



Migrant Workers in Asia: Policies and Practices in Social Sciences

LIPI Jakarta, 14-15 July 2011

- “Labour Migration and The State”
Dr. Aswatini, MA (Indonesian Institute of Sciences)
- “Migrant Workers and The State”
Rafendi Djamin (The Asean Inter Governmental Commission on Human Rights)
- “Migration and Human Rights in Asia: Between Rhetoric and Reality”
Graziano Batistela (Scalabrini Migration Center, The Phillipines)
- “Migrant Workers as a constitutional Challenge for Indonesia”
Dr. Riwanto Tirtosudarmo, MA (Indonesian Institute of Science)
- “Significance of the Amendement of Law no. 39/2004 on Overseas Placement and Protection for Indonesian Migrant Workers”
Prasetyohadi (Institute for Ecosoc Rights)
- “Regional Outlook on Migrant Workers in Asia”
Kartini Pouchous (The International Organization for Migration)
- “Malaysia – Kebijakan Program Amnesty 6P 2011 untuk Pendatang Tanpa Izin (PATI)”
Alex Ong (Migrant Care Malaysia)
- Labor and Human Rights Protections Required for Indonesian Migrant Workers
A.Y. Bonasahat, S.H., LL.M (International Labour Organization)

Workshop Agenda
Migrant Workers in Asia: Policies and Practices in Social Sciences
LIPI Jakarta, 14-15 July 2011

DAY 1	14th July 2011
09.30 – 09.45	Registration
09.45 – 10.15	Opening Remarks
	1. Chairman of National Committee of MOST
	2. Director and Representative UNESCO Office, Jakarta – Prof. Hubert Gijzen
	3. Chairman of LIPI – Prof. Dr. Lukman Hakim. M.Sc
10.15 – 11.00	Keynote Speech
	<i>Prof. Dr. Hikmahanto Juwana LL.M (The University of Indonesia)</i>
11.00 – 12.30	Session 1
	<i>“Migrant Workers and the State”</i>
	Moderator: Charaf Ahmimed
	1. Dr. Ir. Aswatini Raharto, MA (Indonesian Institute of Sciences) <i>“Labour Migration and The State”</i>
	2. Rafendi Jamin (The Asean Inter Governmental Commission on Human Rights)
	3. Graziano Batistella (Scalabrini Migration Center The Phillipines) <i>“Migration and Human Rights in Asia: Between Rhetoric and Reality”</i>
12.30 – 13.30	Lunch Break
13.30 – 15.00	Session 2
	<i>“Migrant Workers from Academic Perspectives”</i>
	Moderator: Mr. Dundin Zaenuddin, M.Si
	1. Riwanto Tirtosudarmo (Indonesian Institute of Sciences) <i>“Migrant Workers as a Constitutional Challenge for Indonesia”</i>
	2. Prasetyohadi (Institute for Ecosoc Rights) <i>“Significance of the Amandement of Law no 39/2004 on Overseas Placement and Protection for Indonesian Migrant Workers”</i>
DAY 2	15th July 2011
09.30 – 11.30	Session 3
	<i>“Migrant Workers Protection: Civil Society Perspectives”</i>
	Moderator: Prof. Dr. Ir. Carunia Mulya Firdausy, MA
	1. Mr. Albert Y. Bonasahat (International Labour Office)
	2. Alex Ong (The Migrant Care Malaysia) <i>“Malaysia- Kebijakan Program Amnesty 6P 2011 untuk Pendatang Asing Tanpa Izin (PATI)”</i>
	3. Ms. Kartini Pouchous (The International Organization for Migration) <i>“Regional Outlook on Migrant Workers in Asia”</i>
11.30 – 13.00	Friday Pray Break
13.00 – 15.00	Session 4
	Moderator: Dr. Henny Warsilah, DEA

	<ol style="list-style-type: none"> 1. "Presentation of MOST Award Finalists" 2. Evaluation from MOST Award Jury 3. Floor Discussion
15.00 – 15.30	Break
15.00 – 16.30	MOST Award
16.30 – 17.00	Closing
	<i>DINNER and CULTURAL NIGHT *By Invitation*</i>
19.00 – 19.30	Opening
19.30 – 21.00	Dinner and Cultural Presentation
21.00	Closing



Migrant Workers in Asia: Policies and Practices in Social Sciences

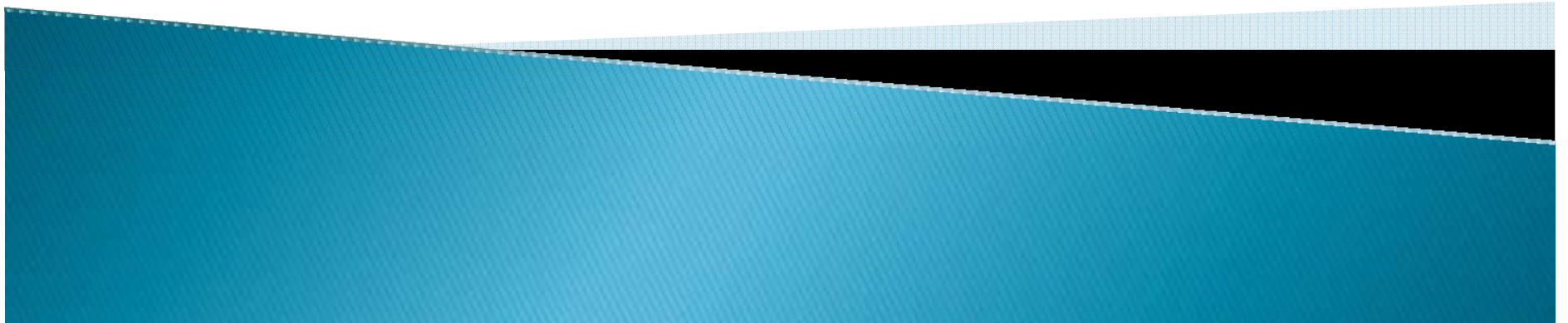
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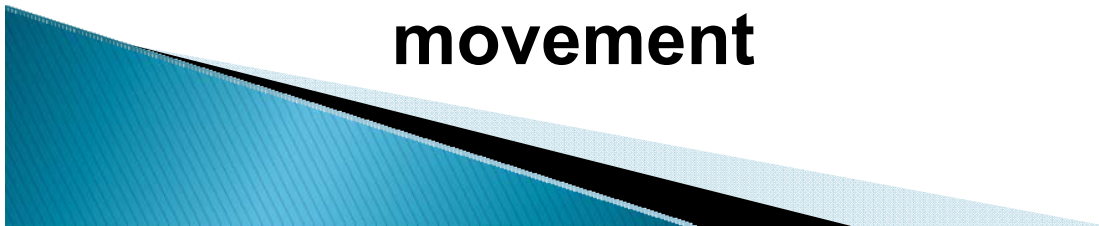
LABOR MIGRATION AND THE STATE: INDONESIAN INSTITUTIONS AND PRACTICES

