

CONSTITUTIONAL PROTECTION OF INDONESIAN MIGRANT FISHERS AFTER THE RATIFICATION OF ILO CONVENTION NO. 188: HARMONIZING NATIONAL LAW AND INTERNATIONAL LABOUR STANDARDS

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Abstract: This study examines the constitutional and international-law implications of Indonesia's ratification of the International Labour Organization Work in Fishing Convention, 2007 (No. 188), and formulates a harmonization model for the protection of Indonesian migrant fishers. The research uses a normative juridical method with statutory, treaty, case, and conceptual approaches. Primary legal materials include the 1945 Constitution, Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, Government Regulations Nos. 59 of 2021 and 22 of 2022, Presidential Regulation No. 25 of 2026, Constitutional Court Decision No. 127/PUU-XXI/2023, ILO Convention No. 188, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and ASEAN instruments on migrant fishers. The study finds that Indonesia already possesses a constitutional and statutory basis for protection throughout the migration cycle, and the Constitutional Court has confirmed that migrant fishing vessel crews fall within the protective scope of Law No. 18 of 2017. Nevertheless, ratification of Convention No. 188 exposes continuing normative and institutional gaps concerning sector-specific definitions, recruitment fees, vessel-owner responsibility, hours of rest, occupational safety and health, social-security portability, repatriation, inspection, transnational jurisdiction, and access to remedies. The article proposes a four-pillar harmonization model: regulatory consolidation with sector-specific differentiation; rights-based licensing and due diligence; integrated transnational enforcement among sending, receiving, flag, port, and coastal States; and effective remedies supported by social protection and worker participation. These reforms should be completed before Convention No. 188 enters into force for Indonesia on 10 June 2027.

Keywords: Constitutional Protection; International Labour Law; ILO Convention No. 188; Migrant Fishers; Legal Harmonization; Indonesia

INTRODUCTION

Work on fishing vessels is structurally different from ordinary land-based employment. The workplace is mobile, geographically remote, exposed to severe weather and industrial hazards, and often situated beyond the immediate reach of the worker's home State. For migrant fishers, these conditions are intensified by cross-border recruitment chains, language barriers, debt, document retention, uncertain vessel ownership, and the interaction of several jurisdictions. A single employment relationship may connect a worker recruited in Indonesia, a placement company operating under Indonesian law, a vessel owner incorporated elsewhere, a vessel flying a third State's flag, fishing operations in another State's exclusive economic zone or on the high seas, and port calls in multiple countries. This jurisdictional

fragmentation creates opportunities for responsibility to be shifted from one actor to another, leaving the worker without an effective forum for protection or remedy.

In constitutional terms, the protection of migrant fishers is not merely a question of administrative placement. Article 27(2) of the 1945 Constitution guarantees the right to work and to a livelihood worthy of humanity. Article 28D(1) protects fair legal certainty and equal treatment before the law, while Article 28D(2) guarantees the right to work and to receive fair and proper remuneration and treatment in employment. Article 28G(1) protects personal security, and Article 28I(4) places responsibility for the protection, advancement, enforcement, and fulfilment of human rights on the State. These guarantees require the State to design a legal system capable of preventing foreseeable abuse, regulating private intermediaries, coordinating public institutions, and ensuring remedies even when the harmful conduct occurs outside Indonesian territory (Constitution of the Republic of Indonesia, 1945). Indonesia's principal statutory framework is Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers. The Law expressly covers migrant seafarers and migrant fishers and organizes protection before, during, and after employment. It also distributes responsibilities among central and regional governments, diplomatic missions, labour attachés, the migrant-worker protection agency, and licensed private placement companies (Republic of Indonesia, 2017). Government Regulation No. 59 of 2021 elaborates the general implementation framework, while Government Regulation No. 22 of 2022 establishes more specific rules for the placement and protection of migrant merchant ship crews and migrant fishing vessel crews (Republic of Indonesia, 2021, 2022). This legal architecture represents a substantial shift from a placement-centred model toward a rights-based protection model.

The constitutional validity of including migrant fishing vessel crews within Law No. 18 of 2017 was tested in Constitutional Court Case No. 127/PUU-XXI/2023. In its decision of 29 November 2024, the Court rejected the petition and affirmed that merchant seafarers and fishers are migrant workers entitled to an integrated system of protection. The Court considered the inclusion consistent with Indonesia's obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and with the constitutional purpose of preventing regulatory gaps. The decision is important because it rejects institutional arguments that would separate maritime workers from the general migrant-worker protection regime. At the same time, the decision does not eliminate the need for differentiated standards: work in fishing has specific risks that are not

adequately addressed through general migration law alone (Constitutional Court of the Republic of Indonesia, 2024).

