy reform and strengthening the role of the state in sending migrant workers to Saudi Arabia as an effort to protect migrant workers.

**Keywords** : Kafala Work System, Protection of Migrant Workers, Saudi Arabia, Indonesia

## INTRODUCTION

The migration of Indonesian workers or migrant workers has existed since the reign of the Dutch East Indies. In 1890, the Dutch East Indies government sent Indonesian citizens to become migrant workers to Suriname to replace the duties of slaves of African origin who had been released on July 1, 1863. During Indonesia's independence until the late 1960s, the placement of Indonesian workers abroad did not involve the government, but was carried out individually, kinship, and was traditional. The destination countries for migrant workers at that time were Malaysia and Saudi Arabia based on cross-border relations and religious relations (hajj). Migrant workers with the purpose of Saudi Arabia, it is generally brought by those

who take care of hajj/Umrah or by those who have long lived in Saudi<sup>35</sup>.

In 2007-2011, Saudi Arabia became a major destination country for Indonesian migrant workers. This is due to the high demand for foreign workers, religious similarities, to information about the ease of performing hajj or Umrah for migrant workers there. The high interest of Indonesians to become migrant workers in Saudi Arabia is also due to one of the requirements which only has an elementary or junior high school diploma, in contrast to other destination countries such as Taiwan, Hong Kong, and Singapore which only accept migrant workers who have a high school diploma or can at least speak English. Therefore, Indonesian migrant workers

<sup>35</sup> BP2MI. Sejarah Pekerja Migran Indonesia. <https://bp2mi.go.id/profil-sejarah>. February 2020.

working in Saudi Arabia are dominated by poorly educated migrant workers. Where these poorly educated people are not absorbed into work in the country. In addition to the above factors, the difficulty of finding a job in the country is the main factor that encourages Indonesians with low education to become migrant workers in Saudi Arabia.

The low level of education of Indonesian migrant workers makes them only able to work in the domestic sector. The types of work in the domestic sector that can be done by Indonesian migrant workers in Saudi Arabia based on the Decree of the Minister of Manpower (Kepmenaker) No. 1 of 2015 concerning positions that can be occupied by Indonesian migrant workers abroad for domestic work include *housekeepers, babysitters, care takers, cooks (family cooks)* ), gardeners, *family drivers*, and *child care workers*<sup>36</sup>. Indonesian migrant workers in Saudi Arabia generally work in places full of 3D (*dark, dirty and dangerous*) risks that cause Indonesian migrant workers to be unappreciated at work<sup>37</sup>. In mid-2012 reached 6,849 cases which included unpaid salaries, persecution, sexual harassment, unanimous employment, unilateral termination of employment (LAYOFFS), and even a ban on communication by employers<sup>38</sup>.

The occurrence of various cases and problems above is also caused by the work system used for migrant workers in Saudi Arabia. No different from countries in the Middle East such as Kuwait and Qatar, the Saudi Arabian government also uses a kafala work system. The kafala work system is a government policy used to regulate, manage, and control the migrant labor population. The kafala system requires all migrant workers to have an official local sponsor responsible for arranging visas and status of residence in the

gulf state<sup>39</sup>. The occurrence of various cases and problems above is also caused by the work system used for migrant workers in Saudi Arabia. No different from countries in the Middle East such as Kuwait and Qatar, the Saudi Arabian government also uses a kafala work system. The kafala work system is a government policy used to regulate, manage, and control the migrant labor population. The kafala system requires all migrant workers to have an official local sponsor responsible for arranging visas and status of residence in the gulf state. This system has been criticized by various international organizations due to the non-participation of the Saudi Arabian government to join labor-related organizations such as the ILO and IOM.

Cases caused by the kafala work system in Saudi Arabia are predominantly experienced by female migrant workers. Where female migrant workers have to adapt to the position of women in Saudi Arabia. Women who were originally in their home country (Indonesia) received high freedoms and rights must follow rules in the form of restrictions such as restrictions on clothing, movement and restrictions on interacting with men. Systematic discrimination against Saudi women denies women the existence of women in public participation, equal access to employment, health care and equal standing in the eyes of the law. The existence of these restrictions on women makes Saudi Arabia the 92nd country out of 93 countries evaluated in terms of gender empowerment. Where the indicator that determines the creation of women's empowerment in a country is the participation of women in the economic and political fields. Saudi women's unequal position to men 's (low) has a great influence on the rights of female migrant

<sup>36</sup> Ismail. Alasan Pemerintah Indonesia Melakukan Moratorium TKI Domestik ke Arab Saudi Pasca MOU Tahun 2014. *Ejurnal Ilmu Hubungan Internasional*, Vol. 7, No. 1 (2019),p 482. Accessed by: <http://ejournal.hi.fisip-unmul.ac.id>. 19 February 2019.

<sup>37</sup> Restu Purnomo. *Buruh Migran di Timur Tengah Studi Kasus Migrasi Buruh Indonesia*. (Yogyakarta: Magister Ilmu Hubungan Internasional UMY, 2017), p. 150

<sup>38</sup>Try Harijono. Pelanggaran Hak Buruh Migran Tinggi. 2012. Accessed by: <https://amp.kompas.com/ekonomi/read/2012/12/13/19320815/nasional> . 13 December 2012

<sup>39</sup> Iman Sumarlan, Persistensi Arab Saudi Mengimplementasikan Budaya Kafala dalam Kebijakan Buruh Migran. <https://adoc.tips>. January 2019.

workers and the treatment of sponsors (employers) towards them<sup>40</sup>.