Aswatini Raharto
Indonesian Institute of Sciences



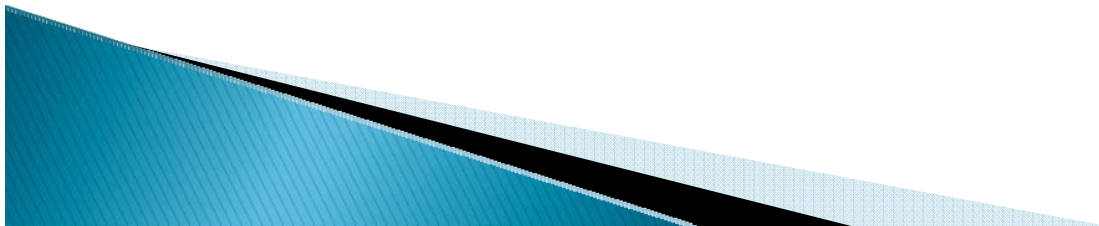
LABOR MIGRATION IN INDONESIA

- **Important labor sending country in South East Asia**
- **Has been going on since the Dutch colonial period**
 - **Voluntarily migration**
 - **Movement arranged by colonial gov.**
- **Up to 1970 mainly to Malaysia and Singapore**
 - **Mostly spontaneous, undocumented movement**



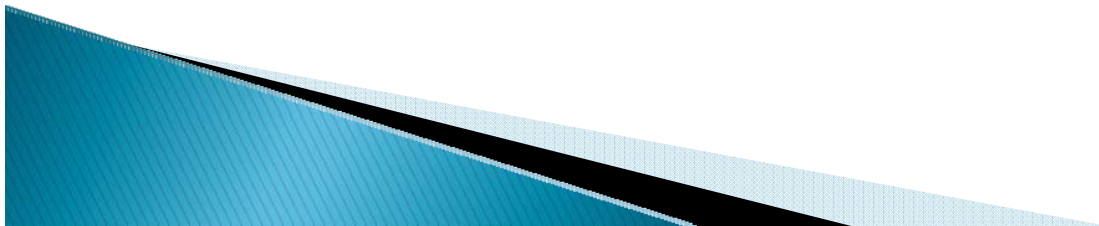
LABOR MIGRATION IN INDONESIA

- ▶ **In 1969 Indonesian Gov started to control placement of Indonesian workers overseas.**
- ▶ **1970 Indonesian Gov. announce regulation on labor recruitment (to work in the country and overseas → internal and international movement)**
- ▶ **1977: particular regulation directed to recruitment of Indonesian workers to work overseas**



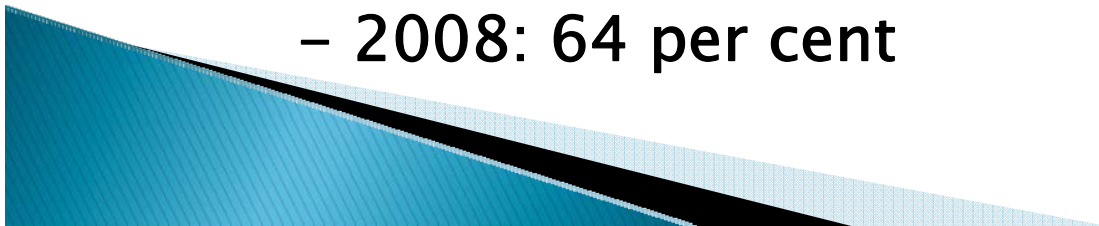
LABOR MIGRATION IN INDONESIA

- ▶ **Labor migration from Indonesia increased by increasing demand from M. East countries around 1970's**
- ▶ **Followed by increased demand on female workers (mainly in domestic sector)**
- ▶ **1980's shifted of labor migration flow: Middle East → Asian Countries (e.g. Malaysia, Singapore, Hongkong)**



LABOR MIGRATION IN INDONESIA

- ▶ Between 1994–2008 : \pm 6.3 Mill labor had been deployed to work overseas(excluding undocumented)
- ▶ Asia pacific region > Middle East
- ▶ Sex ratio (average): 36
 - – Asia Pacific: 79
 - – Middle East: 12
- ▶ Worked in informal sector jobs
 - 2007: 78 per cent
 - Asia pacific : 52 per cent
 - Middle East : 98 per cent
 - 2008: 64 per cent



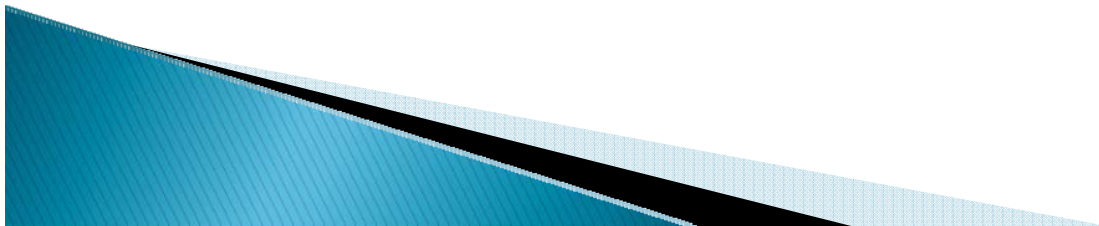
LABOR MIGRATION IN INDONESIA

- Overseas labor migration benefitting: migrants workers, government (sending, receiving), agencies, employer.
- Potential human right violation
- Female are in higher risk of human right violation and exploitation
 - due to nature of their work (in domestic sector), social, economic and legal context.
- Problems for Indonesia since > 50 per cent of Indonesian overseas workers are female mostly working in informal sector jobs.



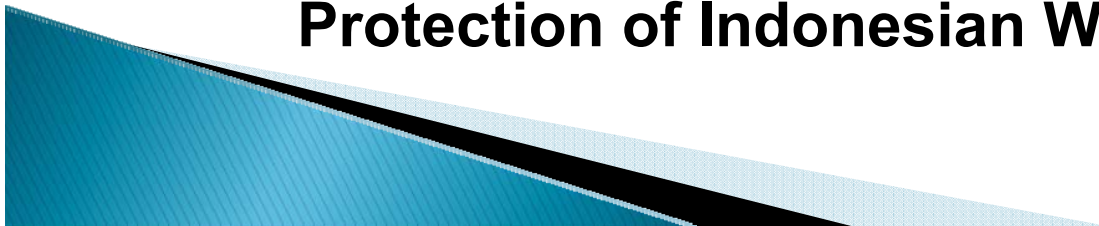
LABOR MIGRATION IN INDONESIA

- **Protection on migrant workers rights started at home: recruitment, placement process**
 - **laws and regulations concerning placement and protection of overseas workers**
 - **institutions involve in migration process: recruitment, placement, returning home**




BASIC INSTRUMENTS CONCERNING THE PROTECTION OF INDONESIAN OVERSEAS MIGRANT WORKERS

- **1st Gov. attention on overseas migrant workers : Ministry of manpower Regulation N0 4, 1970 concerning labor recruitment to work in the country and overseas**
- **Following by several regulations concerning recruitment and placement, under control on Ministry of manpower.**
- **Do not provide enough instruments on placement and protection of Indonesian migrant workers**
- **After >30 years (since 1970); Gov announced Act No. 39, 2004, concerning the Placement and Protection of Indonesian Workers Overseas.**

