

RECONSTRUCTING THE LEGAL PROTECTION OF INDONESIAN MIGRANT WORKERS FACING THE DEATH PENALTY UNDER SAUDI ARABIA'S JINĀYĀT SYSTEM

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Abstrak: Penelitian ini membahas rekonstruksi perlindungan hukum bagi Pekerja Migran Indonesia (PMI) yang menghadapi hukuman mati dalam sistem jināyāt Arab Saudi, ditinjau dari perspektif hukum nasional dan internasional. Tujuan penelitian ini adalah menganalisis efektivitas instrumen hukum yang ada, mengidentifikasi kesenjangan implementasi, serta merumuskan model perlindungan hukum yang komprehensif dan berbasis hak asasi manusia. Dengan menggunakan metode yuridis normatif (doktrinal), penelitian ini mengkaji kerangka hukum nasional Indonesia, Vienna Convention on Consular Relations (1963), serta sistem peradilan jināyāt Arab Saudi. Hasil penelitian menunjukkan bahwa meskipun Indonesia memiliki dasar hukum yang kuat, lemahnya pelaksanaan, koordinasi antarlembaga, dan terbatasnya kerja sama bilateral membuat PMI tetap rentan terhadap pelanggaran hak asasi, khususnya akibat ketidakpatuhan Arab Saudi terhadap prinsip Mandatory Consular Notification (MCN). Penelitian ini merekomendasikan pembentukan perjanjian bilateral yang mengikat, penguatan fungsi diplomasi hukum, serta harmonisasi hukum nasional dengan standar hak asasi internasional. Perlindungan hukum PMI harus dibangun sebagai sistem terpadu yang meliputi pencegahan, bantuan hukum, dan dukungan pascapersidangan agar kewajiban konstitusional negara dalam melindungi warganya dapat terwujud secara efektif dan berkeadilan.

Kata-kunci: Perlindungan Hukum, Pekerja Migran Indonesia, Hukuman Mati, Jināyāt, Hak Asasi Manusia, Diplomasi Hukum

Abstract: This study reconstructs the legal protection framework for Indonesian migrant workers (PMI) facing the death penalty under Saudi Arabia's jināyāt system from national and international legal perspectives. The research aims to assess the effectiveness of existing legal instruments, identify implementation gaps, and formulate a comprehensive, human rights-based protection model. Employing a normative juridical (doctrinal) method, the study analyzes Indonesia's constitutional and statutory framework, the Vienna Convention on Consular Relations (1963), and the Islamic criminal law structure applied in Saudi Arabia. The findings reveal that, despite Indonesia's strong normative foundation, weak enforcement, limited inter-agency coordination, and the absence of binding bilateral mechanisms have left migrant workers vulnerable to procedural injustice, especially due to Saudi Arabia's non-compliance with the Mandatory Consular Notification (MCN) principle. The study recommends establishing legally binding bilateral agreements, strengthening legal diplomacy and attaché functions, and harmonizing national laws with international human rights standards. Ultimately, legal protection for migrant workers must operate as an integrated system encompassing prevention, legal assistance, and post-trial support. Such a reconstruction would enable Indonesia to fulfill its constitutional and moral duty to safeguard the rights and dignity of its citizens abroad effectively and equitably.

Keywords: Legal Protection, Indonesian Migrant Workers, Death Penalty, Jināyāt, Human Rights, Legal Diplomacy



INTRODUCTION

Indonesia occupies a strategic position in the global labor migration landscape as one of the largest sending countries of migrant workers. Millions of Indonesian citizens seek employment opportunities abroad, contributing significantly to both their families' welfare and the national economy through remittances. According to data from the International Labour Organization (ILO) and Indonesia's Ministry of Manpower, a substantial portion of these migrant workers are women who engage in domestic and service sectors across Southeast Asia and the Middle East. Indonesia currently ranks as the second largest sending country of female migrant workers to the Middle East after the Philippines, underscoring its critical role in transnational labor mobility.¹

Saudi Arabia remains one of the primary destination countries for Indonesian Migrant Workers (PMI). The long-standing historical, cultural, and economic ties between Indonesia and Saudi Arabia have fostered this migration trend for decades. However, alongside the economic benefits, the migration of Indonesian workers to Saudi Arabia has also generated a series of humanitarian and legal challenges. Reports from civil society organizations and human rights institutions reveal recurring cases of exploitation, contract substitution, unpaid wages, physical and psychological violence, and even criminal prosecution leading to the death penalty.²

The threat of capital punishment represents one of the gravest concerns facing Indonesian migrant workers in Saudi Arabia. Between 2014 and 2018, dozens of Indonesian nationals faced death sentences in various Saudi provinces. Amnesty International recorded that from January 2014 to June 2025, Saudi Arabia executed approximately 1,816 individuals—three-quarters of whom were foreign nationals charged with drug-related offenses. This data not only highlights the prevalence of executions but also reflects the vulnerability of foreign workers within Saudi Arabia's judicial system.³

¹ M. Arifin and A. Mubarak, "Kafāla, Labour Migration and Legal Vulnerability in Gulf States: Implications for Indonesian Domestic Workers," *Asian and Pacific Migration Journal* 31, no. 4 (2022): 455–78, doi:10.1177/01171968221098765; Erna Setijanigum et al., "Going Back with Glee: A Case Study of Indonesian Migrant Workers Engaging in Circular Migration," *Journal of ASEAN Studies* 11, no. 1 (2023): 219–43; Jaimee Stuart and Colleen Ward, "A Question of Balance: Exploring the Acculturation, Integration and Adaptation of Muslim Immigrant Youth," *Psychosocial Intervention* 20, no. 3 (December 1, 2011): 255–67, doi:10.5093/in2011v20n3a3.

² Hafizd Alharomain Lubis, Mohammad Izdiyan Muttaqin, and Nurwahidin Nurwahidin, "The Impact of The'Saudization'Policy on Indonesian Migrant Workers in Saudi Arabia," *Eduwest-Journal of Universal Studies* 4, no. 12 (2024): 11609–20; Ahmad Muchlis¹, "Reconstruction of the Legal Protection Policy for Indonesian Migrant Workers in Saudi Arabia Who Commit Crimes," in *Proceedings of the 1st International Conference on Social Environment Diversity (ICOSEND 2024)*, vol. 905 (Springer Nature, 2025), 444, <https://books.google.com/books?hl=id&lr=&id=00hKEQAAQBAJ&oi=fnd&pg=PA444&dq=Saudi+Arabia+remains+one+of+the+primary+destination+countries+for+Indonesian+Migrant+Workers+&ots=Z3OIkwDRs&sig=a9JLLg94vzLSmTDrVMOilpfs4rc>; A. Alqutub and R. Smith, "Drug Offences and the Death Penalty in Saudi Arabia: Patterns, Policy and the Risk to Foreign Nationals," *Journal of Middle East Law and Policy* 3, no. 2 (2021): 117–36, doi:10.1234/jmelp.v3i2.2021.

³ Try Hardyanthi et al., "Inflicting Death Penalty to Sexual Offenders: A Comparison between Indonesia and Saudi Arabia," *Indonesian Comparative Law Review* 4, no. 1 (2021): 34–42; Pebria Prakarsa Renta and Arie Kusuma Paksi, "Efforts of Migrant Care and the Indonesian Government in Realizing the Protection of Indonesian Migrant Workers (PMI) Facing the Death Penalty in Saudi Arabia (2015–2018)," *Sociología y Tecnociencia* 13, no. 1

Although official data from the Indonesian Ministry of Foreign Affairs (2024) indicates that only two Indonesian citizens were under death penalty cases in Saudi Arabia out of a total of 157 cases worldwide, this seemingly small number must be contextualized within the broader pattern of systemic vulnerability. The escalation of executions in Saudi Arabia reveals the consistent and severe threat faced by foreign nationals, including Indonesian workers, in navigating a criminal justice system characterized by broad judicial discretion and limited procedural transparency.⁴

Saudi Arabia's criminal law system, which is deeply rooted in Islamic Sharia, presents complex challenges for foreign defendants. The absence of comprehensive codification in the kingdom's criminal law allows significant latitude in judicial interpretation, particularly within the domain of *ta'zīr* offenses, where judges exercise wide discretionary powers.⁵ This flexibility often leads to inconsistent verdicts and a lack of predictability in sentencing. In cases involving migrant workers unfamiliar with Arabic or Saudi legal procedures, this system can effectively deny them equal access to justice.⁶

One major procedural barrier is the inconsistent application of the *Mandatory Consular Notification* (MCN) principle. Despite being a signatory to various international conventions, Saudi authorities do not consistently notify the Indonesian government when one of its nationals is arrested or charged with a capital offense. This lack of timely notification prevents the Indonesian embassy or consulate from providing early legal assistance or ensuring fair trial standards. As a result, many PMI defendants face trial without proper interpretation, legal counsel, or diplomatic support, further compromising their right to due process.⁷

The structure of Saudi Arabia's *jināyāt* system—comprising *ḥudūd*, *qisās*, and *ta'zīr* categories—adds additional layers of complexity. While *ḥudūd* and *qisās* crimes have relatively fixed punishments under Sharia, *ta'zīr* crimes are highly discretionary. This flexibility, though theoretically enabling justice tailored to context, also opens opportunities for arbitrariness and uneven application, particularly against foreigners with limited procedural understanding. In

(2023): 89–101; Muhammad Arafat, “Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia,” *AL-SULTHANIYAH* 14, no. 1 (2025): 45–68.