A major development occurred in 2026 when Indonesia ratified the ILO Work in Fishing Convention, 2007 (No. 188) through Presidential Regulation No. 25 of 2026. Indonesia deposited its instrument of ratification on 10 June 2026, becoming the twenty-seventh ILO Member State to ratify the Convention. Under the ILO ratification record, the Convention will enter into force for Indonesia on 10 June 2027 (ILO, 2026a, 2026b; Republic of Indonesia, 2026). Convention No. 188 establishes a sector-specific international floor covering minimum age, medical fitness, manning and hours of rest, fisher work agreements, repatriation, recruitment and placement, payment of fishers, accommodation and food, medical care, occupational safety and health, social security, and compliance and enforcement (ILO, 2007a).

Ratification creates both an opportunity and a legal transition. It provides an authoritative benchmark against which national rules can be evaluated, but it does not by itself resolve inconsistencies among statutes, implementing regulations, licensing systems, maritime administration, labour inspection, immigration procedures, social-security arrangements, and cross-border enforcement. The central legal problem is therefore not whether Indonesia recognizes migrant fishers as rights-holders; that recognition already exists. The problem is whether the existing regulatory and institutional system is sufficiently coherent, sector-specific, and enforceable to give practical effect to the Constitution and Convention No. 188 across the entire migration and fishing cycle.

This article addresses two research questions. First, how should the constitutional duties of the Indonesian State toward migrant fishers be interpreted after the ratification of Convention No. 188? Second, what harmonization model is required to align national law with international labour and human-rights standards? The study argues that constitutional protection must be understood as a positive, preventive, and remedial obligation. It further argues that implementation should not be reduced to adding Convention terminology to existing regulations. Effective harmonization requires consolidation of overlapping rules, clearer allocation of responsibility, enforceable due diligence for recruiters and vessel owners, transnational cooperation based on shared jurisdictional responsibility, and accessible remedies supported by social protection and worker participation.

THEORETICAL FRAMEWORK AND LEGAL CONTEXT

Constitutional State, Positive Obligations, and Extraterritorial Protection

The constitutional-state principle requires public power to be exercised through law, but formal legality alone is insufficient when the legal system permits predictable rights violations. In the field of migrant labour, constitutional guarantees impose positive obligations: the State must establish preventive regulation, supervise private actors, investigate abuse, impose sanctions, provide consular and legal assistance, and create effective avenues for compensation. These duties are especially important when the worker is physically outside national territory and cannot independently access domestic institutions. The constitutional obligation is therefore functional rather than purely territorial. It follows the State's regulatory authority over recruitment, licensing, documentation, social security, diplomatic protection, and the conduct of Indonesian persons and companies involved in the migration chain.

Extraterritorial protection does not mean that Indonesia can unilaterally regulate all conduct on foreign vessels or within another State's territory. International law allocates jurisdiction among flag, port, coastal, receiving, and sending States. However, limitations on enforcement jurisdiction do not remove Indonesia's responsibility to use the jurisdiction it possesses. Indonesia can regulate recruiters and placement companies established in its territory, require verifiable contracts before departure, condition licences on foreign-partner due diligence, prohibit worker-paid recruitment fees, collect and share vessel and employer data, provide consular assistance, initiate cooperation with flag and port States, and pursue civil or criminal responsibility where a sufficient jurisdictional link exists. The proper constitutional inquiry is therefore whether the State has taken reasonable and effective measures within its competence, not whether it can control every event at sea.

This interpretation is consistent with the State-protection orientation of Law No. 18 of 2017. The statute treats protection as a continuum before, during, and after employment, rather than as a single licensing event. It also recognizes legal, social, and economic protection. Accordingly, the constitutional standard should be evaluated at each stage: recruitment and preparation; departure and placement; work and living conditions on board; port access and emergency response; return and reintegration; and post-return access to justice. A failure at an early stage, such as an opaque contract or unlawful debt, may produce coercion during employment and obstruct remedies after return. Constitutional protection must therefore be designed as an integrated chain of prevention and accountability.

International Labour and Human-Rights Standards for Migrant Fishers

Convention No. 188 is the core sector-specific labour instrument for work in fishing. Its significance lies in adapting decent-work principles to the operational realities of fishing vessels. Unlike general labour legislation, the Convention addresses matters such as the fisher work agreement, responsibility of the fishing-vessel owner, repatriation after termination or abandonment, medical care at sea, vessel accommodation, food and potable water, occupational safety and health, and inspection of living and working conditions. It also requires Members to exercise effective jurisdiction and control over vessels flying their flag and permits port-State measures where a vessel's conditions appear clearly hazardous or non-compliant (ILO, 2007a). Recommendation No. 199 provides additional guidance for implementation (ILO, 2007b).

Convention No. 188 must be read together with broader international standards. Indonesia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families through Law No. 6 of 2012. That Convention protects, among other matters, equality before courts and tribunals, freedom from forced labour, protection against arbitrary deprivation of property and identity documents, access to information, remuneration and employment conditions, emergency medical care, and consular assistance (United Nations, 1990; Republic of Indonesia, 2012). The ILO General Principles and Operational Guidelines for Fair Recruitment further establish that workers should not be charged recruitment fees or related costs and should receive accurate, understandable information about the terms and conditions of work (ILO, 2019).