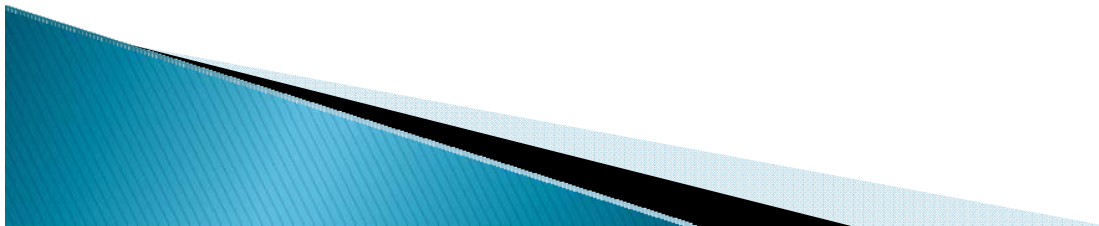


BASIC INSTRUMENTS CONCERNING THE PROTECTION OF INDONESIAN OVERSEAS MIGRANT WORKERS

- ▶ **Launched of Act No 39, 2004 was followed by several (important) instruments**
 - **Presidential Instruction No6, 2006, concerning Policy Reform on Placement and Protection System of Indonesian overseas migrant workers**
 - **Presidential Regulation No.81, 2006 on Establishment of National Authority for the Placement and Protection of Indonesian Overseas workers (BNP2TKI)**
 - **The Head of BNP2TKI Regulation No. 28,2007, on establishment of Overseas Labour Market Agency (BKLN)**
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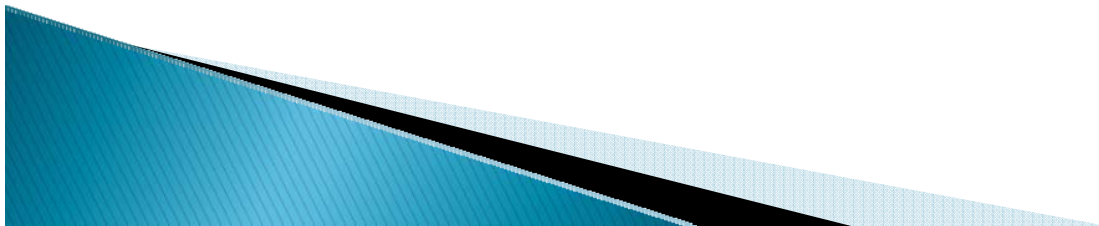
Act No 39, 2004 Concerning Placement and Protection of Indonesian Workers Overseas

- **Do not provide enough protection**
 - **More elaboration are given to administrative and practical aspects on the placement of Indonesian workers overseas.**
 - **Only one chapter (out of 16) and 8 articles (out of 109) focusing directly on the protection Indonesian workers overseas.**
 - **The word ‘female’ only stated once (article 35):’ Female currently not pregnant’.**



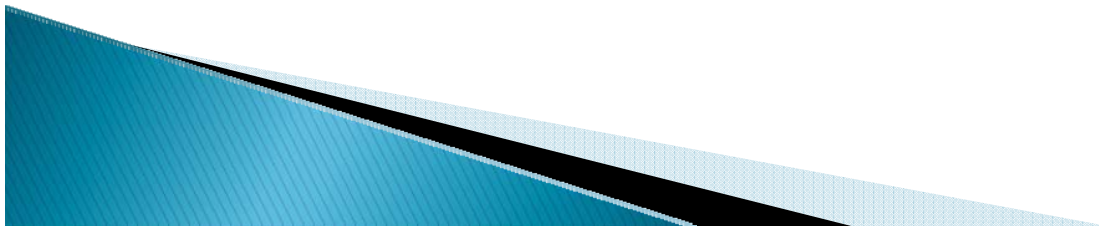
Act No 39, 2004 Concerning Placement and Protection of Indonesian Workers Overseas

- ▶ **Placement of Indonesian migrant workers Overseas (IMWO) is managed by**
 - 1. Government**
 - 2. Private recruitment Agency (PPTKIS), with written permit from the Ministry of manpower**
- Ambiguous meaning 'Who is government' concerning the authority of Ministry of Manpower and BNP2TKI → affected the recruitment process and protection (Ministry of Manpower Regulation No. 22/2008 on the authority of BNP2TKI).**



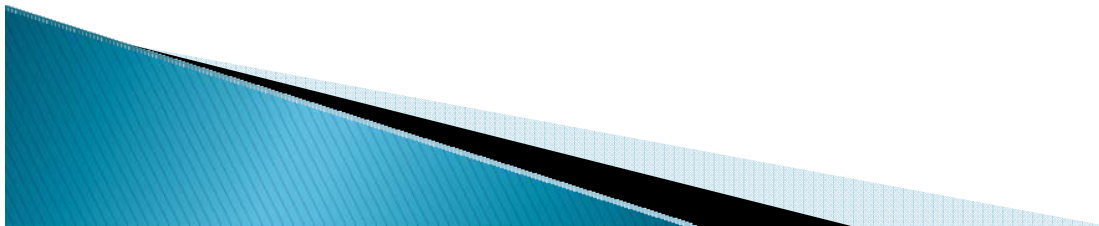
Presidential Regulation No 81, 2006 on establishment of National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI)

- ▶ **Article 49: 6 months after the regulation was announced, all activities related to placement and protection of IMWO, should be hand over from Ministry of Manpower to BNP2TKI**
- ▶ **Ministry of Manpower Regulation No. 22, 2008: BNP2TKI authority is only on G to G recruitment and placement.**
- ▶ **Conflict authority → will have an impact on protection**



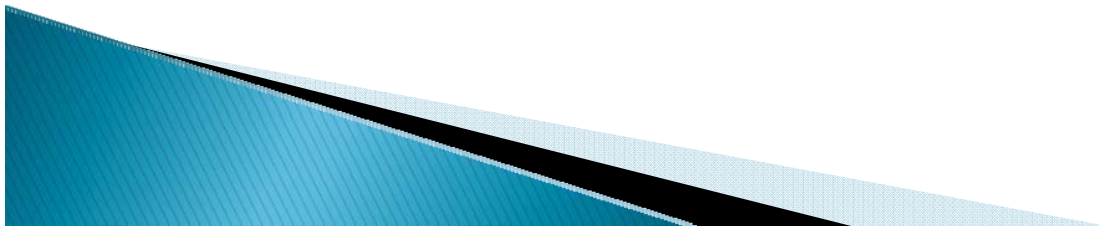
The Head of BNP2TKI Regulation No 28, 2007 on establishment of BKLN

- ▶ **The main duty: providing services (data) in recruitment process**
- ▶ **Facilitate registration of migrants/potential migrants to work overseas**
- ▶ **PPTKIS is no longer allow to utilize Middlemen/sponsor in recruitment of migrant/potential migrant workers.**



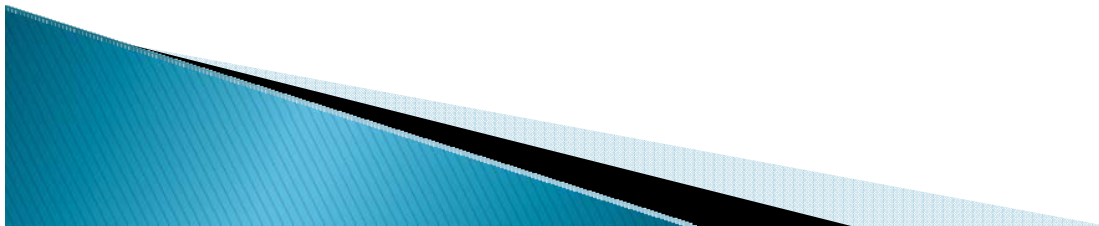
The Head of BNP2TKI Regulation No 28, 2007 on establishment of BKLN