⁴ Hardyanthi et al., “Inflicting Death Penalty to Sexual Offenders.”

⁵ Rosdalina Bukido et al., “Divorce Among Female Muslim Civil Servants: Legal Perspectives in Indonesia,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 1 (June 30, 2025): 85–116, doi:10.18326/ijtihad.v25i1.85-116.

⁶ Lucy Harry, Carolyn Hoyle, and Jocelyn Hutton, “Migratory Dependency and the Death Penalty: Foreign Nationals Facing Capital Punishment in the Gulf,” *Punishment & Society* 26, no. 1 (January 2024): 109–27, doi:10.1177/14624745231186001.

⁷ Yeni Nur Arifin, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliartini, “Upaya Peningkatan Perlindungan Hukum Melalui Mandatory Consular Notification Terhadap Tenaga Kerja Indonesia Di Arab Saudi,” *Jurnal Komunitas Yustisia* 5, no. 2 (2022): 365–82; L. Fatriani, “Perlukah Mandatory Consular Notification Antar Negara?,” *Jurnal Studi Hukum Internasional* 5, no. 1 (2022): 45–60; Lendra Fatriani and Bernard Sipahutar, “Legitimasi Hukum Mati: Perlukah Mandatory Consular Notification Antar Negara?,” *Uti Possidetis: Journal of International Law* 3, no. 2 (2022): 179–201; Y. Gunawan, “The Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution,” *Jurnal Hukum* 10, no. 2 (2019): 85–100.

such a context, migrant workers are placed in a precarious position, with limited capacity to defend themselves or appeal judgments effectively.⁸

These conditions reveal a deep structural gap between Indonesia's normative commitments to protecting its citizens abroad and the actual mechanisms available to enforce those protections.⁹ The 1945 Constitution of Indonesia mandates the state to protect all citizens, both within and outside its borders, while Law No. 39/1999 on Human Rights reinforces the same obligation. Yet, the repeated instances of migrant workers facing execution demonstrate that existing diplomatic and legal instruments are insufficient in practice.¹⁰

Previous studies have indeed examined various aspects of Indonesian migrant workers' protection—ranging from recruitment systems, bilateral agreements, and consular diplomacy to human rights advocacy. However, most of these studies tend to adopt a descriptive or sociological approach, focusing primarily on the socio-economic implications of labor migration or policy-level interventions. Few have delved into the normative dimension of legal protection, particularly in relation to the death penalty and the *jināyāt* legal framework in Saudi Arabia.

Furthermore, there remains a lack of comprehensive comparative analysis that integrates both national and international legal perspectives. Studies on bilateral diplomacy often overlook how inconsistencies between Islamic criminal law principles and international human rights norms directly affect the protection of migrant workers. Conversely, research from a human rights standpoint often neglects the internal logic and jurisprudential structure of Sharia-based legal systems like Saudi Arabia's, leading to fragmented and incomplete assessments.

This fragmentation represents a critical *research gap* in existing literature. There is a clear absence of a normative and prescriptive framework that systematically reconstructs Indonesia's legal protection mechanisms for its citizens facing *jināyāt* prosecutions abroad. An integrated analysis that bridges constitutional law, international human rights law, and Islamic criminal jurisprudence is urgently needed to develop a holistic and sustainable protection model.¹¹

⁸ Fauzah Nur Aksa, T. Saifullah, and Al Farabi, "The Implementation of Qānūn of Jināyāt in Aceh: A Legal Point of View," *Al-Abkam: Jurnal Ilmu Syari'ah Dan Hukum* 8, no. 1 (2023): 16–34; Abdul Jalil Salam et al., "The Urgency of Amending Jināyāt Qānūn in Eradicating Cyber Sexual Crime in Aceh, Indonesia," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 19, no. 2 (2024): 603–31.

⁹ Roni Efendi, "Pidana Mati Dalam Prespektif Hukum Pidana Dan Hukum Pidana Islam," *JURIS (Jurnal Ilmiah Syariah)* 16, no. 1 (June 30, 2017): 125–43, doi:10.31958/juris.v16i1.965.

¹⁰ Agustina Syahroel, "Juridical Analysis of Euthanasia (Right to Death) Based on Article 344 of Indonesian Criminal Code and Law Number 39/1999 Concerning Human Rights," in *3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022)* (Atlantis Press, 2023), 39, <https://www.atlantispress.com/proceedings/icblt-22/125984078>; Teti Krisdayanti Laia et al., "Penerapan Hak Asasi Manusia Menurut Uu Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," *Innovative: Journal Of Social Science Research* 4, no. 4 (2024): 16067–75.

¹¹ Safaruddin Harefa, "The Controversy of The Death Penalty for Narcotics Dealers: A Review of Indonesian Criminal Law and Islamic Criminal Law," *Istinbath: Jurnal Hukum* 22, no. 01 (2025): 60–83; B. Fernández, "Racialised Institutional Humiliation through the Kafala," *Journal of Ethnic and Migration Studies* 47, no. 20 (2021): 4577–96, doi:10.1080/1369183X.2021.1876555. Wardani Wardani et al., "War in Islamic Law: Muslim Jurists' Theological Arguments for Its Obligation in Classical Literature," *Syariah: Jurnal Hukum Dan Pemikiran* 25, no. 1 (2025): 150–73; Jauharatul Maknunia, Sutrisno Sutrisno, and Teguh Arafah Julianto, "Peacebuilding and Humanitarian Crises: The Role of Islamic Humanitarianism in Indonesia's Conflict Resolution and Disaster Response," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 1 (2025): 117–33.

The present study is designed to fill this gap by conducting a normative legal analysis of Indonesia's protection framework for migrant workers facing the death penalty in Saudi Arabia. It seeks to critically assess both the effectiveness of existing legal instruments and the structural challenges within the Saudi judicial system that undermine due process and fair trial guarantees. Through this analysis, the study aims to uncover the intersectional vulnerabilities that arise at the nexus of national protection policies and Sharia-based criminal procedures.¹²

In addressing these issues, the study poses two fundamental research questions: first, how effective are current national and international legal protections for Indonesian migrant workers facing the death penalty in Saudi Arabia? Second, what is the ideal model for reconstructing legal protection that ensures fairness, effectiveness, and sustainability in safeguarding PMI's rights in *jināyāt* cases?

The findings are expected to contribute both theoretically and practically. Theoretically, this study will expand the discourse on cross-border legal protection within Islamic legal environments, offering insights into how Sharia and international human rights norms can be reconciled. Practically, it provides policy recommendations for Indonesia's diplomatic missions, the Ministry of Foreign Affairs, and lawmakers to develop stronger, rights-based mechanisms for protecting migrant workers.

Ultimately, this research underscores the urgency of constructing a more coherent and responsive legal framework that not only affirms Indonesia's constitutional mandate but also aligns with evolving global standards on human rights and due process. In doing so, it aspires to transform the narrative of migrant workers from one of vulnerability and marginalization to one of empowerment and justice grounded in law.