The rampant cases of violations of rights against Indonesian migrant workers caused by the kafala work system that is still implemented by Saudi Arabia, where the Kafala work system has received various criticisms from international organizations for not complying with labor and human rights (HAM) laws will be tried to be analyzed by researchers, where researchers will try to explain the rights violations experienced by Indonesian migrant workers due to the implementation of from the kafala work system. The study will also try to shed light on the factors that prompted Saudi Arabia to continue using the kafala system under international criticism. In the context of international relations studies, research related to the kafala work system is important to carry out because it causes violations of Human Rights (HAM), where human rights are upheld by the international world. This can be seen from the human rights declaration carried out by the United Nations (UN) and approved by countries in the world. In this study, researchers analyzed cases of violations of rights against migrant workers in Saudi Arabia through a *human security* approach with several concepts such as human rights, migrant workers and migration and development.

## LITERATURE REVIEW

Several literature *reviews* to classify and gain an understanding of the problems to be studied are related to the Kafala Work System Analysis of Violations of migrant workers' rights in Saudi Arabia. First, in an *e-book* entitled "**Migrant Workers: Problems, Regulations and Advocacy**" by Satriyo Pringgo Sejati et al<sup>41</sup>. Some of the writings in the book suggest that the strong kafala-based labor governance system is believed by the Saudi Arabian government to be the best

system in labor management. In the kafala system, the immigration status of migrant workers is legally bound to individuals (employers) who are referred to as sponsors for the period of their employment contract. Migrant workers cannot enter the destination country, change jobs, or leave work without permission from the sponsor.

Second, in an *e-journal* entitled "**The Reason why the Indonesian Government Imposed a Moratorium on Domestic Migrant Workers to Saudi Arabia After the 2014 MOU**" by Ismail. <sup>42</sup>This research suggests that the low level of education of Indonesian migrant workers requires them to work in the domestic sector which tends to be easy or close to problems. Migrant workers working in the domestic sector are vulnerable to problems, such as problematic employers, unpaid salaries, sexual harassment, migrant workers impregnated by employers, unilateral termination of employment (LAYOFFS), to prohibitions on communicating with families in the country.

Third, in a research report titled "**As If I'm Not Human**" Arbitrariness towards Asian Domestic Workers in Saudi Arabia" by Nisha Varia, a senior researcher from the Women's Rights Division in 2008. In this research report, it is stated that the sponsor or employer is responsible for the cost of recruitment, a complete medical examination and possession of <sup>43</sup>*an iqama* or Saudi state identity card. Migrant workers must obtain approval from the sponsor to leave the country or return to the country of origin. The Kafala system found in Saudi Arabia is certainly not in accordance with article 13 of the Universal Declaration of Human Rights (UDHR) on the right to freedom of movement and the right to return to the country of origin. In addition, the right to return to the country of origin has been recognized as a norm in customary international law.

Fourth, namely Mega Nisfa Makhroja's article entitled "**The Role of Migration**

<sup>40</sup> Human Right Watch. "Seolah Saya Bukan Manusia" Kesewenang-wenangan terhadap Pekerja Rumah Tangga Asia di Arab Saudi (2008), p. 24. <http://www.hrw.org> . 3 July 2008.

<sup>41</sup>Satriyo, Pringgo et al. Migrant Workers: Problems, Regulation and Advocacy. (Yogyakarta: Master of International Relations, UMY, 2017). <https://docplayer.info> April 2, 2017

<sup>42</sup>*Ibid.* p. 3

<sup>43</sup> *Ibid.* p. 8

**Networks in the International Migration of the People of West Nusa Tenggara (NTB) to Saudi Arabia in 2005-2012".**<sup>44</sup> The research discussed matters that encouraged the people of West Nusa Tenggara (NTB) to make Saudi Arabia the main destination to carry out international migration in 2005-2012. This thesis is relevant for the author because it has the same topic, namely about migrant workers in Saudi Arabia, where in this thesis there is an answer that is the reason why people still want to be migrant workers in Saudi Arabia, although there are many cases of violations of rights, physical or verbal violence and less salary or wages than being a migrant worker in Hong Kong, Taiwan and Malaysia.

Fifth, in a book entitled "**Rights of Migrant Workers**" by the Jakarta International Labor Organization (ILO) in 2006. This book explains the rights of migrant workers, conventions related to migrant workers to the mechanisms carried out by the ILO in supervising and protecting migrant workers. This manual is very relevant for the research to be carried out by the author, because the author can know and understand the rights that should be obtained for migrant workers, especially in Saudi Arabia and the protections obtained by migrant workers. In this book, it is explained that the rights of migrant workers are rights given to migrant workers based on the fact that they are human beings. Where such rights are provided in the sending and destination countries. The book contains the ILO declaration and basic principles and rights in the work. There are several conventions in it, namely the forced labor convention, the forced labor abolition convention, the minimum age convention, the worst forms of child labor convention, the equal remuneration convention, the discrimination convention, the freedom of association convention and the right to organize and collective bargaining. In

addition, there is also a convention on migrant workers according to the ILO, where the ILO develops an international legal entity that deals with the protection of migrant workers, such as protection for trafficking victims to undergo forced labor<sup>45</sup>.