- ▶ Problems:
 - **Some key informant interviewed in the field stated that BKLN is operating quite similar to Middlemen/Sponsor**
 - **Case: PPTKIS employed permanent field workers to recruit potential migrant workers (BKLN can not supply the data)**
 - **PPTKIS still utilize middlemen/sponsor in recruiting potential migrant workers**
 - **Diagram 1.**



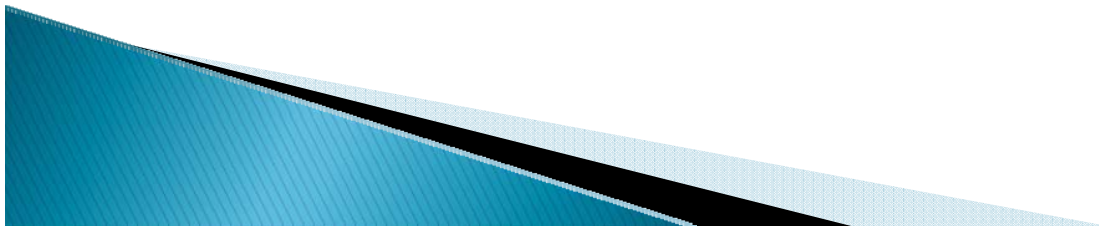
Institutions and recruitment process

- ▶ **Schema 1a**
- ▶ **Schema 1**



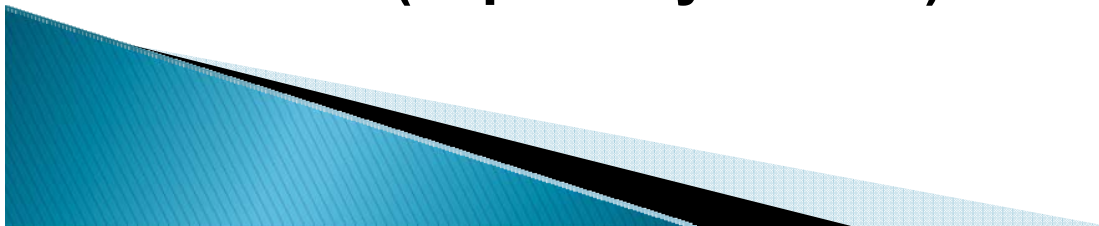
Conclusion:

- ▶ **Act, regulation concerning placement and protection of Indonesian overseas workers do not provide enough protection**
- ▶ **Government institutions involve in recruitment and placement at national and local level create problems in coordination, confusion and conflict of interest and authority → affected the protection.**

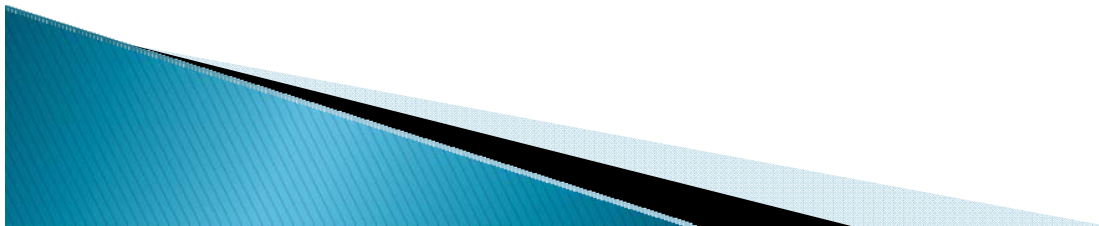


Conclusion:

- ▶ **Private agency (PPTKIS, BKLN) formally assigned by the government in recruitment and placement of IMWO are mainly profit oriented (BKLN is considered as Middlemen/Sponsor, legitimate by government; PPTKIS employed permanent field workers for maximum profit).**
- ▶ **Middlemen/sponsor still operated and still has important roles in recruitment process since they work at village level. → migration process longer and more commercial, migrants (especially female) vulnerable to exploitation.**



THANK YOU



“Migrant Workers and The State”

A regional agenda

Regional Workshop and MOST AWARD, July 14 – 15, 2011



Rafendi Djamin

Indonesia's Representative to the ASEAN Inter-governmental Commission on Human Rights (AICHR)

rafendidjamin@gmail.com

Introduction

- **Migrant worker definition:** a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”
- **Key driver :**
 - the extreme inequality of world distribution of opportunities, including in Asia and Southeast Asia Region.
 - Severe domestic economic situation. For instance: someone born in Thailand can expect to live 7 more years, to have almost 3 times as many years of education, and to spend and save 8 times as much as someone born in Myanmar (Human Development Report)
- **Purpose:** to seek a better quality of life for themselves and their families, one of the human rights and guaranteed by the Universal Declaration of Human Rights and its covenants
- about 80 million migrant workers around the world
- **Involved at least 2 states:** Sending/host/mother countries and receiving/destination countries. Properly manage migration will bring benefit to sending and receiving countries, as well as community

Countries of origin and destination in Asia/ASEAN

(source: IOM, 2011)

States of origin

- Indonesia (*ASEAN Country*)
- Philippines (*ASEAN Country*)
- Viet Nam (*ASEAN Country*)
- Myanmar (*ASEAN Country*)
- Cambodia (*ASEAN Country*)
- Lao PDR (*ASEAN Country*)
- Bangladesh
- India Nepal
- Pakistan
- PRC.

States/Areas of destination

- Brunei (*ASEAN Country*)
- Malaysia (*ASEAN Country*)
- Singapore (*ASEAN Country*)
- Thailand (*ASEAN Country*)
- Hong Kong
- China
- Japan
- Republic of Korea
- Taipei China
- Gulf Countries.

Source: http://www.aipasecretariat.org/wp-content/uploads/2011/04/IOM-ASEAN-Migration-Overview_v_03.pdf

In ASEAN alone, 6 states are identified as countries of origin and 4 others as countries of destination

General features of labour migration in ASEAN

- ❑ Out of the total population of a bit over 600 millions in ASEAN, 263 millions are considered as active labour forces
- ❑ 13.5 million migrant workers originated from Asia ,
- ❑ almost 40 percent of whom (5.3 million people) went to other ASEAN Member Countries.
- ❑ There are 3 countries that host 90% intra-ASEAN migrants Malaysia (35%), Thailand (35%) and Singapore (21%).
- ❑ Remittances inflow in ASEAN for 2010: US\$39.55 billion with Philippines accounting for 54%.
- ❑ Main character : strictly temporary (Limited work contract, limited to a specific sector/employer)
- ❑ Labour migration is gendered: male workers for public sectors; female workers in the private
- ❑ Lack of rural employment in CLMV countries also encouraging workers to migrate, in competition with Thailand, Indonesia, Philippines world financial crisis downturn;
(source : IOM, 2011)