The Maritime Labour Convention, 2006 is relevant but not a substitute for Convention No. 188 (ILO, 2006). Indonesia ratified the Maritime Labour Convention through Law No. 15 of 2016, yet the Convention excludes ships engaged in fishing. The exclusion demonstrates why a general maritime-labour framework cannot be mechanically applied to fishers. The Constitutional Court's reliance on the broader logic of seafarer protection is useful for affirming integrated State responsibility, but post-ratification implementation must preserve the distinct regulatory content of work in fishing (Republic of Indonesia, 2016; Constitutional Court of the Republic of Indonesia, 2024).

At the regional level, the ASEAN Declaration on the Placement and Protection of Migrant Fishers recognizes migrant fishers as migrant workers whose rights form an integral part of human rights and fundamental freedoms. It calls for fair and ethical recruitment, understandable contracts, communication, wage transfer, repatriation, access to justice, and

cooperation among Member States (ASEAN, 2023). The ASEAN Guidelines adopted in 2024 elaborate a whole-of-government and whole-of-society approach and extend shared responsibility beyond sending and receiving States to flag, port, and coastal States and supply-chain actors. The Guidelines encourage comparative gap analysis, legal alignment with international standards, inter-ministerial coordination, cross-border remedies, consular support, social protection, and evidence-based policy (ASEAN, 2024). Although non-binding, these instruments provide a regionally legitimate implementation framework for Convention No. 188.

Normative Coherence and Legal Harmonization

Legal harmonization in this article means more than eliminating textual contradiction. It refers to vertical, horizontal, institutional, and operational coherence. Vertical coherence requires implementing regulations and administrative practices to reflect constitutional guarantees and treaty commitments. Horizontal coherence requires migration, labour, maritime, fisheries, immigration, criminal, and social-security rules to operate consistently. Institutional coherence requires clear mandates, referral procedures, data exchange, and accountability among ministries, agencies, regional governments, diplomatic missions, and law-enforcement bodies. Operational coherence requires that workers, recruiters, vessel owners, inspectors, and adjudicators can identify the applicable rule and the responsible authority in a concrete case.

The benchmark of coherence is practical rights realization. A formally complete contract regime is ineffective if workers receive documents they cannot understand, if the named employer is not the entity controlling the vessel, or if wage claims cannot be enforced across borders. Similarly, a prohibition on unlawful placement is insufficient if licensing databases are fragmented and port or flag authorities cannot verify the worker's status. Harmonization must therefore connect substantive rights with procedures, institutional responsibility, reliable data, and remedies. This functional conception informs the analytical model used in the study.

Figure 1. Normative Coherence Model for the Protection of Migrant Fishers

1945 CONSTITUTION: HUMAN DIGNITY, RIGHT TO WORK, LEGAL CERTAINTY, STATE RESPONSIBILITY



INTERNATIONAL AND REGIONAL STANDARDS: ILO C188, ICRMW, ASEAN

DECLARATION AND GUIDELINES



NATIONAL LEGAL FRAMEWORK: LAWS, GOVERNMENT REGULATIONS, LICENSING, SOCIAL SECURITY, SANCTIONS



INSTITUTIONAL IMPLEMENTATION: MINISTRIES, BP2MI/KP2MI, DIPLOMATIC MISSIONS, INSPECTORS, REGIONS



EFFECTIVE OUTCOMES: PREVENTION, SAFE WORK, REPATRIATION, REMEDY, COMPENSATION, REINTEGRATION

RESEARCH METHOD

This research is a normative juridical study. It examines law as a system of constitutional norms, international obligations, statutory rules, judicial interpretation, institutional mandates, and legal principles. The study does not measure the prevalence of abuse or evaluate the performance of individual agencies through field data. Its purpose is to determine the normative consequences of ratification and to identify gaps that may prevent coherent implementation.

Four approaches are employed. The statutory approach analyses the 1945 Constitution, Law No. 24 of 2000 on International Treaties, Law No. 6 of 2012, Law No. 15 of 2016, Law No. 18 of 2017, Government Regulation No. 59 of 2021, Government Regulation No. 22 of 2022, Presidential Regulation No. 25 of 2026, and related administrative rules. The treaty approach analyses Convention No. 188, Recommendation No. 199, the Migrant Workers Convention, the Maritime Labour Convention, and relevant ASEAN instruments. The case approach examines Constitutional Court Decision No. 127/PUU-XXI/2023. The conceptual approach uses positive obligations, due diligence, shared responsibility, access to justice, and normative coherence as analytical concepts.

Legal materials were collected from official Indonesian legal databases, the Constitutional Court, ILO NORMLEX, the United Nations, and the ASEAN Secretariat. They were analysed through qualitative content analysis and a normative gap matrix. Each protection issue was assessed against four questions: whether national law recognizes the right; whether responsibility is clearly allocated; whether compliance can be verified and



enforced; and whether an accessible remedy exists. The legal status cut-off date is 16 July 2026. Consequently, the analysis distinguishes between ratification of Convention No. 188 on 10 June 2026 and its entry into force for Indonesia on 10 June 2027 (ILO, 2026b).