Furthermore, in an information manual entitled "**Preventing Discrimination, Exploitation and Arbitrary Treatment of Female Migrant Workers: Information Guidelines**" by the International Labor Organization (ILO) Jakarta in 2004. This book contains information about the various dangers, risks, rights and obligations of migrant workers abroad. In this book, it is explained that the dangers and risks associated with migration for migrant workers working abroad usually relate to recruitment, pre-departure, and travel such as unofficial recruitment, trafficking, and so on. In addition, the dangers and risks associated with migrant workers are also related to work and living abroad such as unpaid wages, almost completely dependent on employers, such as the Kafala work system in Saudi Arabia. Then there are also the risks that migrant workers must bear at the stage of repatriation and reunification, where there are often terminations and forced expulsions.<sup>46</sup>

The next literature review is an article entitled "**Protection of the Saudi Arabian Government Against Immigrants (Indonesian Workers) 2010-2012**"<sup>47</sup>. This article explains that the security of individuals on the concept of *human security* in Saudi Arabia is still relatively low, the threat comes from political and socioeconomic structures that are unfair in terms of competition. In addition, weak protections for women are caused by legal discrimination against women in Saudi Arabia. The low level of individual security in Saudi Arabia also refers to unemployment, discrimination, environmental degradation, hunger and poverty. However, the main factor that causes Saudi Arabia to

<sup>44</sup>Mega, Nysfa. The Role of *Migration Networks* in the International Migration of the People of West Nusa Tenggara (NTB) to Saudi Arabia in 2005-2012. (Thesis, Universitas Brawijaya, 2012 )

<sup>45</sup> Ilo. Migrant Workers' Rights. (Jakarta:International Labor Organization, 2006).

<sup>46</sup> Ilo. Preventing Discrimination, Exploitation and Arbitrary Treatment of Female Migrant Workers: Information Guidelines. (Jakarta: International Labor Office, 2004)

<sup>47</sup> Octariandry, Shavita and Yusnarida Eka. Saudi Arabian Government Protection against Immigrants (Indonesian Workers) 2010-2012. <https://jom.unri.ac.id>. February 2014.

have a low level of security is due to the large number of cases of torture of migrant workers, where the highest cases of violence against immigrants are the mistreatment committed by employers of migrant workers, especially domestic workers.

## METHODS, DATA, ANALYSIS

### 1.1 Method

This research is descriptive where this research describes or provides an overview of the problem under study through data obtained from field records, documents and so on that have been collected. This type of descriptive research explains the relationship of cause and effect in problems supported by the theories and concepts that have been chosen by the author. In this study, the authors used a descriptive type of research that gave an overview of the state of the empirical facts accompanied by relevant facts. Furthermore, the research results that have been obtained by the author go through an analysis process to get the final results of the research.<sup>48</sup>

### 1.2 Data Collection

Primary data collection was carried out through field observations and in-depth interviews with key informants. Meanwhile, secondary data was obtained through literature studies in the form of journals, books and papers related to the kafala work system and violations of rights against Indonesian migrant workers, especially in Saudi Arabia. To support previous data collection, researchers also use the internet for supporting materials, where researchers get references from various online news, e-books and e-journals related to the problems raised. In addition, researchers also obtained data from the results of research reports from individuals and organizations, such as the Indonesian Labor Organization (ILO).

While the research location is in the West Lombok region. The author chose West Lombok as the destination to conduct research because it is one of the areas in West Nusa Tenggara that has a fairly high number

of migrant workers/TKW. The method used by the author to conduct research in the area is to use a sampling method, namely purposive sampling. Purposive sampling is the determination of a sample based on the objectives.

### 1.3 Framework Analysis

#### 1.3.1 Human Security Theory

At the beginning of the emergence of the International Relations study, the focus of his studies often focused on security studies dominated by the behavior of countries in overcoming the threats of their country's national security. Post-cold war, the world's security conditions underwent significant changes that had implications for the transformation of security actors, issues, and concepts. The transformation of security studies, which was originally a traditional study of security that is militaristic in nature, at the transformation stage has developed to begin to include non-traditional issues such as human rights, structural violence, the environment, and socio-cultural conflicts. This issue of non-traditional security began to be seen in the late 1990s. At that time a group of Copenhagen mahzabs such as Barry Buzan, Ole Waeber, and Jaap de Wilde began to develop aspects beyond traditional aspects such as poverty, health, human trafficking, terrorism and natural disasters. In addition, this group tries to expand the object of security reference which not only discusses state security, but also *discusses human security*<sup>49</sup>.

