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Criminal Liability of Individuals for the Unlawful Placement of Indonesian Migrant Workers in Malaysia

A Case Study of a Batam District Court Decision Number 418/Pid.Sus/2022/PN Btm

Indra Arfansyah Nasution[1]*, Lilawaty Ginting[2]

[1] Master's Programme in Law, Postgraduate School, Universitas Muhammadiyah Sumatera, Indonesia

[2] Universitas Muhammadiyah Sumatera Utara, Indonesia.

Abstract
The unlawful placement of Indonesian migrant workers requires a distinction between prohibited conduct, participation, and individual culpability. This article examines the governing legal framework, the maritime placement arrangement, and sentencing in Batam District Court Decision Number 418/Pid.Sus/2022/PN Btm. It uses doctrinal legal research with statutory, case, and conceptual approaches, addressing Articles 69 and 81 of Law Number 18 of 2017, participation under the former Criminal Code, and the evidentiary rules applicable to the 2022 proceedings. The case concerns Rico Saputra, associated with coordinating and operating the vessel, and Rostam, associated with assisting as a crew member. Each received three years of imprisonment and a fine of IDR 100 million. The article argues that liability must rest on each defendant's contribution and culpability. Equal sentences are not inherently disproportionate, but their justification requires an assessment of the respective roles and relevant aggravating and mitigating circumstances. An operator's title does not establish greater culpability, and crew status does not automatically warrant a lighter sentence. Enforcement should preserve migrant workers' rights and access to appropriate assistance, including for workers travelling through irregular channels.

Keywords: criminal liability; co-perpetration; Indonesian migrant workers; unlawful placement; Batam.

Introduction

Labour migration can support a family's livelihood, but access to work abroad also depends on the conduct of those who arrange recruitment and departure. Where individuals organise placement outside the authorised system, workers may have difficulty verifying employment terms, obtaining reliable documents, or identifying who is responsible when a problem arises. These concerns justify legal scrutiny of placement activities. They do not justify treating migrant workers themselves as offenders merely because the route used is irregular.

Indonesia's constitutional framework recognises the right to work and to fair treatment in employment. Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers gives that commitment a more specific institutional and regulatory form. It regulates protection before, during, and after employment, while prohibiting individuals from carrying out migrant worker placement under Article 69. Article 81 supplies the corresponding criminal sanction (Republic of Indonesia, 1945, arts. 27(2)

*Correspondence: Indra Arfansyah Nasution; arfansyahindra@gmail.com

and 28D(2); 2017, arts. 7, 69 and 81). The prohibition concerns the conduct of a placement intermediary. It should not be confused with the statutory recognition of an individual migrant worker who obtains overseas employment without a placement agency.

The distinction becomes especially important when several people perform different tasks in a departure arrangement. A person may coordinate communications, operate a vessel, or work as a crew member. Those functions can contribute to an unlawful placement scheme, but they do not establish identical responsibility automatically. The prosecution must connect the act attributed to each defendant with the prohibited placement and the form of participation charged. A conviction that merely repeats the statutory wording leaves that connection insufficiently explained.

Existing scholarship offers several points of reference. Manullang et al. (2024), in their study of another Batam placement case, emphasise culpability, capacity for criminal responsibility, and the roles of persons involved in a joint offence. Zakariya (2023) examines problems of criminalisation and enforcement in migrant worker protection. Hanifah (2025) addresses the government's protective responsibilities across the migration cycle. Together, these studies show why a case analysis should connect criminal attribution with the wider obligation to protect workers.

A systems perspective on criminal justice provides a complementary basis for analysis. M. A. Siregar et al. (2023) describe criminal justice as a system in which police, prosecution, courts, and correctional institutions perform related functions. F. R. Siregar et al. (2023) discuss criminal policy and protection, prevention, justice, and recovery in the context of sexual violence against children. The latter study informs this article's discussion of protective policy; its findings are not treated as evidence of exploitation in the Batam migrant worker case.