RESULTS AND DISCUSSION

Constitutional Basis for State Protection of Migrant Fishers

The first finding is that the Constitution supports a comprehensive, rights-based protection regime. The right to work under Article 27(2) is not limited to access to employment; it is linked to a livelihood worthy of humanity. Article 28D(2) adds fair and proper remuneration and treatment. For migrant fishers, these guarantees require attention to wages, rest, safety, food, accommodation, medical care, and freedom from coercion. A policy that expands overseas employment while tolerating opaque recruitment or hazardous conditions would satisfy neither the dignity component of Article 27(2) nor the fairness component of Article 28D(2).

Article 28D(1) provides a second constitutional foundation: fair legal certainty. Migrant fishers frequently face uncertainty concerning the identity of the employer, applicable law, wage calculation, deductions, duration of voyages, dispute forum, and the entity responsible for repatriation. Legal certainty requires more than the existence of many regulations. It requires rules that can be understood and enforced in the worker's actual transnational relationship. Overlapping licences or competing institutional claims undermine constitutional certainty because they allow regulated actors to exploit ambiguity and make it difficult for workers to identify the responsible authority.

Articles 28G(1) and 28I(4) support preventive State action. Personal security is directly implicated by violence, forced labour, dangerous work, denial of medical care, and abandonment at sea or in foreign ports. State responsibility for human rights requires regulation of private recruitment and employment actors because many violations are committed by non-State entities. The constitutional duty is one of due diligence: public authorities must take reasonable measures to prevent foreseeable harm, supervise compliance, respond to complaints, investigate violations, and provide remedies. The State does not guarantee that no violation will ever occur, but it must establish an effective protection system rather than rely on the worker's private contractual capacity.

The constitutional framework also supports continuity of protection. Rights do not end at departure from Indonesian territory. Indonesia retains regulatory and protective capacities

through licensing, passports and documentation, social-security schemes, diplomatic and consular functions, bilateral cooperation, criminal and civil jurisdiction, and control over Indonesian recruitment entities. The State must use these capacities in coordination with other competent States. This is particularly important for fishers because physical isolation and vessel mobility can make ordinary workplace inspection and judicial access impossible. Constitutional protection must therefore be designed around the realities of transnational maritime work.

Existing National Legal Architecture and Constitutional Court Decision No. 127/PUU-XXI/2023

The second finding is that Indonesia already has a relatively broad legal foundation. Law No. 18 of 2017 expressly includes migrant seafarers and migrant fishers and recognizes protection before, during, and after work. Its objectives include ensuring fulfilment and enforcement of human rights, guaranteeing legal, economic, and social protection, and empowering workers and their families. This structure is compatible with the migration-cycle approach required by international law. Government Regulation No. 59 of 2021 further regulates protection procedures, division of governmental responsibility, and services throughout the cycle (Republic of Indonesia, 2017, 2021).

Government Regulation No. 22 of 2022 supplies a sector-specific layer for migrant merchant and fishing vessel crews. It addresses placement actors, placement requirements, employment agreements, documentation, protection, supervision, and dispute settlement. Its adoption is significant because it acknowledges that work at sea requires arrangements beyond general migrant-worker administration. It also provides a regulatory bridge between labour-migration institutions and maritime actors. Nevertheless, a regulation adopted before ratification of Convention No. 188 must now be reviewed article by article to determine whether its standards, definitions, enforcement tools, and allocation of responsibility satisfy the Convention's more detailed requirements (Republic of Indonesia, 2022).

Constitutional Court Decision No. 127/PUU-XXI/2023 reinforces the integrated framework. The petition challenged provisions that placed merchant seafarers and fishers within the migrant-worker protection system and questioned the relationship between migration and transportation licensing. The Court rejected the petition. It reasoned that inclusion in Law No. 18 of 2017 was consistent with the Migrant Workers Convention and served constitutional protection. The Court also viewed integrated services and coordination

as necessary to avoid fragmented protection (Constitutional Court of the Republic of Indonesia, 2024).

The decision should be understood in two complementary ways. First, it establishes a constitutional floor: maritime workers cannot be excluded from the migrant-worker protection regime merely because they work on vessels. Second, it does not justify uniformity where the risks differ. Merchant shipping and fishing are regulated by different international labour instruments. The Maritime Labour Convention excludes fishing vessels, whereas Convention No. 188 is tailored to them. Thus, integration should concern rights, public responsibility, databases, referrals, and remedies, while technical standards and enforcement procedures must remain sector-specific. The appropriate model is integrated protection with differentiated regulation, not institutional separation and not one-size-fits-all administration.