This theory of *human security* is getting stronger because it is a reaction to humanitarian problems in the world, such as trafficking in children and women, refugees due to conflict and physical violence, terrorism, food problems, and human rights violations. In this theory, there are seven *human security* according to the *United Nations Development Programme (UNDP)* (2004) which is the responsibility of the government in each country and must be fulfilled. The seven securitys include *economic security, food security, health*

<sup>48</sup> Pupu Rahmat, Qualitative Research. Journal of EQUILIBRUM, Vol. 5, No. 9 (2009),p 5

<sup>49</sup>Sonny Sudiar, Human Security Approaches in the Study of State Borders. Journal of International Relations, Vol. 7, No. 2 (October 2018-March 2019) ,p. 154-155. <https://journal.umy.ac.id>. 2019

*security*, environmental *security*, personal *security*, community *security* and political *security*.<sup>50</sup>

Thus, according to this *theory of human security*, with the world conditions that are rife with non-traditional threats, such as violations of rights, violence, trafficking of children and women, every country in the world has the responsibility to fulfill the seven human security above. Where this responsibility is not only a form of maintaining the national security of the country, but also as a form of maintaining peace between countries. That is, each country not only meets the security of its citizens, but also foreign nationals who are in the country, including foreign nationals whose purpose is only as migrant workers.

## Conceptual Foundations

### Human Rights

In the study of International Relations, human rights are one of the issues of controversy in most countries. This shows the rampant violation of rights in various countries in the world, including in Saudi Arabia. Human rights are the main basic rights inherent in every human being given by God Almighty to His creatures so that they must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity and dignity. In addition, the 51 Universal Declaration of Human Rights is the recognition of human rights. In the declaration there is recognition of basic human rights, where the recognition of basic rights to humans is the basis for realizing freedom, justice and world peace. Human rights need to be protected by national and international law to create freedom of speech, religion and freedom from fear.

Based on the explanation above, the concept of human rights is designed to uplift human dignity. In addition, human rights can also be said to be the boundary for each

country, namely the limit of what the state is obliged to do or what is not mandatory for the state. In addition, human rights are owned by everyone regardless of ethnicity, race, religion, occupation, or gender and cannot be violated by individuals, groups and even the state, either intentionally or unintentionally. Likewise, with Indonesian migrant workers who are in Saudi Arabia, they are entitled to the rights and protections of the Saudi Arabian government while working there. However, there are often cases of human rights violations committed by employers triggered by the kafala work system that is still used by the Saudi Arabian government.

### Migrant Worker

According to the International Labour Organisation (ILO), the concept of a migrant worker is someone who migrates, has migrated, from one country to another with an image of being employed by someone other than himself, including anyone who is regularly accepted as a migrant for employment. Based on the presentation from the ILO, if referring to migrant workers in Saudi Arabia, then a person or worker who can be said to be a migrant worker is someone who does not meet the above categories such as workers who work in the domestic sector by passing the correct procedures (legal).

### Kafala System<sup>52</sup>

The Kafala system is a system that focuses on migrant workers working in Arab countries. In the kafala system, there are rules that regulate the needs and matters related to migrant workers in the country. The focus of the kafala work system is that there is sponsorship or called the employer. Employers who employ migrant workers have the responsibility to guarantee all the needs of migrant workers from before the arrival of migrant workers to the place of work, the arrival of migrant workers to the destination country and during their stay in the country. Forms of employer responsibility towards

<sup>50</sup>Elpeni Fitrah. *Human Security Ideas and Indonesia's National Security Policy*. Journal of Insignia. Vol.2, No. 1 (2015), p. 28

<sup>51</sup>Zulfi Imran. *International Human Rights (HAM) in an Islamic Perspective*. Journal of Responsive Law, Vol.7, No. 7 (2019),p. 29

<sup>52</sup>Syafran Naufal. *Qatari Government's Kafala System Policy Towards Migrant Workers World Cup 2022*. (Thesis, Universitas Islam Indonesia: Yogyakarta, 2021), p. 29

such migrant workers such as shelter, wages or salaries, health, accommodation and guarantees to be treated fairly while working. Thus, these migrant workers are bound and dependent on their employers. The process of its application, which tends to bind migrant workers, raises questions in the international world because it is considered an irrelevant system to be applied to migrant workers in Arab countries. The irrelevance of the kafala work system in its application is seen from various cases that occur against migrant workers in Arab countries, such as cases of persecution, not being given wages, confinement to sexual violence. The binding kafala work system can provide loopholes against security threats and the rights of migrant workers. Where in the labor organization of the ILO there are rights of migrant workers that cannot be revoked by the sponsorship or employer as long as the migrant worker in the country is settled.

**Migration and Development<sup>53</sup>**

In general, migration is the movement of residents from one region to another across administrative boundaries in search of a decent livelihood from an economic point of view. While international migration refers to the movement of labor that goes beyond the borders of the country with the aim of getting a job in the destination country. Where the labor force will settle in the destination country in accordance with the time agreed in the employment contract. According to Todaro, there are two reasons someone migrates, namely that someone still has hopes of getting one of the many jobs in the city even though unemployment is increasing and someone still hopes to get a higher income at the destination than in the area of origin.