General features of labour migration in ASEAN

- ❑ Unauthorized/irregular/undocumented migration is also substantial
- ❑ While ASEAN has been clear on making a free flow of skilled labour by 2015 (ASEAN Community), the movement unskilled workers remains problematic.
- ❑ with 148 millions people live on less than 2 \$ a day and over 28.8 millions live on less than 1 \$ a day (IOM, 2011), ASEAN will have to find ways to manage labour migration.
- ❑ Moreover, with the push and pull factors exist in ASEAN, preventing labour from migration is unthinkable, especially when the movement of workforces is recognized as method of maximization and full utilization of human resources. "

Major problems and issues

- Irregular/undocumented workers
- Female domestic workers

❖ Irregular/undocumented migrant workers

- Irregular/undocumented/unauthorized migrant workers are predominant in ASEAN.
 - 95% of all Cambodian workers go abroad through irregular migration.
 - Malaysia and Thailand appear to have the largest numbers of migrant workers in irregular situations
 - likely large numbers of irregular migrants in the Greater Mekong Sub-region.
- Irregular workers prone to abuse and violence even though laws and agreements with neighbouring countries have been put in place to protect their rights abroad.*
- Human rights violations against migrant workers are widely known in the region.
- (Hady Riad. Counsellor, German Embassy to Cambodia)

❖ Migrant Domestic Workers (FDWs)

- Feminization of migration for work, in the domestic sector, characterizes the challenge to prevent the abuse of and to protect the specific rights of women migrant workers in ASEAN
- Female domestic workers (FDWs) are the most vulnerable group among migrant workers.
- Abuses during all phases of migration:
at home -> when being recruited -> while in transit -> once in the host country, at work.
- Particularly vulnerable because working in private homes (unseen, isolated from other workers), no same legal protections as other workers.
- ILO found that 95 percent or more of domestic workers in Asia receive salaries below minimum wage and no regular weekly rest. no limit on their weekly hours of work.

Female migrant domestic workers

90 percent of the total female migrant workers working in ASEAN are FDWs

- Cambodia : over 40,000 employed in Malaysia
- Indonesia : about 300,000 migrated to works as (FDWs);
- Malaysia : About 300,000 FDWs;
- Philippine : 71, 557 new hires deployed overseas in 2009 ; and
- Thailand : about 300,000 FDWs.

Source: UFDWRs, 2011

None of the ASEAN states grant full legal labour rights to women domestic workers

These FDWs are today akin to modern day slaves.

Common violations suffered by FDWs:

1. Confiscation of personal documents
2. Verbal abuse
3. Sexual abuse
4. Physical abuse
5. Unpaid wages
6. Long hours of work (16-18 hours a day every day of the week)
7. Poor living condition with little privacy
8. Debt Bondage
9. Contract violation
10. Substitution of work contract and fraud by recruitment agencies
11. Trafficking

Deprived of Labour Rights in Destination Countries

1. Confinement & no freedom to leave their work place
2. No fixed hours of work
3. Very limited time off work and
4. Undefined job scope, may perform myriad tasks, open to employers to exploit
5. On call 24 hours a day
6. No weekly day offs, holidays/ annual leaves
7. No maternity benefit
8. No termination benefits
9. No rights to form associations

ASEAN Countries' response to migrant workers issue

- **Asean Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)**
 - Sets out responsibilities of ASEAN, and receiving and sending countries
 - Does not include undocumented migrant workers or families of migrant workers
 - Timeframe for implementation is yet to be established
 - Article 22 tasks ASEAN parties to: “develop an ASEAN instrument on the protection and promotion of the rights of migrant workers”
- **ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of *Migrant Workers* (ACMW)**
 - ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of *Migrant Workers* reports to the annual ASEAN Senior Labour. Officials Meeting (SLOM) on implementation 15-16 Sep 2008 (Singapore) – First meeting. Four areas of cooperation agreed:
 - Protection and promotion of rights of migrant workers
 - Strengthening good governance in recruiting process
 - Countering human trafficking
 - Drafting of “Instrument” per Article 22

ASEAN Countries' response

- On irregular migrants, Different ASEAN Member States have different parts in the problem: some are the source of irregular migrants, other are the destination, and some are the source, the transit springboard, as well as the destination. Hence they have different views about irregular migration and different national approaches and policies in dealing with each particular aspect of the problem .
- So there is a urgent need for a holistic approach on irregular migration that will encompass Security and Human Rights Approach. ASEAN as a whole has yet to develop a systematic and holistic approach to tackling irregular migration

ASEAN Countries response

ASEAN bodies dealing with the issue of migration

- ASEAN Foreign Ministers Meeting (AMM), ASEAN Senior Officials Meeting (ASEAN SOM)
- The ARF has an Inter-Sessional Meeting on Transnational Crime and Counter-Terrorism (ISM-TC/CT) for ASEAN to discuss cooperation on combating transnational crime and countering-terrorism with 17 non-ASEAN countries, including all the 10 Dialogue Partners of ASEAN.
- ASEAN Law Ministers Meeting (ALAWMM), ASLOM:
- ASEAN Defence Ministers Meeting (ADMM), ADSOM, ADMM-Plus:
- ASEAN Ministerial Meeting on Transnational Crime (AMMTC), ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of Ministries of Foreign Affairs Meeting (DGICM)
- ASEAN Labour Ministers Meeting (ALMM), Senior Labour Officials Meeting (SLOM), and the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW):
- ASEAN Ministerial Meeting for Social Welfare and Development (AMMSWD), ASEAN Senior Officials Meeting on Social Welfare and Development (SOMSWD), ASEAN Committee on Women (ACW), ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC):
- ASEAN Intergovernmental Commission on Human Rights (AICHR)

ASEAN Countries' response

I. ASEAN Declaration on the protection and promotion of the rights of migrant workers (2007 in Cebu, Philippines)

- ❑ The Declaration recognizes the contributions of migrant workers to both receiving states and sending states of ASEAN and the need to adopt appropriate and comprehensive migration policies on migrant workers and to address cases of abuse and violence against migrant workers whenever such cases occur;
- ❑ The declaration sets out responsibilities of ASEAN, and labour receiving and sending countries
- ❑ The declaration sets out **Commitment of ASEAN Countries** on migrant workers as follow:
 - For purposes of protecting and promoting the rights of migrant workers, ASEAN Member Countries in accordance with national laws, regulations and policies, will:
 - Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
 - Establish and implement human resource development programmes and reintegration programmes for migrant workers in their countries of origin;
 - Take concrete measures to prevent or curb the smuggling and trafficking in persons
 - Facilitate data-sharing on matters related to migrant workers,
 - Promote capacity building;
 - Extend assistance to migrant workers of ASEAN Member Countries
 - Encourage international organisations, ASEAN dialogue partners and other countries to respect the principles and extend support and assistance to the implementation of the measures contained in this Declaration; and
 - **Task the relevant ASEAN bodies to follow up on the Declaration and to develop an ASEAN instrument on the protection and promotion of the rights of migrant workers (para 22)**

ASEAN Countries' response

I . ASEAN Declaration on the protection and promotion of the rights of migrant workers (2007 in Cebu, Philippines)

- However, the Declaration doesn't include undocumented migrant workers or families of migrant workers.
- There is no timeframe for implementation
- .Article 22 tasks ASEAN parties to: “develop an ASEAN instrument on the protection and promotion of the rights of migrant workers”
- Art 22 of this declaration underline the importance to harmonize national labour laws with ILO International standards -- decent work and living conditions, enforcement of core labour standards, proper employment contracts, etc. Respect the rights of all migrant workers and their families