The decision also exposes a recurring governance issue: licensing dualism. Migration authorities focus on worker placement and protection, while transportation or maritime authorities focus on vessel, crew, safety, certification, and shipping requirements. Fisheries authorities may hold additional information on fishing operations, vessel licensing, and supply chains. When licences and databases are not interoperable, each authority may assume that another has verified the employer, vessel, contract, or recruitment chain. Harmonization must therefore define a single legally authoritative workflow, even if multiple institutions retain substantive competence.

Ratification of Convention No. 188 as a New International Benchmark

The third finding is that ratification changes the normative benchmark for evaluating Indonesian law. Presidential Regulation No. 25 of 2026 confirms national approval of Convention No. 188, and deposit of the instrument creates an international obligation that will become fully operative for Indonesia on 10 June 2027. The transition period should be treated as an implementation deadline, not as a period of regulatory inactivity. Under the principle of good-faith performance of treaties, Indonesia should avoid measures that would undermine the object and purpose of the Convention and should prepare the legal and institutional arrangements needed for compliance (Republic of Indonesia, 2000, 2026; ILO, 2026b).

Convention No. 188 adds precision to general constitutional and migrant-worker guarantees. It identifies responsibility of fishing-vessel owners, requires fisher work agreements that are comprehensible and consistent with the Convention, regulates repatriation, requires medical fitness, addresses minimum age and training, prescribes manning and rest, establishes standards for accommodation and food, and requires

occupational safety and health measures. It also links rights to compliance mechanisms by requiring laws, regulations, or other measures and effective jurisdiction and control over vessels flying the Member's flag (ILO, 2007a).

For Indonesian migrant fishers on foreign-flagged vessels, some flag-State obligations cannot be directly enforced by Indonesia. Nevertheless, ratification strengthens Indonesia's position in bilateral negotiations, consular intervention, recruiter regulation, contract approval, and transnational case handling. Placement may be conditioned on evidence that the vessel, owner, and flag State can meet minimum standards. Agreements with receiving, flag, port, and coastal States can establish information exchange, complaint referral, inspection cooperation, repatriation procedures, wage-recovery mechanisms, and recognition of evidence. Ratification therefore has both internal and external regulatory effects.

The Convention also requires clarity regarding the responsible private actor. Fishing operations often involve beneficial owners, charterers, manning agents, recruiters, and vessel operators. A contract that names only an intermediary may leave the worker unable to enforce wages or repatriation. National implementation should identify the fishing-vessel owner or equivalent responsible entity and ensure that contractual delegation does not remove ultimate responsibility. Recruiters should remain accountable for their own conduct, including unlawful fees, misinformation, document substitution, and failure to verify foreign partners. The two forms of responsibility are complementary rather than mutually exclusive.

Finally, ratification provides a basis for systematic inspection and evidence. Protection cannot rely exclusively on complaints because fishers may be at sea for long periods, lack communication, fear retaliation, or face confiscation of documents. Risk-based inspection, vessel and employer data, contract registries, wage-payment records, medical and training certificates, and complaint histories can identify high-risk placements before departure. Port-State cooperation is essential because a port call may be the only practical moment at which a worker can contact authorities or an inspector can observe conditions.

Normative and Institutional Gap Analysis

The comparative analysis identifies ten priority gaps. The term 'gap' does not always mean that no rule exists. In several areas, rights are recognized but standards are dispersed, responsibility is unclear, verification is weak, or remedies are difficult to execute across borders. Table 1 summarises the legal assessment.

Table 1. Gap Analysis between the Indonesian Framework and Convention No. 188

Protection issue	Existing Indonesian basis	Post-ratification gap	Required harmonization
Definitions and coverage	Law No. 18/2017 and GR No. 22/2022 cover migrant fishing vessel crews.	Terms used by migration, maritime, and fisheries authorities may not identify the same worker, vessel, owner, or placement chain.	Adopt uniform cross-sector definitions and a single identifier for worker, vessel, owner/operator, recruiter, and foreign partner.
Recruitment and placement	Licensing and placement duties exist; fair recruitment is a statutory objective.	Worker-paid fees, sub-agents, informal brokers, debt, and unverifiable foreign partners may escape effective control.	Prohibit worker-paid recruitment fees and related costs; require supply-chain disclosure, escrow/security, and recruiter due diligence.
Fisher work agreement and wages	Employment agreements and documentation are required.	Contract substitution, language barriers, unclear deductions, and uncertain responsible employer reduce enforceability.	Require plain-language agreements, independent pre-departure verification, itemised wages/deductions, electronic copies, and joint responsibility where appropriate.
Minimum age, medical fitness, and competence	General age, health, and competency requirements exist in labour and maritime rules.	Standards and authorised examination systems may not fully correspond to C188 or may be fragmented.	Align age limits, medical certification, training, and recognition of competency documents with C188 and Recommendation No. 199.
Rest, OSH, medical care, accommodation, and food	General safety and protection duties exist.	Detailed fishing-specific standards, risk assessment, accident reporting, and verifiable rest records may be incomplete.	Issue sector-specific minimum standards, inspection checklists, emergency protocols, and auditable records.