International migration is seen as a way to increase development at the regional, national, household, and individual levels through remittances. In research conducted by Trlin in New Zealand and David F. on the effect of migration on the increase in small-scale economic activity in India and China that ongoing migration activity has had a major influence not only on local economic aspects, but also able to influence local government policies in local economic

development planning. In addition, international migration can also accelerate the occurrence of socio-cultural transformation. Interactions carried out while in the destination country can cause changes such as changes in social structure and the development of new cultures as a consequence of the cultural contacts represented by migrant workers.

In that context, migrant workers act as agents of change. Transformation in the fields of science and technology can be used to support development in the country of origin, such as Indonesian migrant workers in Saudi Arabia as agents of change for development in Indonesia. Then from a gender perspective, the number of successful female migrant workers can bring about changes in gender relations in the family and country. Where the function and role of women in the social reproduction of the family will change and the role of women will increase in decision making, both in the family, society and the state.

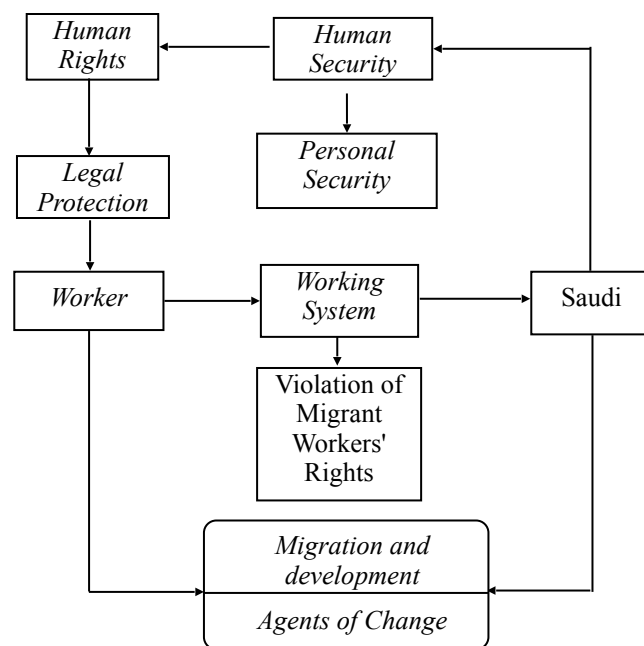


Figure 1: Operationalization of Theory

Based on the chart above, one of the migrant workers employed using the kafala work system is found in Saudi Arabia. Where the kafala work system used by the Saudi Arabian government tends to have an impact on

<sup>53</sup> Dinar Wahyuni. International Migration and Development : *International Migration and Development* . Journal of Studies, Vol. 18, No. 4 (2013),p. 308

violations of rights on migrant workers. Thus, it is necessary to *have human security* such as *personal security* to protect the human rights of migrant workers. Because migrant workers working in Saudi Arabia are one of the agents of change in development, especially in their home countries.

## DISCUSSION AND FINDING

### Factors Causing Violation of the Rights of Indonesian Migrant Workers in Saudi Arabia

In Arabic, kafala means to feed, guarantee or guarantee and support. Whereas in the 19th century Arabic dictionary, kafala means dependent, responsible, guarantee, and can also be interpreted as the union of responsibility to others. Based on some of the meanings of kafala above, the kafala work system used by Gulf countries, especially Saudi Arabia, is a work system based on Islamic teachings, namely the sponsor or employer where migrant workers work treats migrant workers with kafala treatment, namely as a guarantor and person in charge of the needs and security of migrant workers. However, the tradition of slavery during the Arabian Peninsula that was still inherent in Saudi Arabian society made the kafala work system a forum for modern slavery.

Islam does not justify the existence of a system of slavery, in fact Islam came to close the gaps in slavery that occurred in the Arabian Peninsula before the arrival of Islam. However, Islam did not abolish the system of slavery in an aggressive way, but rather by a gradual evolutionary step. Even at the time of the Messenger of Allah pbuh. slaves were seen as human beings who had honor because the wages of laborers had to be given before the dryness of his sweat and it was stated that the slave was the brother of the master whom Allah made was under his supervision, so let the master feed him from the kind of food he ate, give clothes from the type of clothing he wore and neither burden him with heavy work. Evidence of Islam's rejection and expectations of a change in slavery civilization can be found in the Qur'an which discusses slavery including: surah An-Nisa' (4): 92, surah Al-Maidah (5): 89, surah At-Taubah (9): 60, surah An-Nur (24): 33 and surah Al-Mujadilah (58): 2.

However, the slavery that occurred in the Arabian Peninsula is still ongoing today, especially in Saudi Arabia and is called modern slavery. Modern slavery can be seen from the employer's arbitrary treatment of migrant workers regulated in the kafala work system. The kafala work system implemented by Saudi Arabia describes the civilization of the jahiliyah period, where when employers hired migrant workers by ordering them through agents, they considered it to be a transaction of buying and selling slaves.

### Kafala System Creates Rights Violations against Indonesian Migrant Workers in Saudi Arabia

#### 1. State Policies That Tend to Be Exploitative

Saudi Arabia's state policy on the kafala work system has consequences such as restrictions on the rights of migrant workers and the development of laws. There are policies codified into law and the practice of forced labor is considered a common and institutionalized practice. In the kafala work system, the employer or sponsor has the ability and right to grant legal status to migrant workers who commit acts that violate the regulations such as fleeing.