ASEAN Countries' response

II. ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of *Migrant Workers* (ACMW)

- ❑ in 2008, the ASEAN Committee on the implementation of ASEAN Declaration on the protection and promotion of the rights of migrant workers was established with the main task to develop an ASEAN legal binding instrument to protect and promote rights of migrants
- ❑ Previously, the ASEAN Ministers of Foreign Affairs in their Statement adopted on 30 July 2007 during the 40th ASEAN Ministerial Meeting in Manila, Philippines, called for the establishment an ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers , which reports to the Senior Labour Officials Meeting (SLOM).
- ❑ The first Meeting of the ACMW, held on 15 – 16 September 2008 in Singapore, adopted its Terms of Reference and Work Plan.
- ❑ ACMW Work Plan”
 - 1: Step up protection and promotion of the rights of migrant workers
 2. Strengthen protection and promotion of the rights of migrant workers by enhancing labour migration governance in ASEAN Countries (Strengthening good governance in recruiting process)
 - 3: Regional cooperation to fight human trafficking in ASEAN
 4. **Development of an ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers (Drafting of “Instrument” per Article 22)**

ASEAN Countries' response

The development of the drafting process of the ASEAN Declaration *on the Protection and Promotion of the Rights of Migrant Workers*

- ❑ At the last Meeting of SLOM, 7th SLOM Meeting in Malaysia on 23-25 May 2011, it was agreed that the drafting process of the instrument should be continued, as mandated by Cebu Declaration. The drafting process had been dead-lock for quite long (4 years), since ASEAN Member States couldn't reach agreement on the issues of the status of the documents/instruments (legally and non legally bidding) as well as on the coverage of migrant workers (documented and undocumented workers).
- ❑ The meeting also noted that it is necessary to involve third party in the drafting process and to set out the timeframe.

ASEAN Countries' response

III. ASEAN Intergovernmental Commission on Human Rights (AICHR)

- The establishment of AICHR was mandated by the ASEAN Charter of 2008.
- AICHR was formed as an integral ASEAN organizational structure, with a role as a consultative body and Advisory in nature.
- overarching human rights institution with overall responsibility for the promotion and protection of human rights in ASEAN.
- As defined in the article 1 of the TOR, AICHR purposes are to promote and protect human rights and fundamental freedoms of the peoples of ASEAN.
- Paragraph 4 of the TOR elaborates AICHR's mandates and functions and they include:
 - Developing strategies to promote and protect human rights (paragraph 4.1);
 - Consulting with human rights entities and institutions (paragraph 4.9);
 - Obtaining information from ASEAN members on human rights (paragraph 4.10);
 - Developing common approaches and positions on human rights (paragraph 4.11)
 - **Preparing thematic studies on human rights (paragraph 4.12)**

ASEAN Countries' response

III. ASEAN Intergovernmental Commission on Human Rights (AICHR)

❖ Thematic study on migration and human rights

- In AICHR's 5 year work-plan and program priorities 2010-2011 AICHR has determined that AICHR's priorities included migration and human rights.
- Therefore, pursuant to paragraph 4 of the TOR, AICHR is mandated to prepare studies on the theme of Migration and human rights, including through information obtained from ASEAN members and consultations with national, regional and global human rights entities and institutions like NGOs and UN, to develop ASEAN approaches and strategies to promote and protect human rights.
- Indonesia, who is now holding the Chairmanship of the AICHR is proposing a research on female domestic workers for the AICHR's 2011 thematic Study on migration and human rights. The reason to choose female domestic workers issue because, as explain earlier, that FDWs are the most vulnerable group among migrant workers. none of the ASEAN Member states grant full legal labour rights to female migrant domestic workers.

ASEAN Countries' response

III. ASEAN Intergovernmental Commission on Human Rights (AICHR)

❖ Thematic study on migration (female domestic workers) and human rights

The objectives of the research:

- Examine best practices on the protection of female migrant domestic workers in sending and receiving countries, including the coordination and collaboration mechanisms; judicial and non-judicial; and the role of civil society and private sectors;
- Assess the existing regional agreements both multilateral and bilateral (and/or trilateral) regarding the management of domestic migrant workers and the protection of their rights;
- Review and analyse domestic policies of ASEAN Member States relating to the protection of domestic migrant workers such as law on migration, trafficking, refugees, citizenship, and plan of action of human rights;
- Examine characteristics of the national migration policies and laws of ASEAN Member States, in particular, those who are the major recipients and sending countries to explore possibilities for policy and legal harmonization;
- Identify the gaps between existing laws and policies and human rights situation of migrant workers and challenges; and
- Formulate recommendations for the development of the ASEAN instrument for the protection and promotion of the rights of domestic migrant workers'

ASEAN Countries' response

III. ASEAN Intergovernmental Commission on Human Rights (AICHR)

❖ Thematic study on migration (female domestic workers) and human rights

The outcomes of the research:

- Best practices to protect female migrant domestic workers in sending and receiving countries;
- Policy analysis on existing regional agreements, domestic policies related to migrant domestic workers; and
- Policy and legal recommendation for the development of ASEAN instrument for the promotion and protection of the rights of migrant workers especially female domestic workers and their rights in ASEAN. The recommendations will be submitted to ACMW, ACWC and related ministries.

Thank you

contact

Email: rafendidjamin@gmail.com

Tweeter: @IndoAIHR

MIGRATION AND HUMAN RIGHTS IN ASIA: BETWEEN RHETORIC AND REALITY

Jakarta 14 July 2011

INCREASING CONCERN FOR HUMAN RIGHTS

- The three contentious issues at the Vienna Conference: universality of human rights, rights and development, and international responsibility
- Amendments of the ASEAN Charter
- ASEAN Intergovernmental Commission on Human Rights
- Bangkok Declaration on irregular migration
- Bali Process
- Colombo Process
- ASEAN Declaration Against Trafficking in Persons
- ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers

PROTECTION OF MIGRANTS RIGHTS

- Migrants' vulnerability
- The multilateral approach
- The bilateral approach
- Testing protection through international cooperation