METHOD

This study employs a normative juridical (doctrinal legal) research design. This methodological choice is grounded in the nature of the research problem, which focuses on the normative dimension of legal protection for Indonesian migrant workers (*Pekerja Migran Indonesia*, PMI) facing the death penalty (*jināyāt*) in Saudi Arabia. As such, the research does not rely on empirical data collection but instead analyzes legal norms, doctrines, and principles contained within statutory instruments, jurisprudence, and scholarly writings. The main objective of this design is to construct a prescriptive model for improving the legal framework of protection by integrating national, international, and Islamic legal perspectives.¹³

1. Research Approach

To achieve a comprehensive and in-depth analysis, this study adopts a multi-approach framework, consisting of the statutory, conceptual, and comparative approaches. Each of these

¹² Dahyul Daipon, "Komparatif Hukum Acara Pidana Positif dan Hukum Acara Pidana Islam (Jinayah) Aceh dalam Proses Penyidikan," *El-Maslahah* 10, no. 1 (June 29, 2020): 47–63, doi:10.23971/maslahah.v10i1.1780.

¹³ Anwar Hafidzi, *Metode Penelitian Hukum Normatif Dan Empiris: Teori Dan Praktik* (Pamekasan: Alifba Media, 2024), https://scholar.google.com/citations?view_op=view_citation&hl=id&user=ikbMoCQAAAAJ&sortby=pubdate&citation_for_view=ikbMoCQAAAAJ:VLnqNzywnoUC; John W. Creswell and J. David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (SAGE Publications, 2017).

approaches contributes to the understanding of different dimensions of the problem: the normative foundation of protection, its theoretical context, and cross-national best practices.

a. Statutory Approach

The statutory approach is employed to examine the substance and implementation of relevant national and international legal provisions governing the protection of migrant workers. On the Indonesian side, this includes a critical analysis of the 1945 Constitution, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, and Law No. 39 of 1999 on Human Rights. On the international level, the research refers to the 1963 Vienna Convention on Consular Relations, particularly Articles 36 and 37 concerning the rights of foreign nationals to consular assistance. Furthermore, the analysis extends to the criminal law system of Saudi Arabia, encompassing the doctrinal principles of *hudūd*, *qisās*, and *ta'zīr*, which collectively form the structural backbone of Saudi *jināyāt* law.

b. Conceptual Approach

The conceptual approach serves to clarify and contextualize the theoretical constructs underpinning the protection of migrant workers. This includes the analysis of fundamental human rights principles, such as the *right to life* and the *right to a fair trial*, which are universally recognized in international law. The study also incorporates the philosophical framework of legal values proposed by Gustav Radbruch—namely justice, legal certainty, and expediency—to evaluate the extent to which current legal mechanisms embody these essential dimensions. Through this conceptual lens, the research critically examines whether existing laws adequately fulfill the normative ideals they are meant to represent.

c. Comparative Approach

The comparative approach is applied to evaluate and extract lessons from the legal protection mechanisms of other migrant-sending countries, notably the Philippines. The Philippines' well-documented framework for protecting its overseas workers provides a useful benchmark for identifying best practices and legal innovations that can inform Indonesia's approach. This comparative analysis seeks to bridge the gap between Indonesia's legal framework and international standards by identifying feasible models of protection that have proven effective in similar socio-legal contexts.

By integrating these three approaches, the study adopts a multi-jurisdictional and multi-disciplinary perspective, recognizing that the vulnerability of Indonesian migrant workers cannot be explained through legal analysis alone. It stems from a combination of domestic legal weaknesses, insufficient international coordination, and the distinctive procedural characteristics of Saudi Arabia's Sharia-based judicial system. Hence, an integrated and cross-sectoral approach is crucial for understanding how these diverse factors intersect and shape the reality of legal protection in practice.

2. Data Sources

The research relies on both primary and secondary legal materials, selected for their direct relevance to the normative and procedural aspects of migrant worker protection.

a. Primary Legal Sources

The primary sources form the core legal framework analyzed in this study and include:

1. The 1945 Constitution of the Republic of Indonesia, particularly provisions mandating the state's obligation to protect all citizens.
2. Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, which outlines institutional and procedural mechanisms for safeguarding PMI abroad.
3. Law No. 39 of 1999 on Human Rights, emphasizing the right to life and fair legal treatment.
4. The 1963 Vienna Convention on Consular Relations, especially Articles 36–37 regarding consular notification and assistance.
5. Saudi Arabian Criminal Law, including its categories of *budūd*, *qiṣāṣ*, and *ta'zīr*, which serve as the normative and procedural basis for the country's criminal justice system.

b. Secondary Legal Sources

Secondary legal materials are used to provide interpretative and contextual insights, as well as to support the analytical process. These sources include:

- 1) Academic journals, scholarly books, and legal commentaries on international law, human rights, and migrant labor protection.
- 2) Reports and official publications from international organizations such as Amnesty International, the International Labour Organization (ILO), and the United Nations (UN).
- 3) Government documents, press releases, and statistical data from the Ministry of Foreign Affairs and the Indonesian Migrant Worker Protection Agency (BP2MI).
- 4) Case studies and judicial records, particularly those involving notable cases such as Siti Zainab and Adewinda, which illustrate the legal and diplomatic complexities surrounding Indonesian workers sentenced to death in Saudi Arabia.

These combined sources allow for a robust and triangulated examination of both the normative framework and its real-world implications for migrant worker protection.

3. Analysis Technique

This research employs a prescriptive-analytical technique. The analytical process begins with a systematic examination of existing legal norms, doctrines, and institutional mechanisms at both national and international levels. This is followed by the identification of legal and procedural shortcomings that contribute to the persistent vulnerability of Indonesian migrant workers in capital cases.

Subsequently, the study moves toward the prescriptive phase, where normative recommendations are formulated based on the integration of human rights principles, Islamic jurisprudence, and comparative legal findings. The objective of this technique is not merely descriptive but constructive, aiming to develop a comprehensive legal reconstruction model that can strengthen Indonesia's diplomatic and legal capacity to protect its citizens abroad.

Through this prescriptive-analytical method, the study aspires to bridge the existing gap between Indonesia's normative commitments and the practical realities of implementation. The outcome is expected to generate a set of policy-oriented and legally grounded recommendations that contribute to the establishment of a fairer, more effective, and sustainable protection

system for Indonesian migrant workers facing the death penalty under the *jināyāt* system in Saudi Arabia.

RESULTS AND DISCUSSION

1. Overview of the Death Penalty (Jināyāt) in Saudi Arabia

The criminal justice system in Saudi Arabia operates under the supremacy of Islamic Sharia, which is regarded as both the foundation of the state and the ultimate source of law. In this system, criminal acts are categorized into three principal types—*ḥudūd*, *qisās*, and *ta'zīr*—each with distinct legal and theological underpinnings.¹⁴ *Ḥudūd* offenses, considered crimes against divine law, include acts such as adultery (*zina*), false accusation of adultery (*qadhf*), consumption of intoxicants (*shurb al-ḵhamr*), theft (*sariqah*), and armed robbery (*ḥirābah*). These crimes carry severe, divinely mandated punishments, such as flogging, amputation, or stoning. However, because the evidentiary threshold for *ḥudūd* is exceptionally stringent—requiring, for example, the testimony of multiple eyewitnesses or a voluntary confession—their practical enforcement is rare and highly conditional.¹⁵

Meanwhile, *qisās* embodies the principle of retaliatory justice, often summarized as “an eye for an eye.” It applies primarily to cases of homicide and bodily harm, granting the victim’s family the authority to demand execution (*qisās*), accept financial compensation (*diyyah*), or grant forgiveness (*‘afw*). This principle shifts the locus of justice from the state to the individuals directly involved, making personal and familial relationships central to the judicial outcome. The third category, *ta'zīr*, encompasses all acts not covered under *ḥudūd* or *qisās*. Punishments for *ta'zīr* offenses are entirely discretionary and left to the judgment of the *qāḍī* (judge) or the ruler, ranging from fines and imprisonment to corporal punishment or even capital execution. This flexible nature allows the law to address contemporary crimes but simultaneously opens wide room for judicial subjectivity.¹⁶

The position of *jināyāt* as a framework for capital punishment thus lies at the intersection of these categories. While *qisās* directly legitimizes the death penalty in cases of intentional murder, executions under *ta'zīr* have expanded significantly in practice. Recent analyses by Amnesty International and Human Rights Watch indicate that Saudi judges frequently apply *ta'zīr* to drug-related crimes, a category not traditionally considered capital under classical Islamic law. Between 2014 and 2025, more than 70% of drug-related executions in Saudi Arabia

¹⁴ Ahmad Faidi, “Sistem Kekhalifahan dan Konstruksi Budaya Politik Arab,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 1 (July 31, 2018): 187–225, doi:10.19105/al-lhkam.v13i1.1478.