This article examines Decision Number 418/Pid.Sus/2022/PN Btm through three questions: how Indonesian law attributes criminal liability to individuals who undertake migrant worker placement; what the defendants' maritime arrangement reveals about the form of participation; and how the legal basis, proof, and sentence should be assessed. Its contribution lies in separating the placement offence from individual culpability and in identifying what a reasoned finding of co-perpetration requires. The assessment concerns the legal framework applicable to the 2022 adjudication, rather than a retrospective application of later legislation.

Method

The study adopts doctrinal legal research through statutory, case, and conceptual approaches. The statutory approach examines Law Number 18 of 2017 within the framework applicable in 2022, including Law Number 11 of 2020 on Job Creation, and Government Regulation Number 59 of 2021 on the Implementation of the Protection of Indonesian Migrant Workers. The case approach focuses on Batam District Court Decision Number 418/Pid.Sus/2022/PN Btm, dated 18 October 2022. The conceptual approach distinguishes the elements of the offence, participation in its commission, culpability, and sentencing justification.

The analytical framework also uses the Criminal Code (*KUHP*) and Law Number 8 of 1981 on Criminal Procedure (*KUHAP*) as they applied to the proceedings. References to Article 55 of the KUHP and Articles 183 and 184 of the *KUHAP* therefore concern the historical adjudication. They are not statements that these provisions remain the

governing rules for every proceeding at the time of publication. Secondary materials are selected for their relevance to criminal attribution, placement regulation, and worker protection, including later scholarship used to evaluate the earlier decision.

Mansar and Lubis (2023) examine harmonisation in the transition towards a more humane national criminal law. Their later contribution informs this article's evaluation of clarity and individual responsibility. It does not supply a retrospective basis for the 2022 conviction; the offence, participation rules, and sentencing framework remain those applicable to the historical proceedings.

Materials are organised around the defendant's legal status, the act attributed to the defendant, its connection with overseas employment, the participation provision invoked, and the resulting sanction. Systematic interpretation connects the placement prohibition with the sanction and the general rules of participation. Qualitative legal analysis then distinguishes what the disposition establishes from the further reasoning needed to assess individual responsibility. The study does not measure the prevalence of irregular migration, interview workers, or establish the deterrent effect of the sentence. Its conclusions are confined to a single-case doctrinal assessment.

Results and Discussion

The placement prohibition and its protective purpose

Articles 69 and 81 of Law Number 18 of 2017 form the central statutory relationship in this case. Article 69 prohibits individuals from carrying out the placement of Indonesian migrant workers. Its explanatory provision includes brokers and individuals who lack placement authority. Article 81, in the version relevant to the 2022 analysis, prescribes imprisonment of up to ten years and a fine of up to IDR 15 billion for the prohibited placement (Republic of Indonesia, 2017, art. 81 and explanation of art. 69). The legal issue is therefore whether the individual carried out placement, rather than whether the individual merely had contact with a worker.

The provision must be read alongside the distinction between a placement intermediary and an individual migrant worker. Article 1(4) recognises an Indonesian migrant worker who will work abroad without using a placement operator. That category does not confer authority on a separate individual to organise placement for others. Conversely, its existence prevents an interpretation under which every independently arranged employment relationship abroad is automatically equated with the intermediary's offence. The legal categories concern different actors and different conduct.

In this article, "unlawful placement" identifies the conduct prohibited by the placement legislation, while "irregular migration" describes departure outside the applicable procedures. Neither expression supplies a substitute for proving an offence. An irregular departure may be relevant to the factual context, but criminal attribution still requires a connection between the defendant's conduct and the statutory placement prohibition. Administrative non-compliance, unauthorised placement, and trafficking should therefore be assessed under their respective legal requirements.