#### 2. Exploitative Working Conditions

Exploitative working conditions are conditions created by sponsors or employers against migrant workers due to abuse of the kafala work system. Kafala, which basically has principles to guarantee, responsible and supervise migrant workers, is misused by employers to take advantage of its authority. Exploitative working conditions due to misuse of the kafala work system can be seen from various cases that often afflict migrant workers, especially Indonesian migrant workers, including poor living conditions, unable to exercise freedom of movement, unpaid wages, confiscation of passports to sexual violence.

#### 3. Exploitative Living Conditions

In the kafala work system in Saudi Arabia, the sponsor or employer is given the discretion to determine or choose the



place to be used as a place to live by migrant workers. In addition to choosing a place to live for migrant workers, the sponsor or employer also has the responsibility to provide decent accommodation for migrant workers. However, there are still sponsors who provide inappropriate or unsuitable accommodation for migrant workers in Saudi Arabia. The problems experienced by migrant workers such as labor camps lack the stock of basic needs, namely water and electricity, rooms that are not too spacious and inhabited by several people which results in overcrowding, do not have proper bathroom facilities. In addition, the male construction workers live in the suburbs in the labor camp.

Based on several things that caused the kafala system to become an irrelevant work system to cause violations of the rights of Indonesian migrant workers above, there was international pressure, especially from the international labor organization (ILO) to the Saudi Arabian government. One of the highlights of the ILO is article 1 paragraph 1, 2 paragraphs 1 and 25 in the supervision of the K29 application by the ILO regarding forced labor, there are several norms found in domestic Saudi Arabia that are more believed by its people than adopting or believing international norms regarding forced labor. There are three norms that Saudi Arabian society believes in, namely social, cultural and legal norms. The intended social norm is the closed social system of Saudi Arabian society (*close society*). This then causes dependence on migrant workers which has an impact on the vulnerability of abuse. Then the cultural norm believed by the people of Saudi Arabia is the existence of restrictions and exiles on women, because women are not allowed to leave the house without the permission of their husbands

or without the company of close relatives who are muhrim with them. Furthermore, Saudi Arabia's legal norms are not in accordance with the forced labor convention, namely immigration, labor and criminal law that do not provide sufficient protection guarantees for victims who experience violations.

Based on the theory of human security and the implementation of the kafala work system in Saudi Arabia, the security of migrant workers is very vulnerable and lacks protection from the Saudi Arabian government itself. The security of Indonesian migrant workers in Saudi Arabia is included in personal security. Personal security, especially for migrant workers, is still relatively low. Indonesian migrant workers are still threatened in their workforce. This can be seen from the cases that have occurred a lot and from the complaints of Indonesian migrant workers while working in Saudi Arabia. In addition, the principle of human security, especially personal security where personal security can be realized if individuals are avoided from fear, both fear of physical, verbal, torture / persecution, hostage taking, rape, violence against women and children are contrary to cases caused by the implementation of the kafala system, such as molestation, rape, physical and verbal abuse to sexual abuse. Apart from the principle of personal security, the principles of international human rights regarding migrant workers, namely migrant workers and their families have the right to freedom to life, free from slavery, torture, freedom from arbitrary treatment, get health care, wages and holidays are contrary to the impacts caused by the kafala system such as no holidays, limited rest, excessive working hours to unpaid salaries.

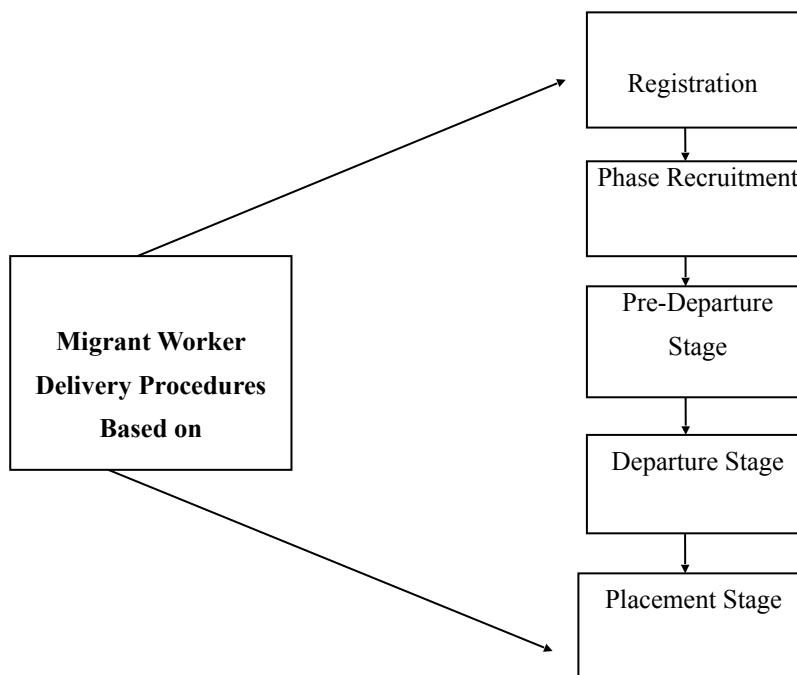


Figure 2: migrant worker delivery procedures based on International standards.  
Source: Authors, 2022.