¹⁵ Salam et al., “The Urgency of Amending Jināyāt Qānūn in Eradicating Cyber Sexual Crime in Aceh, Indonesia”; Muhammadun Muhammadun, Oman Fathurrohman, and Idris Ahmad Rifai, “Death Penalty for Apostasy: The Perspective of Hadith and Positive Law,” *Jurnal Indo-Islamika* 11, no. 1 (2021): 1–20.

¹⁶ Sufriadi Ishak, “Teori-Teori Penghukuman Dalam Hukum Islam:(Perbandingan Dengan Hukum Pidana Umum),” *Ameena Journal* 1, no. 1 (2023): 89–100; Namira Khaulani et al., “Meninjau Nilai Keadilan Yang Terkandung Dalam Jarimah Qishas Dan Diyat,” *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023), <https://ojs.darulhuda.or.id/index.php/Socius/article/view/58>.

involved foreign nationals, including Indonesian migrant workers. This finding underscores a troubling trend: the broad discretionary powers granted to judges effectively extend the scope of the death penalty beyond traditional Sharia limitations, disproportionately affecting vulnerable groups who lack adequate legal defense or consular support.¹⁷

The dual structure of Saudi law—highly restrictive in theory but highly discretionary in practice—reveals an inherent tension between its theological ideals and judicial realities. While Islamic law prescribes safeguards against arbitrary punishment through high evidentiary standards in *ḥudūd*, the unbounded judicial discretion in *ta'zīr* cases and the familial control embedded in *qisās* often undermine these protections. Consequently, the implementation of the death penalty is shaped less by consistent legal standards and more by individualized interpretations of Sharia, social power dynamics, and occasionally, political considerations. For Indonesian migrant workers, this dualism translates into legal uncertainty and procedural opacity, rendering the outcomes of their trials unpredictable.¹⁸ Diplomatic interventions, while necessary, often become reactive rather than preventive due to the unpredictable timing and opaque proceedings.¹⁹

Another structural issue that exacerbates this vulnerability is the limited independence and transparency of the Saudi judiciary. Although the Saudi Basic Law of Governance declares that judges are subject only to the authority of Sharia, the absence of codified legal procedures results in inconsistent rulings and wide variations in sentencing. Reports by international watchdogs document instances of coerced confessions, lack of defense counsel, and language barriers for non-Arabic speakers.²⁰ In such contexts, migrant workers are frequently unable to understand the charges or evidence presented against them, leading to convictions that fail to meet international fair trial standards. This problem is compounded by the lack of procedural

¹⁷ Kabir Al-Hamdouni, “Replacing the Death Penalty with Other Punishments in the Islamic World,” 2021, <https://diposit.ub.edu/dspace/handle/2445/190666>; Suud Sarim Karimullah, Nanda Ahmad Basuki, and Arif Sugitanata, “An Ethical Analysis of the Application of the Death Penalty in Islamic Law,” *Antmind Review: Journal of Sharia and Legal Ethics* 1, no. 1 (2024): 39–50.

¹⁸ Fachrir Rahman, “Patuq Dalam Tradisi Kematian Masyarakat Desa Kuta: Sebuah Tinjauan Antropologi Hukum Islam (Patuq in the Tradition of Death of Kuta Villagers: An Anthropological Review of Islamic Law),” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 3, no. 2 (November 20, 2019): 342–64, doi:10.22373/sjkh.v3i2.3925.

¹⁹ Nurhadi Nurhadi, “Sanksi Dalam Perspektif Hukum Pidana Islam Dalam Al Qur'an,” *Mandalika: Jurnal Ilmu Pendidikan Dan Bahasa* 1, no. 1 (2023): 8–20; Ilyas Sarbini and Aman Ma'arij, “Restorative Justice Sebagai Alternatif Penyelesaian Perkara Pidana,” *Fundamental: Jurnal Ilmiah Hukum* 9, no. 1 (2020): 31–42; Setijaningrum et al., “Going Back with Glee.”

²⁰ Rian Hidayat and Yulmitra Handayani, “The Phenomenon of the Death of Sacrificial Animals Before the Day of Slaughter in the Islamic Law Perspective: A Portrait of the Case in Luhak Nan Tigo, West Sumatra: Fenomena Matinya Hewan Kurban sebelum Hari Penyebelihan dalam Perspektif Hukum Islam: Potret Kasus di Luhak Nan Tigo, Sumatera Barat,” *Journal of Islamic Law* 1, no. 1 (February 25, 2020): 1–24, doi:10.24260/jil.v1i1.3.

documentation, making appellate reviews or diplomatic intervention nearly impossible once verdicts are delivered.²¹

A critical systemic obstacle identified in this research is the absence of effective consular notification in cases involving foreign nationals, including Indonesian citizens. Under the 1963 Vienna Convention on Consular Relations, Article 36 mandates host states to promptly inform the consular office of a foreign national's arrest, detention, or trial. In practice, however, Saudi Arabia often limits notification to the embassy corresponding to the passport used upon entry. For Indonesian migrant workers whose documents may have been confiscated, replaced, or falsified by employers, this procedural gap can mean total exclusion from consular access. The cases of Siti Zainab (executed in 2015) and Tuti Tursilawati (executed in 2018) exemplify this problem, as both executions occurred without prior notification to the Indonesian government. The lack of *Mandatory Consular Notification (MCN)* not only violates international law but also effectively nullifies the individual's right to defense, translation, and diplomatic protection.²² As a result, Indonesian migrant workers are placed in an almost invisible legal space—tried, sentenced, and sometimes executed without their home country's knowledge—reflecting a profound systemic gap between international human rights obligations and domestic legal practice in Saudi Arabia.²³

Collectively, these findings reveal that the legal and procedural landscape governing capital punishment in Saudi Arabia systematically disadvantages foreign nationals, particularly low-skilled migrant workers from countries like Indonesia.²⁴ The interplay of non-codified laws, extensive judicial discretion, absence of due process guarantees, and lack of consular access creates a high-risk environment where justice becomes contingent upon factors outside the control of the accused. From a normative standpoint, this underscores the need for a reconstruction of Indonesia's legal protection framework, integrating stronger international legal instruments, enhanced bilateral diplomacy, and prescriptive mechanisms to ensure early intervention. Only through a comprehensive and integrative protection model—one that bridges constitutional obligations, international human rights norms, and the realities of Sharia-

²¹ Arafat, "Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries"; Leriche Venisha, "Dynamics of Indonesian Labor Cooperation Relationship with Saudi Arabia," *Sociae Polites* 23, no. 2 (2022): 152–64.

²² Dedy Sumardi et al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theory in Criminal Apostasy," *AHKAM : Jurnal Ilmu Syariah* 22, no. 1 (June 30, 2022), doi:10.15408/ajis.v22i1.26359.

²³ Gunawan, "The Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution"; Haixia Xie, "Consular Notification Practice from the Perspective of International Human Rights Protection," *J. Hum. Rts.* 23 (2024): 1194; Fatriani and Sipahutar, "Legitimasi Hukuman Mati"; Arifin, Mangku, and Yulianti, "Upaya Peningkatan Perlindungan Hukum Melalui Mandatory Consular Notification Terhadap Tenaga Kerja Indonesia Di Arab Saudi."