Hanifah and Andryan (2021) distinguish operational policy rules from legislation and examine safeguards for persons affected by administrative discretion. Applied here, administrative guidance may help implement worker protection, but criminal attribution must remain grounded in the applicable statutory prohibition. The

distinction prevents departure procedures or institutional instructions from being treated as independent grounds for conviction.

The protective rationale is practical. A placement system should make it possible to identify the responsible intermediary, assess the employment arrangement, and secure assistance when needed. Hanifah (2025) situates protection across the periods before departure, during work abroad, and after return. Applied to the present issue, that approach supports scrutiny before a worker leaves Indonesian territory. It also means that prosecution of an intermediary is only one part of the state's response: workers may still require information, legal assistance, and safe referral regardless of the outcome of the criminal case.

Hanifah (2020b) argues that the state's responsibility for migrant workers must be implemented through protection and institutional coordination, rather than remain a legislative commitment. In this case, that perspective supports linking prosecution with a clear assistance pathway. It does not establish which services the workers actually received or whether an institution failed to perform its duties.

Hanifah (2020a), writing on domestic workers, links legal certainty with recognition of workers' rights and protection against arbitrary treatment. That principle supports intelligible placement rules and accessible remedies for migrant workers. The study does not establish that the workers in this case were domestic workers; their prospective occupation must be determined from the evidence.

Individual responsibility and the distinction between participation and assistance

The offence and responsibility for the offence answer related but separate questions. Establishing that an unlawful placement occurred does not yet identify every person who can be held criminally responsible. The analysis must attribute conduct to each defendant and address culpability, capacity for responsibility, and any applicable justification or excuse. Manullang et al. (2024) adopt a comparable distinction in examining joint involvement in migrant worker placement. Their analysis supports attention to individual roles rather than a presumption that all participants bear the same liability.

Article 55(1), point 1, of the *KUHP* applicable to the case covers persons who commit an offence, cause another to commit it, or jointly commit it. Article 56 separately addresses intentional assistance. These provisions should not be collapsed into an undifferentiated category of "involvement" (Republic of Indonesia, n.d., arts. 55–56). A person who knowingly takes part in executing the prohibited placement may be analysed as a co-perpetrator. A person whose conduct provides assistance presents a different attribution question. The appropriate classification depends on the facts and the charge.

For the co-perpetration analysis, the relevant questions include what the defendant did, what the defendant knew about the arrangement, and how the contribution related to its execution. The physical division of tasks is informative, but occupational status alone is insufficient. Operating a vessel is not inherently an unlawful placement act; it becomes relevant when connected to the employment departure arrangement and the defendant's knowing cooperation. The same reasoning applies to a crew member, whose routine duties should be distinguished from participation in carrying out the prohibited scheme.

Article 81 does not expressly repeat an intent formula in its operative wording. That feature should not be treated as permission to dispense with a culpability analysis or to infer knowledge solely from presence. The court's reasons should explain why the conduct attributed to the defendant is blameworthy in the circumstances proved. This is particularly important where the two defendants performed different functions. The placement prohibition supplies the offence; the participation analysis supplies the basis for attributing its commission to each person.

The maritime arrangement in the Batam case

Decision Number 418/Pid.Sus/2022/PN Btm concerns Rico Saputra alias Rico bin Saparudin as the first defendant and Rostam bin Awang Samad as the second defendant. The Batam District Court decided the case on 18 October 2022 and found both defendants guilty under the second alternative charge of participating, as individuals, in the unauthorised placement of Indonesian migrant workers. Each was sentenced to three years of imprisonment and a fine of IDR 100 million, with six months of substitute confinement if the fine was unpaid (Batam District Court, 2022).

The arrangement involved transporting workers towards Malaysia by sea. Rico Saputra's role was associated with organising the transport, communicating with persons involved in departure, and operating the speedboat. Rostam's role was associated with assisting the transport as a crew member. An unnamed speedboat fitted with a Yamaha 40-horsepower engine was among the objects identified in the case and was ordered confiscated for the state. These details place the transport stage at the centre of the participation analysis.