Protection issue	Existing Indonesian basis	Post-ratification gap	Required harmonization
Repatriation and abandonment	Protection and return mechanisms are recognised.	Responsibility and financing may be disputed among recruiter, owner, insurer, flag State, and government.	Establish mandatory financial security, rapid consular referral, recovery rights against responsible actors, and time-bound procedures.
Social security and compensation	Migrant-worker social security is regulated.	Coverage periods, overseas treatment, death/injury evidence, benefit portability, and recovery from foreign employers remain difficult.	Integrate social-security data, recognise foreign evidence, negotiate portability, and guarantee interim assistance pending recovery.
Complaints, justice, and remedies	Administrative, civil, criminal, and industrial-relations pathways exist.	Forum uncertainty, cost, evidence abroad, limitation periods, and lack of legal assistance impede claims.	Create a one-door case-management system, preserve evidence, provide legal aid and translation, and enable collective/representative claims.
Inspection and jurisdiction	Multiple agencies supervise migration, labour, vessels, and fisheries.	Overlapping mandates and limited access to foreign-flagged vessels create enforcement gaps.	Define lead and supporting authorities; build flag-, port-, coastal-, receiving-, and sending-State cooperation and risk-based joint inspection.

Protection issue	Existing Indonesian basis	Post-ratification gap	Required harmonization
Data and institutional coordination	Integrated services and government databases are legally contemplated.	Databases may be incomplete, non-interoperable, or not linked to complaints, sanctions, and vessel history.	Create an interoperable national migrant-fisher registry, common risk indicators, data-protection rules, and public accountability reporting.

Recruitment, Contracting, and Allocation of Private Responsibility

Recruitment is the first control point and frequently determines whether later employment is voluntary and enforceable. The ILO fair-recruitment principle that workers should not bear recruitment fees is particularly relevant to migrant fishers because debt can bind a worker to a vessel even when conditions differ from the promised terms. National rules should define recruitment fees and related costs broadly, prohibit direct and indirect charging, and prevent evasion through sub-agents, training charges, transport deductions, or loans linked to placement. Refund and compensation mechanisms should be available without requiring the worker to prove a complex criminal offence (ILO, 2019).

Licensing should be transformed from documentary approval into continuing due diligence. A placement company should verify the legal identity and track record of the foreign employer, vessel owner or operator, recruitment partner, vessel, flag, fishing authorisation, insurance, and repatriation security. It should disclose all actors in the chain and update authorities when any actor changes. High-risk indicators, such as repeated name or flag changes, prior wage complaints, opaque beneficial ownership, or unusually long voyages, should trigger enhanced review or suspension. Administrative sanctions should be linked to the national database so that an actor sanctioned by one authority cannot continue through another licensing channel.

The fisher work agreement must connect the worker to an entity capable of performing the obligations. It should state the vessel or permitted vessel group, voyage or duration, wage basis, overtime or share system, deductions, rest, repatriation, medical care, insurance, complaint mechanism, applicable law, and forum. The worker must receive the agreement in a language understood before departure and retain an electronic and physical copy. Contract

substitution should produce immediate administrative consequences and a rebuttable presumption in favour of the pre-departure terms.

Working and Living Conditions, Occupational Safety, and Inspection

Work in fishing combines navigational, mechanical, weather, fatigue, and occupational hazards. General duties of care are insufficient unless translated into measurable vessel standards and records. Implementing rules should specify minimum safe manning, hours of rest, risk assessment, protective equipment, accident and disease reporting, first aid and medical supplies, access to medical advice, accommodation, sanitation, food, and potable water. Records should be tamper-resistant and available to competent authorities and workers. Where national technical standards differ by vessel size or voyage duration, permitted flexibility must preserve the Convention's protective purpose (ILO, 2007a, 2010).

Inspection responsibility should be mapped according to jurisdiction. Indonesia has direct authority over Indonesian-flagged fishing vessels, recruiters, and placement processes. For Indonesian fishers on foreign-flagged vessels, pre-departure verification and cooperation with flag and port States become central. Bilateral or administrative arrangements should permit verification of vessel certification, exchange of inspection findings, notification when Indonesian workers are found on non-compliant vessels, and urgent access to workers in port. Consular officers need protocols for interviewing workers privately and referring safety allegations to competent port or flag authorities.

Complaint-driven enforcement alone is inadequate. A risk-based system should combine placement data, vessel ownership and flag history, voyage patterns, wage-payment evidence, accident reports, complaints, and inspection results. The objective is not to prohibit legitimate overseas fishing employment but to prevent placement into conditions that cannot reasonably satisfy minimum standards. Transparent risk criteria also protect compliant businesses by ensuring that enforcement is targeted and predictable.