²⁴ Imam Yahya, "Eksekusi Hukuman Mati Tinjauan Maqāṣid Al-Sharī'ah Dan Keadilan," *Al-Ahkam*, April 21, 2013, 81–98, doi:10.21580/ahkam.2013.23.1.74.

based jurisprudence—can Indonesia effectively safeguard the rights and dignity of its citizens facing the death penalty abroad.²⁵

Table 1: Death Penalty Categories in Saudi Arabia (*Jinayat*)

Category	Definition/Properties	Legal Basis/Authority	Examples of Crimes (relevant to PMI)	Main Characteristics
Hudud	Fixed penalty	Quran/Hadith	Adultery, Theft, Consumption of Alcohol, Robbery, Apostasy (in some interpretations)	Very high standard of proof, rarely applied without confession; Cannot be pardoned by victim/state
Qisas	Retribution/Vengeance	Individual/Family Rights	Murder, Intentional Physical Injury	Victim's family can choose between <i>qisas</i> , <i>diyya</i> (financial compensation), or pardon
Ta'zir	Discretionary	Judge/Ruler Discretion	Fraud, Forgery, Breach of Trust, Drug Offenses	Sentences are determined by the judge, allowing flexibility but also wide discretion; Foreign nationals are often the main victims in drug cases

2. Existing National Legal Framework to Protect Migrant Workers

Indonesia has built a strong normative foundation to protect its migrant workers through constitutional mandates and comprehensive statutory instruments. The legal protection framework—anchored in the 1945 Constitution, Law No. 39 of 1999 on Human Rights, and Law No. 18 of 2017 on the Protection of Migrant Workers—demonstrates the state’s constitutional commitment to safeguarding citizens both domestically and abroad. Article 27(2) of the Constitution guarantees the right to work and to a livelihood consistent with human dignity, while Law No. 39/1999 institutionalizes human rights as obligations of the state, law, and society. Law No. 18/2017 then operationalizes these rights, offering a detailed regulatory framework for the recruitment, protection, and repatriation of migrant workers, and assigning clear responsibilities to central and local governments. In principle, this legal architecture

²⁵ Muchlis[^]1, “Reconstruction of the Legal Protection Policy for Indonesian Migrant Workers in Saudi Arabia Who Commit Crimes”; Ahmad Muchlis, “Rekonstruksi Kebijakan Pelindungan Hukum Pekerja Migran Indonesia Di Arab Saudi Yang Melakukan Tindak Pidana Dengan Ancaman Pidana Mati,” *JURNAL USM LAW REVIEW* 8, no. 2 (2025): 1006–31; Andrian Pratama, “Analisis Hukum Islam Terhadap Mahar Dalam Bentuk Hiasan Dari Uang Yang Dibingkai (Studi Kasus Di Desa Turi Kecamatan Panekan Kabupaten Magetan)” (PhD Thesis, IAIN Ponorogo, 2020); Mas Putra Zenno Januarsyah and Aep Saepulloh, “Penerapan Asas Aut Dedere Aut Punere Bagi Warga Negara Indonesia Pelaku Pembunuhan Di Arab Saudi Dikaitkan Dengan Konvensi Wina 1963 Tentang Hubungan Konsuler,” *YUDHISTIRA: Jurnal Yurisprudensi, Hukum Dan Peradilan* 3, no. 3 (2025): 1–7.

reflects a progressive and rights-based approach that aligns with Indonesia's constitutional values and international commitments.²⁶

However, the empirical reality reveals that the implementation of these laws remains far from effective. The phenomenon often referred to as the “paper tiger” of Indonesian legal protection—strong in form but weak in practice—illustrates a systemic gap between normative ideals and practical enforcement. The protection mechanisms established under Law No. 18/2017, including integrated information systems, supervision mechanisms, and placement regulations, have not fully translated into real protection for workers abroad. This is evident in the persistence of unprocedural placements, illegal recruitment by unauthorized agents, low digital literacy among workers, and poor inter-agency coordination. These issues undermine the intended protection framework, leaving many migrant workers without proper documentation, training, or access to legal support.²⁷

The analysis shows that these domestic weaknesses have direct international repercussions. Poor “upstream” protection—before departure and during recruitment—leads to increased “downstream” vulnerability abroad. Workers who depart through irregular channels or lack legal awareness are more exposed to exploitative labor systems, such as the *Kafalah* system in Saudi Arabia, which ties a worker's legal status to their employer.²⁸ This dependency often results in wage withholding, forced labor, or criminal prosecution, further demonstrating how weak domestic enforcement amplifies risks in the destination country.²⁹ The absence of effective pre-departure regulation thus has a multiplier effect, making migrant workers more susceptible to abuse, legal uncertainty, and even the death penalty under Saudi Arabia's *jināyāt* system.³⁰

²⁶ Lubis, Muttaqin, and Nurwahidin, “The Impact of The ‘Saudization’ Policy on Indonesian Migrant Workers in Saudi Arabia”; Reddy Anggara et al., “Understanding the Motivations of Being Indonesian Migrant Workers,” *Cogent Social Sciences* 10, no. 1 (December 31, 2024): 2333968, doi:10.1080/23311886.2024.2333968; Renta and Paksi, “Efforts of Migrant Care and the Indonesian Government in Realizing the Protection of Indonesian Migrant Workers (PMI) Facing the Death Penalty in Saudi Arabia (2015–2018),” 39; Laia et al., “Penerapan Hak Asasi Manusia Menurut Uu Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.”

²⁷ Pepen Irpan Fauzan and Ahmad Khoirul Fata, “Model Penerapan Syariah Dalam Negara Modern (Studi Kasus Arab Saudi, Iran, Turki, Dan Indonesia),” *Al-Manabij: Jurnal Kajian Hukum Islam* 12, no. 1 (June 22, 2018): 51–70, doi:10.24090/mnh.v12i1.1328.

²⁸ Md Yazid Ahmad et al., “The Locus Standi of Heirs in Claiming Matrimonial Property (Jointly Acquired Property) After Death Among Muslims in Malaysia,” *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (June 30, 2025): 141–65, doi:10.22373/gqw83m36.

²⁹ “Eksekusi Hukuman Mati Di Indonesia (Tinjauan Hukum Pidana Islam)| Syariah: Jurnal Hukum Dan Pemikiran,” accessed October 26, 2025, <https://jurnal.uin-antasari.ac.id/index.php/syariah/article/view/65>.

³⁰ Fernández, “Racialised Institutional Humiliation through the Kafala”; Manisuli Ssenyonjo, “Judicial Imposition of the Death Penalty and Corporal Punishment in Iran and Saudi Arabia for Unlawful Consensual Sexual Relations under Shari’a: A Human Rights Critique,” *International Human Rights Law Review* 13, no. 2 (2024): 265–312; Abdullah F. Alrebh and Toby A. Ten Eyck, “Covering the Birth of a Nation: The Rise of Saudi Arabia in The London

Another significant structural issue lies in budgetary and institutional limitations. The Ministry of Foreign Affairs and the Indonesian Migrant Worker Protection Agency (BP2MI) face financial constraints that hinder timely intervention, especially in cases requiring legal assistance or repatriation. This lack of resources results in reactive rather than preventive protection, where government action often occurs only after legal crises emerge. Moreover, bureaucratic inefficiency and fragmented coordination between agencies prevent the establishment of a unified, responsive system for handling migrant worker issues. These institutional weaknesses point to a deeper governance challenge: the state's inability to translate its constitutional and statutory obligations into an effective operational framework.³¹

From a theoretical standpoint, this situation can be analyzed through Gustav Radbruch's triad of legal values—justice, legal certainty, and expediency. While Indonesia's legal framework satisfies the value of *justice* at the normative level by recognizing the rights of migrant workers, it fails to ensure *legal certainty* and *expediency* in implementation. Laws exist, but they do not consistently produce predictable or beneficial outcomes for those they are meant to protect.³² This imbalance reflects a structural dissonance between legal ideals and institutional capacity, a recurring challenge in Indonesia's human rights governance.³³

In conclusion, Indonesia's national legal framework for the protection of migrant workers is comprehensive in theory but constrained in practice.³⁴ The state has successfully established a robust normative base, yet persistent implementation failures, resource shortages, and bureaucratic fragmentation have rendered legal protection largely ineffective on the ground. The result is a systemic vulnerability where domestic governance weaknesses directly translate into international human rights risks. Strengthening enforcement, improving coordination among institutions, and investing in pre-departure education and legal literacy are essential steps to transform Indonesia's migrant worker protection system from a “paper commitment” into a tangible mechanism that fulfills its constitutional promise to protect all citizens, both at home and abroad.

Times, 1927–1937,” *The Social Science Journal* 51, no. 1 (March 2014): 130–38, doi:10.1016/j.soscij.2013.05.005; Harefa, “The Controversy of The Death Penalty for Narcotics Dealers.”

³¹ Muhammad Kadafi, “Tembak Mati Sebagai Eksekusi Pidana Mati Dalam Perspektif Hukum Positif Dan Hukum Islam (Telaah Putusan Mahkamah Konstitusi No. 21/Puu-Vi/2008),” *Al-'Adalah* 12, no. 1 (2015): 569–80, doi:10.24042/adalah.v12i1.236.

³² Khaeron Sirin, “Hukuman Mati Dalam Wacana Demokrasi (Perdebatan Antara Hukum Islam Dan HAM Di Indonesia),” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 13, no. 01 (2013): 187–98, doi:10.30631/alrisalah.v13i01.441.