The case therefore requires a legal connection between maritime transport and placement for employment abroad. The relevant conduct cannot be described adequately as boat operation alone. It must be considered within the arrangement through which the workers were being taken to Malaysia for employment. Rico's coordination and operation of the vessel may support such a connection when accompanied by proof of knowledge and cooperation. Rostam's crew role requires its own explanation; it should not be treated as conclusive simply because it facilitated movement.

The distinction also limits what can be inferred about the modus operandi. Use of a speedboat identifies a means of transport; by itself it does not establish deceptive recruitment, the amount of any placement fee, the identity of a receiving employer, or exploitation after arrival. Those matters require separate evidence. The present analysis consequently treats maritime transport as the documented operational feature of the case, without extending the factual account into an unproven recruitment or trafficking network.

Alternative charges and the requirements of proof

The court's reliance on the second alternative charge identifies the legal route that resulted in conviction. Alternative charging allows the court to consider the characterisation supported by the proved facts, but it does not reduce the burden of proof. The reasoning should connect the selected charge with the relevant facts and explain the elements found established. The fact that one alternative was selected is not, on its own, a substantive explanation of why the defendants' conduct constituted placement or co-perpetration.

Article 183 of the *KUHAP* applicable to the proceedings required at least two lawful items of evidence, together with the judge's conviction that an offence occurred and

that the defendant was responsible. Article 184 identified witness testimony, expert testimony, documents, indications, and the defendant's statement as lawful evidence (Republic of Indonesia, 1981, arts. 183–184). This framework requires a careful distinction between categories of lawful evidence and physical objects collected in the investigation.

The case account identifies mobile telephones and the speedboat among the seized objects. Their existence can support an investigation, but their evidential significance depends on their connection with an issue that must be proved. A telephone does not establish coordination unless relevant communications are properly identified and linked to a defendant. A vessel does not establish employment placement unless testimony, documents, or other admissible evidence connect its use with the arrangement charged. Confiscation in the disposition likewise does not replace the explanation of that connection.

Asmadi et al. (2024) identify enforcement capacity and institutional coordination as challenges in personal data protection. Their analysis informs a proposal to preserve relevant digital records securely and limit unnecessary disclosure of workers' identities. This concerns evidence handling and worker protection; it does not establish a data protection offence or a data breach in the Batam case.

A useful element-based assessment therefore asks three concrete questions. First, which evidence identifies each defendant as the person performing the relevant act? Second, which evidence connects the act with the placement of workers for employment in Malaysia? Third, which evidence supports the knowledge and cooperation required for the participation attributed to that defendant? These are analytical questions for evaluating the reasons; they are not additional facts about the case. Keeping them separate makes the relationship between the legal conclusion and its evidential foundation easier to assess.

Assessing co-perpetration and culpability in the decision

The disposition establishes that the court treated the two defendants as participants in the prohibited placement. On the conduct described, Rico's coordination of transport and operation of the vessel offer a specific basis for examining an active contribution to its execution. The assessment nevertheless requires proof that those acts were connected to the unlawful employment placement, rather than an inference drawn solely from control of the boat. A finding of responsibility is more persuasive when the reasons identify both the contribution and the defendant's understanding of its purpose.

Rostam's position calls for the same individual assessment. Assistance with transport may be operationally significant, but describing him as a crew member does not resolve whether he jointly executed the offence or intentionally assisted it. The reasons should explain the cooperation established, the knowledge attributable to him, and why the form of participation found fits Article 55 rather than merely treating every useful act as co-perpetration. This distinction concerns legal attribution and does not presuppose that a subordinate participant must be acquitted.

Capacity for criminal responsibility and the absence of a justification or excuse remain part of the doctrinal framework. They should not be inferred from the sentence alone. Where the facts raise an issue such as incapacity or coercion, the judgment should address it on the evidence. Equally, an academic assessment should not invent such a defence merely because the defendants performed unequal roles. The appropriate

conclusion depends on the circumstances proved and the reasons given for accepting or rejecting the issue.