Repatriation, Social Protection, and Access to Justice

Repatriation is both a labour right and an emergency-protection mechanism. National implementation should specify who must arrange and pay for return when the agreement ends, the vessel is abandoned, the worker is ill or injured, the vessel is detained, or continued work becomes unsafe. Mandatory financial security should be immediately accessible, without waiting for final allocation of liability. The State may provide emergency assistance and later recover costs from the recruiter, owner, insurer, or other responsible actor. Clear priority rules

are necessary because disputes over responsibility can otherwise strand workers in foreign ports.

Social protection must address the evidentiary realities of injury, disappearance, and death at sea. Claims may depend on foreign medical records, port reports, crew lists, logbooks, or witness testimony. Indonesian institutions should adopt procedures for recognising and authenticating such evidence and should not impose requirements that workers or families cannot reasonably satisfy. Benefit administration, consular case management, and law-enforcement investigation should share evidence subject to data-protection safeguards. Bilateral and ASEAN arrangements should pursue portability and coordination of benefits, especially where contributions or compensation are payable in another jurisdiction.

Access to justice requires more than a list of forums. Workers need a clear entry point, legal advice, translation, evidence preservation, status updates, and coordination among administrative, civil, criminal, and diplomatic pathways. A one-door case-management system should assign a lead officer and maintain a digital file from the first complaint through remedy. Limitation periods should account for long voyages and delayed access to documents. Representative or collective claims should be available where many workers were recruited through the same chain or served on the same vessel.

Institutional Coordination and Data Governance

The institutional problem is not simply the number of agencies but the absence of a legally binding workflow across them. Labour-migration authorities, transportation and maritime authorities, fisheries authorities, immigration, foreign affairs, social-security administrators, police, prosecutors, regional governments, and diplomatic missions each hold part of the relevant information. A harmonized system should define which institution leads at each stage and which must provide supporting action within specified time limits. Referral should transfer responsibility, not merely forward correspondence.

An interoperable migrant-fisher registry should link worker identity, recruiter, foreign partner, employer, vessel owner or operator, vessel identifiers, flag, contract, insurance, social security, medical and training certification, departure and return, complaints, inspections, accidents, and sanctions. Access should be role-based and consistent with personal-data protection. The registry should also generate public, anonymised accountability reports. Reliable data is necessary for prevention, but it must not be used to punish workers for irregular status or deter them from seeking assistance.

Regional and bilateral cooperation should follow the ASEAN shared-responsibility model. Sending, receiving, flag, port, and coastal States have different legal powers, and none can ensure protection alone. Cooperation instruments should identify focal points, response times, evidence channels, emergency procedures, inspection referrals, repatriation arrangements, wage recovery, and dispute resolution. Supply-chain actors, including seafood buyers and financiers, should be encouraged or required to conduct human-rights due diligence where their commercial leverage can prevent abuse (ASEAN, 2024; United Nations, 2011).

A Four-Pillar Harmonization Model

Based on the preceding analysis, this study proposes a four-pillar model. The pillars are cumulative. Regulatory reform without enforcement will remain symbolic; enforcement without remedies will not restore rights; remedies without data and cooperation will be slow; and sector-specific standards without integration will reproduce institutional fragmentation.

Pillar 1: Regulatory Consolidation with Sector-Specific Differentiation

Indonesia should conduct an official article-by-article conformity review of national law against Convention No. 188 and Recommendation No. 199. The review should identify which provisions require amendment of a statute, government regulation, presidential regulation, ministerial regulation, or administrative standard. Government Regulation No. 22 of 2022 should become the primary sector-specific implementation instrument, coordinated with Law No. 18 of 2017 and Government Regulation No. 59 of 2021. Definitions, licensing sequence, work-agreement requirements, responsible parties, rest and safety standards, repatriation, inspection, and sanctions should be consolidated. Integration must preserve fishing-specific standards rather than treating fishers as ordinary seafarers or ordinary land-based migrant workers.

Pillar 2: Rights-Based Licensing and Mandatory Due Diligence

Licences should be conditioned on continuous compliance and supply-chain transparency. Recruiters must identify all intermediaries, verify foreign partners and vessels, prohibit worker-paid fees, provide understandable contracts, maintain financial security, and report changes. Vessel owners or equivalent responsible entities must remain accountable for work and living conditions, wages, medical care, and repatriation. Due diligence should be risk-based, documented, auditable, and linked to sanctions, compensation, and licence suspension. Workers and their representatives should be able to access relevant non-confidential information and challenge inaccurate records.

Pillar 3: Integrated Transnational Enforcement

Indonesia should establish a permanent inter-ministerial migrant-fisher mechanism with a legally defined lead institution, shared database, joint risk assessment, inspection and referral protocols, and emergency response procedures. Internationally, it should prioritise agreements with major receiving, flag, port, and coastal States. These instruments should enable verification before placement, private worker interviews, complaint referral, evidence sharing, coordinated inspection, wage recovery, and rapid repatriation. Diplomatic missions should have specialised focal points and operational budgets for maritime labour cases.