³³ Muhamad Rizal, “Penerapan Hukuman Pidana Mati Perspektif Hukum Islam Di Indonesia,” *Nurani: jurnal kajian syari'ah dan masyarakat* 15, no. 1 (2015): 101–16, doi:10.19109/nurani.v15i1.277.

³⁴ “Meninjau Hukuman Mati Bagi Murtad (Kajian Hadist Tematik) | Abdullah | De Jure: Jurnal Hukum Dan Syar'iah,” accessed October 26, 2025, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/2153>.

Table 2: Key Provisions of Indonesia's National Legal Framework for the Protection of Migrant Workers³⁵

Legal Instrument	Relevant Article	Core Obligations/Rights	Implications for PMI Protection
1945 CONSTITUTION	Article 27(2), Article 28I(4)	Right to decent work and livelihood; Protection of human dignity by the state	Foundation for state responsibility; Guarantee fundamental rights of citizens
Law No. 18 Year 2017	Article 3, Article 8(1), Article 30(1)	Guaranteeing the fulfillment and enforcement of human rights of PMI; Legal assistance and protection; Not burdened with placement fees	Direct mandate for Comprehensive protection; Ensuring access to justice; Preventing financial exploitation
Human Rights Law No. 39 of 1999	Definition of Human Rights	Basic rights that must be respected, upheld and protected by the state and all parties.	Affirms the state's commitment to human rights; Provides a strong legal basis for advocacy

Indonesia's national legal framework (table 2) provides a strong foundation for the protection of migrant workers through three key instruments: the 1945 Constitution, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, and Law No. 39 of 1999 on Human Rights. Articles 27(2) and 28I(4) of the 1945 Constitution affirm every citizen's right to decent work and livelihood and the state's obligation to protect and uphold human rights, forming the normative basis for state responsibility toward Indonesian migrant workers abroad. Law No. 18 of 2017 operationalizes these constitutional principles by ensuring the fulfillment and enforcement of migrant workers' human rights, guaranteeing access to legal assistance and protection, and prohibiting the imposition of placement fees—thus providing a direct mandate for comprehensive protection and the prevention of financial exploitation. Meanwhile, Law No. 39 of 1999 reinforces this framework by affirming that human rights are inherent to every individual and must be respected, upheld, and protected by the state. Collectively, these instruments establish a coherent legal synergy that underscores Indonesia's constitutional and moral responsibility to safeguard the dignity, safety, and justice of its migrant workers abroad.³⁶

3. International Legal Instruments and Bilateral Gaps

The protection of migrant workers abroad depends not only on the national legal framework, but also on international legal instruments and bilateral cooperation.

a. The 1963 Vienna Convention on Consular Relations (Articles 36 and 37) The 1963 Vienna Convention on Consular Relations (VCCR) is the key instrument governing consular relations between states. The convention requires the receiving state to provide consular notification and access "without delay" if a foreign national is arrested or detained. This includes the right for the detained individual to communicate with and be visited by consular officers, as well as the right of the consulate to provide assistance. Article 36 specifically covers communication and contact with nationals of the sending

³⁵ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia," 1999, <https://peraturan.bpk.go.id/Home/Details/45361>.

³⁶ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia," 2017, <https://peraturan.go.id/id/uu-no-18-tahun-2017>. Muchlis, "Rekonstruksi Kebijakan Pelindungan Hukum Pekerja Migran Indonesia Di Arab Saudi Yang Melakukan Tindak Pidana Dengan Ancaman Pidana Mati."

country, while Article 37 addresses information in cases of death, guardianship, or ship/aircraft incidents.

b. Absence of Mandatory Consular Notification (MCN) between RI and Saudi Arabia Despite the existence of the VCCR, Saudi Arabia generally limits consular notification of arrests of foreign nationals to the embassy of the country that issued the travel document used for entry into the Kingdom. This means that if a migrant worker enters with a Saudi travel document or passport other than an Indonesian passport, consular assistance is severely hampered. In practice, Saudi Arabia often does not conduct MCNs in accordance with the VCCR, which results in Indonesia not receiving timely information regarding the arrest, detention or execution of its citizens. This was evident in the cases of Siti Zainab and Tuti Tursilawati, where executions took place without prior notification to the Indonesian government.

This lack of mandatory consular notification is a conflict between state sovereignty and human rights. The VCCR sets the international norm for consular notification, which is the cornerstone of protecting the rights of foreign nationals. Saudi Arabia's non-compliance can be interpreted as an assertion of national sovereignty over international legal obligations, particularly in relation to its Sharia-based justice system. This creates a direct conflict between a state's right to govern its territory and its international human rights responsibilities. This conflict implies that diplomatic efforts focusing solely on notification "requests" are likely to remain ineffective. To address this, Indonesia should frame its demands not just as bilateral courtesies but as upholding fundamental human rights and principles of international law, potentially utilizing multilateral forums or linking them to broader economic/political cooperation.

Analysis of the MoU and the Reality of Non-Binding Agreements Indonesia and Saudi Arabia have been engaged in discussions regarding a Memorandum of Understanding (MoU) to regulate the placement of migrant workers. The upcoming MoU aims to lift the moratorium on sending workers and is expected to send 600,000 workers. However, MoUs in Indonesia are generally considered non-legally binding, meaning they do not create enforceable legal obligations unless explicitly stated otherwise. This is in contrast to "Cooperation Agreements" (PKS) or contracts which are legally binding.

The article highlights that the upcoming MoU "must serve as more than a symbolic gesture" and "must be the basis for lasting change". Previous MoUs, such as the one signed in 2014, have not fully minimized labor disputes or ensured notification of execution. This suggests that while MoUs can set intentions, their non-binding nature limits their effectiveness in compelling compliance with international norms such as the MCN.

Reliance on MoUs, which are generally non-binding, for crucial issues such as the protection of migrant workers, particularly regarding the death penalty, is inherently problematic. While MoUs can facilitate dialog, their lack of coercive power means commitments can be ignored without legal consequence, as evidenced by past failures to prevent unannounced executions. The non-binding nature of the MoU directly causes persistent vulnerability for migrant workers as it does not provide legal bargaining power for Indonesia to force Saudi Arabia to comply with protection mechanisms. This means that even if an MoU mentions consular notification, its non-binding status makes it ineffective against the discretionary judicial practices of sovereign states, leading to continued human rights violations.

Table 3: Comparison of VCCR Provisions and Saudi Arabia's Practice on Consular Notification³⁷

³⁷ C. Bennett, "Consular Access, Article 36 VCCR and the Right to a Fair Trial: Recent Developments and State Practice," *Human Rights Law Review* 23, no. 1 (2023): 1–28, doi:10.1093/hrlr/ngac008; Kabiru Ibrahim Danguguwa

Aspects	Legal Obligation (VCCR Article 36)	Saudi Arabia Practice (General)	Impact on migrant workers
Arrest/Detention Notification	"Without delay"	Limited to passport-issuing country, often non-existent	Consular access delayed/absent, due process impaired
Consular Access	Right to communicate/visit	Very difficult if using non- Indonesian travel documents	Impedes legal aid, translation, family contact
Notification of execution	Implicit in consular relationship	Often absent	Diplomatic contempt, prevents last minute appeals/ family meetings

4. Case Analysis

The analysis of specific cases of migrant workers facing the death penalty in Saudi Arabia provides a clear picture of the challenges faced and the Indonesian government's response.

a. The cases of Siti Zainab and Adewinda bt Isak Ayub³⁸

- 1) Siti Zainab Binti Duhri Rupa: Executed in Madinah on April 14, 2015, after being sentenced to death in 1999 for the murder of her employer. Siti Zainab reportedly "confessed" during police interrogation without legal representation or consular access, despite alleged mental health issues. Her execution came after a 15-year wait for the victim's youngest child to reach the age of majority to decide on qisas. The Indonesian government strongly protested the lack of notification.
- 2) Adewinda bt Isak Ayub: Mentioned in the context of a murder case involving a migrant worker in Saudi Arabia. This is one of the murder cases (Jinayat) that was successfully exempted from the death penalty, because the migrant worker was treated inhumanely so that she suffered from mental disorders according to the Saudi Arabian Psychiatric team submitted by the Labor Attaché and Legal Attaché of the Indonesian Embassy in Riyadh.

b. Zaini Misrin (2004) and Ruyati binti Satubi (2011): Another prominent case of Indonesian women executed in Saudi Arabia, which led to the imposition of a moratorium on sending informal workers. The execution of Tuti Tursilawati in 2018 also occurred without information to the Indonesian government.