This reading supports the central position of the article: the offence can be committed through coordinated conduct, while responsibility remains personal. The workers' irregular route cannot serve as collective proof against everyone involved in transport. A legally sufficient finding must connect each defendant with the prohibited act and the relevant form of participation. That requirement protects defendants against attribution by association and strengthens the credibility of enforcement directed at persons who actually carry out unlawful placement.

Individual justification and proportionality of the sentence

The prison terms and fines imposed in this case fall below the maximum penalties stated in Article 81 as relevant to the 2022 assessment. That observation supports a limited conclusion about the statutory ceiling; it does not establish that the sentence is proportionate. Proportionality requires reasons addressing the gravity of the conduct and the culpability of each defendant. The fact that both received the same punishment does not remove the need to explain how their different roles were assessed.

The distinction between attribution and sentencing is decisive. If both defendants are proved to have jointly committed the placement offence, Article 55 permits their treatment as perpetrators within the applicable statutory framework. That classification does not require identical penalties. Conversely, different operational tasks do not necessarily require different penalties. The sentencing question is whether their proved contributions and culpability justify the same punishment. Equality in the outcome is compatible with individual assessment only where the reasons explain the relevant comparison.

For Rico, a sentencing assessment should examine the degree of organisational control and decision-making established by the evidence. For Rostam, it should examine whether his contribution was confined to routine assistance or formed part of knowing, sustained cooperation in the prohibited placement. Greater control may justify a more severe sentence if it demonstrates greater culpability; limited participation may support mitigation if substantiated. These are evaluative possibilities, not findings of unequal profit, authority, coercion, or knowledge in this case. A crew member may make an essential and culpable contribution, while vessel operation alone does not establish leadership.

A reasoned sentencing analysis should distinguish proved harm from foreseeable risk. The irregular maritime arrangement can be examined for the risks it created, but the article cannot treat exploitation, violence, or financial loss as established consequences without supporting findings. Likewise, greater organisational control or financial benefit may be relevant if proved; neither should be assumed from a defendant's position. Aggravating and mitigating considerations should therefore remain tied to the evidential record rather than to general concerns about migration.

The same comparison is needed for the identical fines and the six-month substitute confinement. Matching monetary amounts establish formal equality, but any relevant difference in financial circumstances must be supported by evidence before different practical burdens are asserted. The reasons should address the prison term and fine as a combined penal response and consider the consequence of non-payment. The reported disposition alone therefore supports neither a conclusion that the penalties

were necessarily proportionate nor a conclusion that one defendant necessarily deserved a lower penalty.

The six-month substitute confinement attached to the unpaid fine is also part of the sanction imposed, rather than a compensation mechanism for the workers. A criminal fine payable to the state should not be described as recovery for those affected. Worker assistance and any legally available remedy require their own basis and assessment. The sentence communicates legal accountability, but this single decision cannot demonstrate that future unlawful placements were prevented or that the workers obtained effective redress.

Kaban et al. (2023) place compensation within criminal policy that recognises victims as rights holders. Their contribution supports assessing legally available remedies separately from punishment. In this case, the fine and confiscation do not by themselves establish that workers were compensated. Any claim for redress requires its own legal basis and proof of the loss alleged.

Simatupang et al. (2025) understand restitution in trafficking cases as responsibility for victims' losses, alongside rehabilitation and reintegration. This provides a useful distinction between penal accountability and recovery. Its application to the present discussion is conditional: unlawful placement cannot be labelled trafficking, and trafficking-specific restitution cannot be assumed available, without establishing the separate statutory requirements.

Implications for enforcement and migrant worker protection

The decision illustrates why transport arrangements deserve attention in placement investigations. Enforcement should identify persons who organise, finance, communicate, or carry out the departure and then assess each role under the applicable offence and participation rules. Investigators should document the connection with overseas employment and preserve relevant communications and employment materials through lawful procedures. The aim is a traceable explanation of responsibility, rather than reliance on the worker's departure or the suspect's proximity to it.