Pillar 4: Effective Remedies, Social Protection, and Worker Participation

A rights-based system must provide rapid, affordable, and enforceable remedies. Administrative compensation and emergency support should not depend on completion of lengthy criminal proceedings. Legal aid, translation, evidence preservation, digital case tracking, and representative claims should be available. Social-security and insurance schemes should cover the entire migration cycle and recognise transnational evidence. Workers, trade unions, fisher organisations, families, and civil-society organisations should participate in regulatory review, monitoring, and evaluation. Their experience is necessary to test whether formal rules work in actual recruitment and vessel operations.

Table 2. Operationalisation of the Four-Pillar Harmonization Model

Pillar	Core legal action	Lead implementation focus	Principal indicator
1. Regulatory coherence	Conformity review; amendment and consolidation of rules	Law and regulation; common definitions and standards	Published C188 conformity matrix and revised sectoral regulation
2. Rights-based licensing	No-fee recruitment; due diligence; financial security; accountable owner	Recruiters, foreign partners, vessel owners/operators	Traceable recruitment chain and enforceable security for wages/repatriation

Pillar	Core legal action	Lead implementation focus	Principal indicator
3. Transnational enforcement	Inter-ministerial mechanism; bilateral/ASEAN cooperation; joint risk system	Sending, receiving, flag, port, and coastal authorities	Verified vessel/employer data, timely referrals, inspection and repatriation outcomes
4. Remedies and participation	One-door case management; legal aid; social protection; worker voice	Workers, families, unions, agencies, courts, insurers	Time to remedy, compensation recovered, benefit access, and worker-informed policy review

Implementation Priorities before 10 June 2027

The one-year interval between deposit and entry into force should be governed by a public implementation roadmap. The first priority is a national legal conformity audit led by the competent migrant-worker ministry together with labour, transportation, fisheries, foreign affairs, law, social-security, and law-enforcement institutions. The audit should be published and should distinguish mandatory Convention obligations, recommended measures, existing compliant provisions, partial compliance, conflicts, and institutional gaps. Public consultation must include migrant fishers, returned workers, unions, recruiters, vessel-owner representatives, civil society, and experts.

The second priority is revision of the sectoral implementing framework, especially Government Regulation No. 22 of 2022 and related ministerial and agency rules. Revision should clarify the relationship between placement and maritime licences, create a single digital workflow, define mandatory contract content, allocate responsibility for wages and repatriation, prohibit worker-paid fees, require financial security, align medical and safety standards, and establish sanctions that apply across licensing systems. Transitional provisions should prevent existing licences from becoming a loophole.

The third priority is institutional readiness. Authorities need standard operating procedures for case referral, consular response, inspection cooperation, accident and death cases, evidence collection, repatriation, and compensation. Front-line officers require training on Convention No. 188, forced-labour indicators, trauma-informed interviewing, data protection, and jurisdictional coordination. Budget allocation is essential; an unfunded mandate will not satisfy the constitutional duty of effective protection.

The fourth priority is international cooperation. Indonesia should map the principal destination, flag, port, and coastal States connected to Indonesian migrant fishers and prioritise agreements with jurisdictions where case volume or risk is high. Existing bilateral arrangements should be reviewed against Convention No. 188 and the ASEAN Guidelines. Cooperation should include direct agency contacts, 24-hour emergency channels, verification of vessel and employer information, access to workers, recognition of documents and evidence, and mechanisms for wage and compensation recovery.

The fifth priority is monitoring and accountability. The government should publish baseline data and annual indicators on placements, verified vessels and employers, recruitment-fee complaints, contract violations, injuries and deaths, repatriation, wage recovery, social-security claims, sanctions, and case-resolution time. Data should be disaggregated where appropriate but anonymised to protect workers. Independent review after the first year of entry into force would permit adjustment based on actual implementation problems.

CONCLUSION

Indonesia's ratification of ILO Convention No. 188 transforms the legal context for protecting migrant fishers. The 1945 Constitution already requires the State to protect dignity, fair work, legal certainty, personal security, and human rights. Law No. 18 of 2017, Government Regulation No. 59 of 2021, and Government Regulation No. 22 of 2022 provide an integrated migration-cycle framework, and Constitutional Court Decision No. 127/PUU-XXI/2023 confirms that migrant fishing vessel crews cannot be excluded from that protection. Ratification therefore does not create State responsibility from nothing; it specifies and strengthens an existing constitutional obligation through a sector-specific international standard.

The principal challenge is implementation coherence. Gaps remain where rights are dispersed across legal regimes, private responsibility can be shifted through recruitment and ownership chains, jurisdiction is divided among States, databases and licences are not fully



integrated, and remedies are difficult to access from sea or across borders. The proposed four-pillar model responds to those problems through regulatory consolidation with sector-specific differentiation, rights-based licensing and due diligence, integrated transnational enforcement, and effective remedies supported by social protection and worker participation. Completing these reforms before 10 June 2027 would allow Indonesia to move from formal ratification to measurable constitutional protection and could provide a regional model for rights-based governance of migrant labour in the fishing sector.

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