### Sending Migrant Workers with Kafala Work System

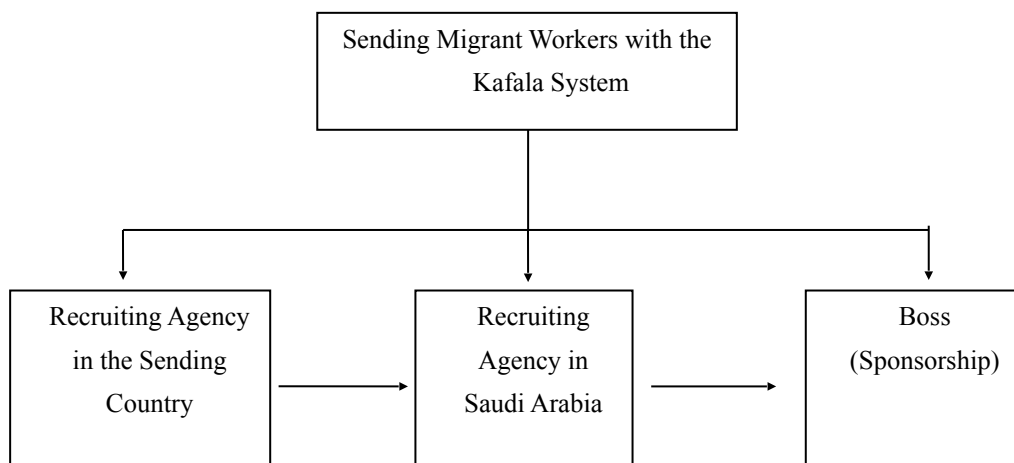


Figure 3: sending migrant workers using the kafala system Source: Processed Author, 2022

### Protection of the Rights of Indonesian Migrant Workers

#### Preventive Legal Protection

1. The regulation contains rules such as Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Article 7 states that the protection of prospective migrant workers or Indonesian migrant workers includes protection before work, during work and after work.

#### 2. Coaching

Coaching is carried out through the coaching of related agencies or institutions. Where the guidance is carried out by strengthening the role of institutions, such as BN2PTKI and the Ministry of Manpower. BN2PTKI is an operator in managing migrant workers, one of its duties and authorities is to crack down on illegal migrant worker shelters and crack down on private migrant worker placement companies (PPTKIS) if they

make mistakes. Meanwhile, the Ministry of Manpower as the regulator.

### 3. Extension

Extension is carried out by forming a system and network of information about the foreign job market that can be accessed by the public. In addition, the government also conducts counseling by providing overall information about the process and procedures for placing migrant workers abroad and providing information related to dangerous risks that may occur during the placement period. The counseling is carried out by the Manpower Office and related agencies or institutions such as BN2PTKI or BP2MI.

### 4. Supervision

Indonesia supervises the pre-placement period, placement period and post-placement period. Supervision is also carried out on a provincial and district/city scale. In addition, supervision is also carried out by the Indonesian Chamber of Commerce and Industry (Kadin). Where the Chamber of Commerce established a task force aimed at monitoring illegal migrant workers, providing protection to migrant workers abroad, overseeing government policies and implementing private placements that are not in favor of migrant workers and conducting various discussions with relevant agencies regarding the implementation, sending migrant workers abroad from pre-placement to repatriation.

## Repressive Legal Protection

### 1. Administrative

In the aspect of administrative legal protection, administrative sanctions based on Law No. 39 of 2004 concerning the Placement and Protection of Migrant Workers Abroad in article 100 paragraph 2 that administrative sanctions take the form of: written warnings, temporary suspension of part or all of the business activities of placement of migrant workers, revocation of permits, cancellation of departure of prospective migrant workers and repatriation of migrant workers from abroad at their own expense.

2. Criminal Aspects of criminal law in Law No. 39 of 2004 concerning the Placement and Protection of Migrant Workers abroad are regulated in Chapter XIII Articles 102 to 104.

### ***Memorandum of Understanding Agreement The Placement and Protection of Indonesian Domestic Workers Indonesia dan Saudi Arabia Tahun 2014***

The moratorium policy was issued in 2011. The moratorium on sending migrant workers to Saudi Arabia was first issued in the form of a *semi-moratorium (soft moratorium)* in January 2011. The issuance of the semi-moratorium is implemented in two ways, namely improvement in Indonesia by focusing on tightening the delivery of migrant workers such as improvements in the process of migrant workers' demand, job skills and language, recruitment of prospective migrant workers, debriefing, health tests, health tests, insurance guarantees, departure and protection of migrant workers while working abroad. The second way is to improve in Saudi Arabia by focusing on improving regulations and socialization. This is done by controlling *job orders* through the addition of conditions so that employers hire migrant workers are well selected.