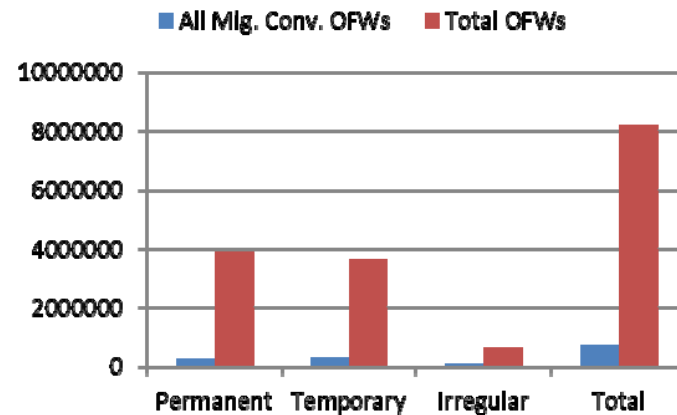
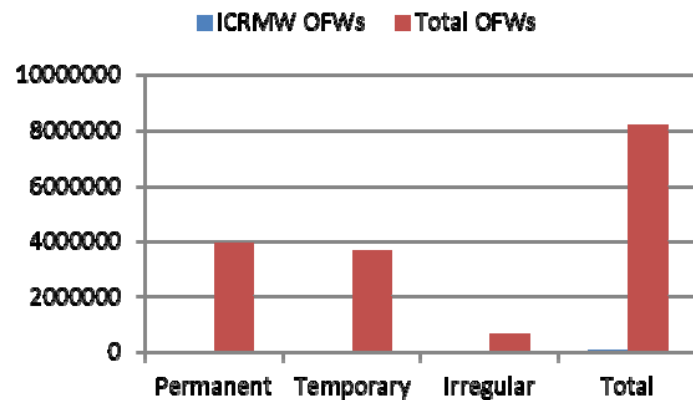
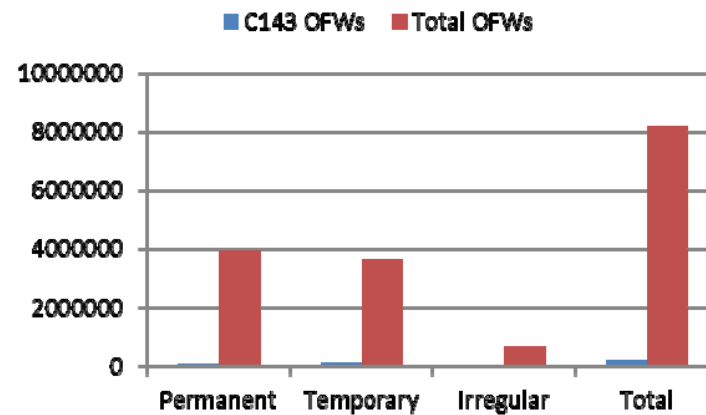
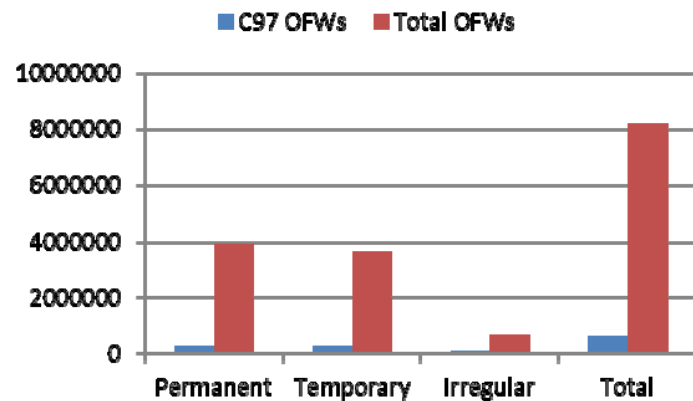
RATIFICATION OF UN INSTRUMENTS

Convention	Countries of Origin	Countries of Destination
ICERD	11	8
ICESCR	11	4
ICCPR	11	4
CEDAW	11	10
CAT	9	6
CRC	11	10
CRPD	6	6
CPED	2s	1

RATIFICATION OF MIGRANTS INSTRUMENTS

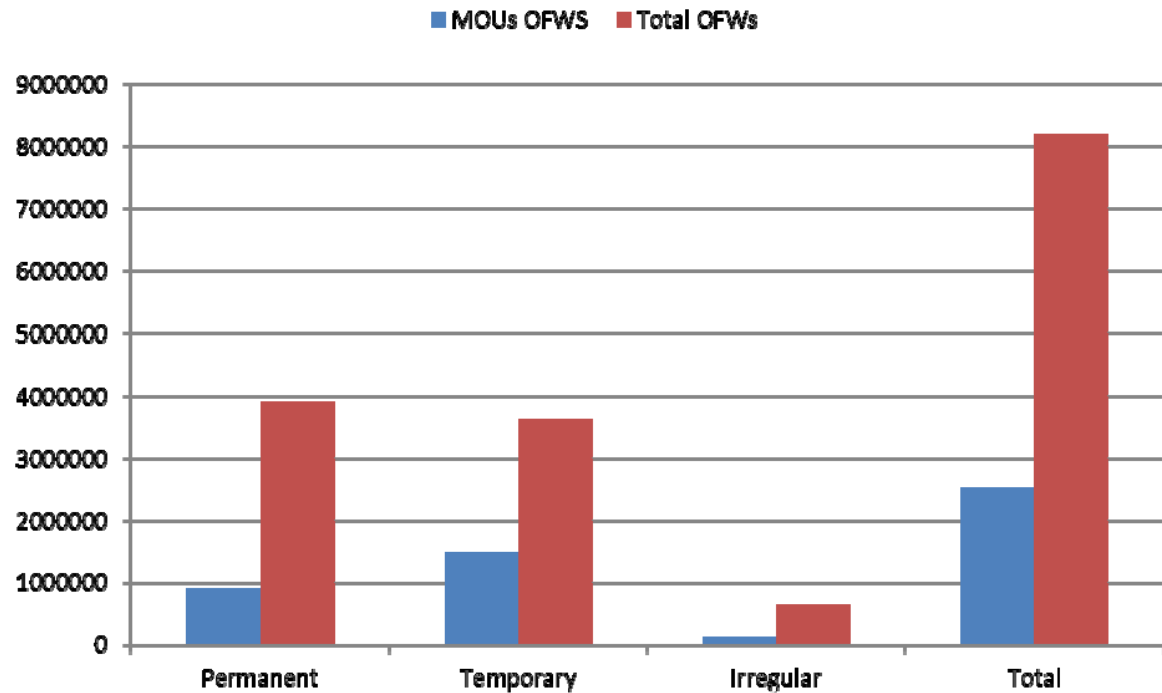
Instruments	Origin	Destination
ICPRMW	3	0
Prot. Trafficking	3 and 3 signed	7 and 2 signed
Prot. Smuggling	2 and 3 signed	4 and 2 signed
ILO C97	1	1
ILO C 143	1	0
ILO C 181	0	1

THE MULTILATERAL APPROACH



THE BILATERAL APPROACH

BAHRAIN
CANADA
Alberta
British Columbia
Manitoba
Saskatchewan
CNMI
INDONESIA
IRAQ
JAPAN
JORDAN
KOREA
KUWAIT
LAO PDR
LIBYA
NEW ZEALAND
NORWAY
PNG
QATAR
SPAIN
SWITZERLAND
TAIWAN
UAE
UNITED KINGDOM
USA



THE GAPS

- Insufficient implementation of norms at origin
- Insufficient migrant protection at countries of destination
- Insufficient coverage and binding strength of MOUs and BAs
- Insufficient coverage and strength of the multilateral approach
- Insufficient qualifications of migrants
- Weaknesses of the temporary labor migration system

For a human rights' based governance

- Necessity and weakness of the human rights approach
- The flaws of the temporary labor migration system
- Indications of principles for a rights based framework
- Toward a regional approach for the governance of migration

Migrant Workers as a Constitutional Challenge for Indonesia¹

Riwanto Tirtosudarmo

Research Center for Society and Culture,
Indonesian Institute of Sciences

Movement of People and the Nation-State

People are always on the move. Movement of people or migration is an important element of the history of mankind. While it is undeniable that freedom to move is one of the basic human rights, movement of people however can be a problematic in relation to the nation-states. This paper is an attempt to reflect on the challenges posed by movement of people to the nation-state of Indonesia, especially to the constitutional promise that the state has to provide welfare to its citizens. In a broad sense there are two kinds of movement of peoples, regardless of their reasons to move: internal and international. Peoples move internally between places within the state's national borders and internationally if they are crossing the geographical state's borders. In this paper I would like to focus on the international movement of people, specifically on a group of people that is known as migrant workers. Migrant workers are Indonesian citizens who are working abroad. I would argue that movement of people seeking economic opportunities abroad is therefore constitutes a serious challenge to the nation-states as the state has the responsibility according the constitution to provide jobs for its citizens.