Siti Zainab's case explicitly states that she "confessed" during police interrogation without legal representation or consular access, despite allegations of mental health issues. This is a common vulnerability for migrant workers, who may not understand the language, the legal system, or their rights, leaving them vulnerable to forced or involuntary confessions. This is directly linked to the absence of MCN. The absence of MCNs directly causes critical defects in the early stages of the legal process for migrant workers, leading to questionable "confessions". This in turn leads to a weak foundation for their defense, making them highly vulnerable to severe penalties, including the death penalty, even if

et al., "Consular Access and the Protection of Nigerian Illegal Residents and Detainees in Saudi Arabia," *Golden Ratio of Social Science and Education* 5, no. 1 (2025): 180–90; *ibid*.

³⁸ Kementerian Sekretariat Negara, "Pemerintah Indonesia Protes Keras Arab Saudi Atas Eksekusi Mati Siti Zainab | Sekretariat Negara," accessed October 24, 2025, https://www.setneg.go.id/baca/index/pemerintah_indonesia_protes_keras_arab_saudi_atas_eksekusi_mati_siti_zainab. Adewinda Free. Rakhmad Hidayatulloh Permana, "WNI Asal Cianjur Terbebas dari Hukuman Mati di Arab Saudi," *detiknews*, accessed October 24, 2025, <https://news.detik.com/berita/d-5580205/wni-asal-cianjur-terbebas-dari-hukuman-mati-di-arab-saudi>.

they themselves are victims. This highlights that the issue is not just about the final verdict, but the entire procedural journey.

a. Legal and Diplomatic Actions of the Government of Indonesia The Government of Indonesia has consistently made various diplomatic and legal efforts to save Indonesian citizens from the death penalty. The Ministry of Foreign Affairs and Indonesian representatives (KBRI/KJRI) provided legal assistance, appointed lawyers and translators, and conducted regular prison visits. For example, in SBM's case, the Indonesian Embassy in Riyadh formed an advocacy team, attended 23 court hearings, and conducted 11 prison visits, which led to SBM's release from death row. Another case, TTD who was suspected of practicing witchcraft, also had his sentence reduced from death to 5 years in prison through diplomatic and legal efforts.

b. Lack of Notification of Execution: A Violation of Diplomatic Principles? The consistent failure of Saudi Arabian authorities to notify the Indonesian government prior to executions, as seen in the cases of Siti Zainab and Tuti Tursilawati, is a clear violation of diplomatic protocol and the spirit of the Vienna Convention on Consular Relations. This lack of notification undermines Indonesia's sovereign right to protect its citizens and prevents last-minute interventions or appeals, leading to irreversible outcomes and diplomatic outrage.³⁹

Although Indonesia's diplomatic and legal efforts have succeeded in saving some Indonesians from execution, the repeated cases of unannounced executions and the overall high number of executions of foreign nationals in Saudi Arabia show that these successes are often individual victories against a larger systemic problem that remains unchanged. This suggests a contradiction: the Indonesian government is actively working, yet the problem persists. This implies that while individual diplomatic interventions are critical, they are reactive and cannot fundamentally change structural vulnerabilities unless Saudi Arabia's underlying policies (e.g., non-compliance with MCN, discretionary application of *ta'zir*) are addressed through more binding and proactive mechanisms. The current approach is likened to a "temporary solution" to a deep wound.

Table 4: Summary of Cases of Indonesian Migrant Workers Facing the Death Penalty in Saudi Arabia (2014-2024) ⁴⁰

Year	Key Cases/Events	Number of Migrant Workers Affected	Key Issues Highlighted
2011	Execution of Ruyati Binti Satubi	1	Execution without notification
2014-2018	Dozens of PMI cases	Dozens	Persistent death penalty threats

³⁹ Gunawan, “The Importance of Bilateral Agreement on Mandatory Consular Notification for Indonesia: Tuti Tursilawati Execution.”

⁴⁰ Lucy Harry and Jocelyn Hutton, “A Permanent Maid Moratorium: The Death Penalty in The Middle East and Female Migrant Workers From Indonesia,” *The Howard Journal of Crime and Justice*, June 11, 2025, hojo.12617, doi:10.1111/hojo.12617. Antara News, “Saudi Govt Sorry No Prior Notice about Ruyati’s Execution,” 2011, <https://en.antaranews.com/news/73389/saudi-govt-sorry-no-prior-notice-about-ruyatis-execution>; Antara News, “39 Indonesian Migrant Workers Face Death Penalty in Saudi Arabia,” 2014, <https://en.antaranews.com/news/93327/39-indonesian-migrant-workers-face-death-penalty-in-saudi-arabia>; ICoMDP, “Two Indonesian Nationals Executed in Saudi Arabia,” 2015, <https://icodp.org/news/2015/04/two-indonesians-executed-in-saudi-arabia>; Sekretariat Kabinet Republik Indonesia, “Indonesia Protests Execution of Tuti Tursilawati,” 2018, <https://setkab.go.id/indonesia-protests-execution-of-tuti-tursilawati/>. Amnesty International, *Death Sentences and Executions 2024*, 2025, <https://www.amnesty.org/en/documents/act50/2025/death-sentences-and-executions-2024/>.

Year	Key Cases/Events	Number of Migrant Workers Affected	Key Issues Highlighted
2015	Execution of Siti Zainab, Execution of Karni Tarsim	2	Execution without notification, lack of consular access, diplomatic protests, moratorium imposed
2018	Execution of Tuti Tursilawati	1	Execution without notification to Indonesian government
2024	Total Indonesians on death row worldwide	157	Including 2 cases in Saudi Arabia
2024	Indonesian citizens successfully freed from death penalty	137	Diplomatic and legal efforts succeeded in reducing sentences (e.g. SBB, HMM)
Jan-June 2025	Executions in Saudi Arabia (foreign nationals)	34 (drug-related)	Escalation of drug-related executions, mostly foreign nationals

5. Reconstructing the Legal Protection Model

Reconstructing the legal protection model for Indonesian migrant workers (PMI) facing the death penalty in Saudi Arabia requires a comprehensive, proactive, and human rights-based approach. This effort is not merely a matter of policy design but a constitutional and moral duty of the state to guarantee the safety and dignity of its citizens abroad. Within the Saudi *jinayat* system relying on reactive diplomacy alone is insufficient. What is needed is a paradigm shift toward a protection model grounded in enforceable legal mechanisms, institutional capacity, and coherence between national and international law.

The protection of migrant workers is a fundamental right recognized in international instruments such as the *International Covenant on Civil and Political Rights* (ICCPR) and the *United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (MWC). Both affirm the right to life, liberty, and security, while prohibiting torture and restricting the use of the death penalty to the “most serious crimes.” The principle of personality—granting states jurisdiction over their nationals wherever they may be—further reinforces Indonesia’s duty to protect its citizens through consular assistance and legal representation abroad. In practice, the imposition of the death penalty for *ta’zir* crimes that do not involve intentional killing, such as drug-related offenses, directly contradicts these international human rights norms. This calls for a stronger and more assertive role for Indonesia in ensuring justice and due process for its citizens overseas.⁴¹

⁴¹ E. V. A. Dissanayake, “Reviewing the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) in the Context of Contemporary Cross-Border Labour Migration,” accessed October 24, 2025, https://www.researchgate.net/profile/E-V-A-Dissanayake/publication/379819406_Reviewing_the_International_Convention_on_the_Protection_of_the_Rights_of_All_Migrant_Workers_and_Members_of_Their_Families_ICRMW_in_the_context_of_contemporary_Cross-border_Labour_Migration/links/661c1f8739e7641c0bc8eb08/Reviewing-the-International-Convention-on-the-Protection-of-the-Rights-of-All-Migrant-Workers-and-Members-of-Their-Families-ICRMW-in-the-context-of-contemporary-Cross-border-Labour-Migration.pdf; P. K. Venkateswaran and Geni Phillipose, “An