After the Indonesian government issued the moratorium, Saudi Arabia responded by stopping the recruitment of migrant workers from Indonesia. The dismissal was carried out by dismissing the granting of visas to Indonesian migrant workers. The government's decision to stop the recruitment of migrant workers, especially for the domestic sphere, is considered to create a new problem, namely the rampant number of Indonesian citizens working in Saudi Arabia illegally. Employment conditions in 2011-2013 were no better than in 2005-2007. The rampant cases of rights violations and the increase in complaints by Indonesian migrant workers in Saudi Arabia, the Indonesian government has again made an agreement in the form of an MoU with Saudi Arabia as an effort to protect Indonesian migrant workers. On February 19, 2014, in Riyadh, representatives of the Indonesian government, namely Muhaimin Iskandar as minister of Manpower and Transmigration and Abdeul M. Fakeih as representative of the Saudi

Arabian government as minister of Manpower signed the MoU. Where the MoU agreed is a bilateral agreement between the governments of Indonesia and Saudi Arabia regarding the protection of Indonesian migrant workers in the domestic sector and the placement of migrant workers. However, the existence of the MoU has no specific impact on reducing rights violations experienced by Indonesian migrant workers. After 2014, after the MoU, there was indeed a reduction in complaints about the problem of Indonesian migrant workers, but it only ranged from no more than 8%

### One Channel Placement System

The One Channel Placement System is one of the bilateral cooperation between Indonesia and Saudi Arabia. The cooperation aims to protect the rights of Indonesian migrant workers and regulate the employment relationship between employers and Indonesian migrant workers in accordance with the laws and regulations applicable in each country as well as in international conventions. then on October 11, 2018 the one-channel placement system was agreed and inaugurated by Indonesia and Saudi Arabia. The signing was represented by the Minister of Manpower of the Republic of Indonesia, M. Hanif Dhakiri and the Minister of Manpower and Social Development of the Kingdom of Saudi Arabia, Ahmed bin Suleiman bin Abdul Aziz Al-Rajhi at the office of the Indonesian Ministry of Manpower. In addition, the governments of Indonesia and Saudi Arabia held another bilateral meeting on September 16, 2019 in order to discuss the progress that has been agreed regarding the one-channel placement system. In the meeting, several agreements were produced, including:

1. The pilot of the One Channel Placement System project will begin on October 1, 2019.
2. Extended the validity period of FY documents until April 2020.
3. Establish a *joint task force* that aims to monitor and evaluate the implementation of the One Channel Placement System and resolve *dispute settlements* that occur from the One Channel Placement System.

In addition to the agreement above,

Saudi Arabia also expressed commitments through its delegation, including:

1. Determine the number of *shari'a* who will participate in the One Channel Placement System, which is 42 *shari'a*.
2. updated the Pre-Departure Orientation material for prospective Indonesian migrant workers.
3. Ensure *that the hotline service* in Saudi Arabia can be accessed 24 hours by all Indonesian migrant workers in Indonesian

In *the One Channel Placement System* project, Indonesian migrant workers work with *the shari'a system*. Where *the shari'a* system is a system that involves companies appointed by Saudi Arabia and accountable to the Saudi Arabian government. Previously, Saudi used the kafala system, where employers or individuals were responsible to the Saudi Arabian government. Thus, Indonesian migrant workers no longer use the kafala system, but the shari'a system. However, the One Channel Placement System project is still in the trial stage and will be evaluated every three months. This collaboration will also only be implemented in certain locations such as Jeddah, Riyadh, Medina, Daman, Qobar and Dahrn. The One Channel Placement System is also implemented in several jobs such as *family driver; baby sitter; family cook, housekeeper; child careworker and elderly caretaker*.

However, based on the implementation of the *shari'a* system involving companies that have been appointed by the Saudi Arabian government, it was found that there is no difference between the kafala system and the *shari'a* system. This means that there is no difference in treatment by employers and companies involved in Indonesian migrant workers, there is even a case of one of the former TKWs from West Lombok being sold by the company that accommodated him to an employer and the company also did not care about the condition of migrant workers who were treated arbitrarily towards their employers. This proves that the *shari'a* system only meets the administrative requirements and the change of responsibility from the employer to the company. Based on suggestions from various international parties regarding the increase in the number of persons responsible for migrant

workers in Saudi Arabia, it is hoped that it can stop the arbitrary treatment of migrant workers. However, based on the results of such implementation, it can be proved that the increase and change of responsible persons is irrelevant to protect the rights of migrant workers.

## CONCLUSION

1. Factors that cause the kafala work system to cause violations of the rights of Indonesian migrant workers include: state policies that tend to be exploitative, exploitative working conditions, exploitative living conditions to the still attached tradition of slavery in Saudi Arabian society.
2. The procedure for sending migrant workers with the kafala system is not in accordance with international standards so that it is vulnerable to causing violations of the rights of migrant workers
3. Indonesia's efforts to protect the rights of migrant workers in Saudi Arabia include: preventive legal protection, repressive legal protection and agreements in the form of an MoU on the protection of migrant workers and a one-channel placement system with Saudi Arabia.

However, the existence of legal protections and agreements has not been able to stop cases of violations of the rights of Indonesian migrant workers due to the weak guidance and supervision by the government and agencies as well as supervision on the part of Saudi Arabia. In addition, in this study, it was also found that in the implementation of the shari'a system there were no differences with the kafala system. This means that in the application of the shari'a system there is still treatment like in the kafala system.

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