A coordinated response also requires attention beyond prosecution. M. A. Siregar et al. (2023) describe the criminal justice system as interconnected institutions with related enforcement functions. In the placement context, this perspective supports coordination among investigative and prosecutorial authorities and the institutions responsible for migrant worker assistance. Zakariya (2023) similarly identifies enforcement capacity and regulatory design as concerns in migrant worker protection. Applied here, these perspectives support a response that links case handling with lawful and accessible assistance for workers.

The protective orientation should remain concrete. Workers can be informed of their rights, assisted in preserving documents, and referred to the competent protection authority. Communication should avoid implying that use of an irregular route cancels human dignity or all entitlement to assistance. These recommendations follow the article's interpretation of the protective purpose of the legislation; they are not findings that the workers in this case received, or were denied, a particular service.

Mansar (2022) treats legal aid as a state responsibility in the protection of children in conflict with the law. The relevant conceptual point is that access to legal assistance forms part of a protective legal response. This article applies that principle to its

proposed assistance pathway; the juvenile procedures considered in that study are not imported into this adult placement case.

Hanifah (2024) examines non-litigation mechanisms for domestic industrial relations disputes. Her analysis supports distinguishing employment remedies from the prosecution of placement offences. A worker's wage or contractual claim requires assessment of the proper law, forum, and parties, particularly where employment is overseas. The availability of an employment settlement mechanism does not establish authority to discontinue the placement prosecution.

F. R. Siregar et al. (2023) discuss protection and recovery within criminal policy in a different victim context. The transferable point is the need to consider how a legal response serves affected persons, rather than assessing it solely through the conviction. The present case requires its own evidence and legal provisions. It should not be labelled trafficking solely because unlawful placement may create exposure to exploitation; any trafficking allegation must be assessed under the separate statutory offence.

Further research could compare judgments involving organisers, recruiters, vessel operators, and crew members to examine how courts distinguish co-perpetration from assistance and explain sentencing differences. Such a comparison would require the full reasons and relevant facts of each decision. A separate empirical study could examine whether workers can access assistance after interception or prosecution. The present doctrinal analysis identifies those questions without claiming that the consistency or effectiveness of enforcement has already been demonstrated.

Conclusion

Articles 69 and 81 of Law Number 18 of 2017 provide the central basis for criminal responsibility for placement undertaken by individuals in the legal framework applicable to the Batam case. The prohibition targets the placement intermediary and must be distinguished from the recognition of an individual migrant worker. Decision Number 418/Pid.Sus/2022/PN Btm concerns a maritime arrangement involving Rico Saputra and Rostam, whom the court convicted under the second alternative charge and sentenced to three years of imprisonment and a fine of IDR 100 million each, with substitute confinement for non-payment.

The doctrinal assessment supports liability based on an identifiable contribution, a legally established form of participation, and individual culpability. Rico's coordination and vessel operation and Rostam's crew role require separate connections with the prohibited placement. The use of a speedboat, presence aboard it, and the existence of seized objects are relevant facts, but none supplies an automatic finding of co-perpetration. The adequacy of judicial reasoning depends on how those facts are linked to lawful evidence and the elements of the charge.

Enforcement should therefore make individual attribution explicit and explain why the respective roles justify the penalties imposed. Equal prison terms and fines may be warranted, but neither occupational labels nor joint perpetrator status can replace an assessment of proved culpability and relevant sentencing circumstances. Worker protection should continue through accessible information, legal assistance, and assessment of legally available remedies. The case supports a focused doctrinal lesson about responsibility in coordinated placement; it does not establish the prevalence of

irregular migration or the deterrent effect of the sentence. Comparative judicial and empirical research is needed to evaluate those wider questions.

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