The reconstruction of Indonesia's protection model requires reform at three interconnected levels: institutional, normative, and diplomatic. First, the state must transition from reliance on *Memoranda of Understanding* (MoUs), which are non-binding, to legally binding bilateral agreements that guarantee *Mandatory Consular Notification* (MCN). Such agreements would oblige Saudi authorities to promptly notify Indonesian diplomatic missions of any arrest, detention, or death sentence involving Indonesian nationals. Without this mechanism, cases like those of Siti Zainab and Tuti Tursilawati will continue to expose Indonesia's weak legal standing in foreign jurisdictions. A binding MCN agreement transforms diplomatic relations from one of voluntary cooperation into a relationship governed by reciprocal legal obligations under international law.⁴²

Institutional strengthening is equally essential. The functions of legal attachés and consular officers must be reinforced through increased funding, professional training, and operational autonomy. The Philippines' experience in establishing a *Legal Aid Fund* for overseas workers serves as a valuable model for financing defense lawyers, interpreters, and advocacy in capital cases. Legal diplomacy must also extend beyond formal channels to include culturally sensitive and faith-based approaches that leverage Indonesia's shared religious and historical ties with Saudi Arabia. Coordination between the Ministry of Foreign Affairs and the Indonesian Migrant Worker Protection Agency (BP2MI) should be improved to ensure integrated case management, early intervention, and continuous communication with affected families.⁴³

At the normative level, Indonesia's domestic legislation must be harmonized with international human rights standards. The enactment of the new Criminal Code (Law No. 1 of 2023), which introduces a ten-year probation period before execution, represents a significant step toward aligning national law with global human rights principles. This reform not only strengthens Indonesia's moral authority in international advocacy but also reinforces the consistency of its human rights stance. Aligning domestic and foreign policy enhances the

Analysis of the Effectiveness of International Human Rights Instruments in Protecting the Rights of Migrant Workers,” *Journal of Neonatal Surgery* 14, no. 16s (2025), https://www.researchgate.net/profile/Venkateswaran-Pk/publication/391708927_An_Analysis_of_the_Effectiveness_of_International_Human_Rights_Instruments_in_Protecting_the_Rights_of_Migrant_Workers/links/68241d616b5a287c30417e1d/An-Analysis-of-the-Effectiveness-of-International-Human-Rights-Instruments-in-Protecting-the-Rights-of-Migrant-Workers.pdf; E. Hiariej and I. Santoso, “Diplomasi Hukum Dan Perlindungan PMI: Model Pembiayaan Bantuan Hukum Dan Best Practices Filipina,” *Studia Politika: Jurnal Politik Dan Hukum* 9, no. 2 (2023): 89–110.

⁴² L. Crespo and S. Navarro, “Consular Protection and Death Penalty Cases: Lessons from Avena and Medellín,” *International Journal of Constitutional Law* 20, no. 3 (2022): 642–62, doi:10.1093/icon/moac021; Bennett, “Consular Access, Article 36 VCCR and the Right to a Fair Trial: Recent Developments and State Practice”; B. Harkins and T. Kojima, “Consular Notification, Legal Remedies and Capital Punishment: Comparative Perspectives,” *Journal of International Criminal Justice* 18, no. 5 (2020): 983–1005, doi:10.1093/jicj/mqaa052.

⁴³ Lubis, Muttaqin, and Nurwahidin, “The Impact of The ‘Saudiization’ Policy on Indonesian Migrant Workers in Saudi Arabia”; Wayne Palmer and Nicola Piper, “Regulatory (Mal)Integration: Its Implications for Migrant Workers’ Ability to Access Employment Rights in Indonesia,” *Journal of Immigrant & Refugee Studies* 21, no. 2 (April 3, 2023): 203–16, doi:10.1080/15562948.2022.2142349.

credibility of Indonesia's diplomatic efforts and underscores its commitment to uphold the sanctity of life and the rule of law, both at home and abroad.

Reconstruction must also reaffirm the state's constitutional obligation to protect all citizens, as enshrined in Articles 27(2) and 28I(4) of the 1945 Constitution. This requires establishing transparent grievance mechanisms, improving digital literacy among prospective migrant workers, and enforcing stricter oversight of recruitment agencies. Legal protection should begin long before the worker departs—through pre-departure legal education, cultural orientation, and administrative preparedness—to minimize irregular migration and legal vulnerability. A preventive approach of this nature ensures that protection operates not only at the crisis stage but throughout the migration process.

The theoretical foundation of this reconstruction aligns with Gustav Radbruch's triad of legal values: justice, legal certainty, and expediency. The value of justice demands fairness, proportionality, and due process—especially for vulnerable workers facing language barriers and procedural disadvantages in foreign legal systems. Legal certainty emphasizes the need for clear, enforceable, and predictable legal frameworks, such as binding MCN agreements, to safeguard citizens' rights under all circumstances. Expediency, meanwhile, focuses on achieving tangible outcomes: reducing execution rates, improving access to legal aid, and ensuring that migrant workers' welfare and dignity are effectively protected.

Ultimately, the effectiveness of legal protection depends not solely on the existence of laws but on the state's capacity to implement them consistently. Migrant workers must not be treated as passive beneficiaries of protection but as active rights-holders. Empowering them with legal awareness, access to information, and financial resources to obtain legal aid transforms protection from an external intervention into a participatory process. Such empowerment bridges the gap between legal norms and lived realities, ensuring that protection is both meaningful and sustainable.

A holistic protection model that integrates legal, diplomatic, and educational dimensions represents the most realistic path toward safeguarding the lives of Indonesian citizens abroad. By combining normative strength with institutional readiness and international engagement, Indonesia can transform its constitutional promise into a tangible system of justice that protects, empowers, and upholds the dignity of every citizen—wherever they may be.

Table 5: Proposed PMI Legal Protection Reconstruction Model

Model Components	Key Actions/Mechanisms	Expected Outcome	Basic Principles (Radbruch)
Binding MCN Bilateral Agreement	Bilateral treaties requiring prompt notification of arrests, detentions and executions	Timely notification, enhanced due process	Legal certainty
Strengthening legal attachés and legal diplomacy	Increased legal aid budget, specialized attaché training, legal aid fund (Philippines model), innovative diplomacy	Effective legal representation, better consular access, increased clemency rates	Expediency

Model Components	Key Actions/Mechanisms	Expected Outcome	Basic Principles (Radbruch)
Harmonization of National and International Law	Alignment of national death penalty legislation (e.g. new Penal Code) with international norms; Implementation of "One Channel Placement System"	Stronger diplomatic bargaining power, coherent human rights positions	Justice, Legal Certainty
Affirmation of State Obligations	Transparent grievance mechanism, pre-departure education, strict supervision of recruitment agencies	Vulnerability reduction, prevention of illegal placement, overall welfare improvement	Benefit, Justice

The proposed model demonstrates that effective legal protection for PMI requires an integrated, rights-based, and enforceable framework. Binding agreements, institutional capacity, legal harmonization, and proactive state responsibility are key determinants of success. The core finding is that Indonesia’s protection system must evolve from normative commitment to operational enforcement, ensuring that constitutional and human rights obligations translate into real safeguards for migrant workers abroad.

CONCLUSION

The analysis concludes that Indonesia’s current system of legal protection for migrant workers facing the death penalty in Saudi Arabia remains fragmented and reactive. Despite having a solid constitutional and statutory foundation—such as the 1945 Constitution, Law No. 39/1999 on Human Rights, and Law No. 18/2017 on Migrant Worker Protection—these instruments have not been effectively implemented in practice. Weak coordination among institutions, lack of enforcement capacity, and insufficient diplomatic leverage have allowed systemic gaps to persist. On the international level, Saudi Arabia’s discretionary *jināyāt* system and its failure to comply with the *Vienna Convention on Consular Relations (1963)* continue to expose Indonesian workers to serious procedural disadvantages. Consequently, the protection currently offered is often reactive—focused on individual clemency appeals rather than structural reform—leaving the root causes of vulnerability largely unaddressed.

The implications of this study point to the urgent need for a comprehensive and enforceable reconstruction of Indonesia’s protection framework, one grounded in human rights and global justice principles. A legally binding bilateral agreement on *Mandatory Consular Notification* (MCN), the strengthening of legal attachés and diplomatic missions, and the revision of Law No. 18/2017 to enhance pre-departure and institutional safeguards are central to achieving sustainable protection. Such reforms would not only improve Indonesia’s ability to defend its citizens abroad but also strengthen its international credibility as a state committed to human rights. Beyond legal reform, the findings underscore that protection must function as an integrated system—spanning prevention, legal assistance, and post-trial support—so that Indonesia’s constitutional duty to protect its citizens is fully realized in both law and practice.

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