¹ Paper prepared for MOST-LIPI conference on human rights of migrant workers in Southeast Asia, Jakarta 14-15 July 2011. This paper is slightly a shorter version of a chapter written for forthcoming ISEAS's book entitled *The Challenges for Indonesia in the 21st Century*.

Almost fifty years ago, a well-known statement made by Indonesia's first president Sukarno of his country as "a nation of coolies, and a coolie among nations", inspires the writing of this chapter. Sukarno's speech certainly has to be interpreted within various historical and political contexts. Sukarno made the statement at the closing ceremony of Manila Conference on 5 August 1963, an occasion which marked the heyday of an international campaign against what he called neo-colonialism and neo-imperialism at the start of the Cold War. The complete statement is:

When I was asked to give a speech at the University of the Philippines, I told for example about the history of the 17th and 18th century of the commercial revolution of the West. By that commercial revolution...we lost our political independence. And then came the 19th and the 20th century with the industrial revolution of the West. By that industrial revolution of the West, we lost our economic independence. So that in the beginning of the 20th century most of us have become...a nation of coolies and a coolie of nations.¹

As so often, Sukarno reflected in this speech on the travail of post-colonial states in Africa, Asia and Latin America within global historical contexts. Sukarno warned the people in these continents not to be trapped by the danger of a new form of economic colonialism propagated by industrial countries.

With the idea of "a nation of coolies" in mind, overseas labour migration constitutes a challenge to the post colonial states' competency in managing the economy. The inability to manage the economy is reflected in the state's failure to create domestic employment opportunities, which in the long run will be eroding a sense of nationhood reflected by an outflow of many Indonesians moving abroad to look for better jobs. In this context, Sukarno's speech becomes very relevant for the current situation as the failure of creating jobs at home becomes a pool of cheap labours for exports. If the tendency of an increasing overseas labour movement over the last three decades cannot

be reversed, the chance of Indonesia becoming “a nation of coolies and a coolie among nations” is getting stronger. This paper argues that the increasing number of peoples moves out of Indonesia to seek better jobs abroad reflect the failure of the Indonesian government to create job opportunities at home. The drifting of Indonesian citizens abroad therefore should be seen as a challenge for the nation-state of Indonesia to create more jobs domestically. Although under current economic globalization movement of labours is inevitable yet it is the obligation of the state to manage its domestic economy and to improve the economic welfare of its citizens.

Back in 1928, when Indonesian nationalists proclaimed the Youth Oath or *Sumpah Pemuda*, they proclaimed the ideals of one motherland, one nation and one language in order to develop a sense of nationhood in the multi-ethnic and multi-religious society. In 2008, when Indonesia celebrated the eightieth anniversary of the Youth Oath, the daily *Kompas* conducted a survey (27 October 2008) asking: “How do you perceive Indonesian youths today? Are they more concerned with the interests of the regions or the national interest as a whole?.” Among 852 respondents, age 17 years and above, from 10 provincial capitals, only 22 per cent said that youngsters are more concerned about the nation, while 75 per cent held that they were merely concerned with the interests of their home region. Around 3 per cent said that they didn’t know”. The survey indicates a declining sense of nationhood among young Indonesians and a preoccupation with personal interests in a local context. Meanwhile, another survey conducted by *Kompas*² in November 2008 showed that 83.2 per cent of the respondents thought that current Indonesian leaders were only following their personal interests with little nationalist or patriotic devotion.

This paper argues that unless the Indonesian state is fulfilling its constitutional duties in providing job opportunities for its people, protecting the human rights of its citizens, and guaranteeing all Indonesians equal rights as citizens without discrimination toward migrants or minority groups, the movement of people will become a major challenge for Indonesia. Movement of people, either internally or internationally, is only a reflection of wider social and political changes. In order to understand the wider contexts where in which movement of people is situated, the following part discusses the development of a failed strategy in transforming Indonesia into a genuine industrial developmental state. The third part of the chapter concerns the policy context of current international labour migration and is specifically looking into the complexities of the so called “irregular migration”. Irregular migration reflects the failure of the state in managing international labour migration in Indonesia. While internal and international migrations are seemingly two separate entities, they are both representing the reflection of social and political processes that continue to shape Indonesia and its future. The last part, is a reflection, in lieu of a conclusion, on the need to discuss and in turn, perhaps, to advocate, the issue of citizenship, as an important pillar of democracy, in Indonesia.

Resettlement, not Industrialization: A Colonial Legacy

Throughout its history, Indonesia’s demography and geography constituted two important factors in its development as the nation-state. The uneven population distribution between the very densely populated island of Java and the Outer Islands has been a long cause of concern for Indonesian governments, both colonial and post-colonial, to design a migration policy that could reverse the existing imbalances. For the

first time, in 1905, the Dutch colonial government launched a policy to move people from Central Java to South Sumatra. This event marked the beginning of a direct state-migration policy in the archipelago. Similar efforts were made in following decades with meager results at best. The independent Indonesian state has become ever increasingly concerned about demographic configuration and their likely immediate and long term political impacts. As will be argued, however, state policies to balance population distribution between Java and the Outer Islands did not comprise of a strategy for industrialization of the Outer Island which could have structurally reformed the Indonesian economy.

The end of the nineteenth century and the beginning of the twentieth century were marked by several important social changes. Java experienced rapid population growth in the second half of the nineteenth century. The central and eastern parts of Java especially became seriously over-populated, while there were vast unpopulated or under populated areas in the Outer Islands. Java's growing population was considered by the Dutch government to be the underlying cause of the decline of its people's welfare. The Dutch, however, had no policy that could directly solve the problem of population growth. The only answer they offered was emigration from Java to the outer islands. As Ricklefs (1981) argued:

There was no real attack on population growth. The nation's wealth was used for the interests of foreign enterprises and indigenous industries were not developed. The main economic development took place in the outer islands, while the main welfare problems grew in Java. Education was to be the key to a new age, but the number of school places provided was small when set against the size of the population.

In a similar vein, van der Kroef (1956) noted that the policies devised by the colonial government to cope with the dangerous economic effects of population pressure, curiously enough, rarely concerned themselves with the structural transformation of agricultural production. Many officials of the colonial and post-colonial governments as well as some colonial scholars have based their hopes on emigration as a solution of the problem. Pelzer (1945), a noted geographer, for example, had even gone so far as to maintain that emigration from Java to less densely populated islands would be able to absorb the population increase for many decades, and that emigration rather than industrialization would provide the necessary relief. Van Oorschot (cited in Penders, 1969) mentioned the following reasons for the Dutch lack of interest in industrialization: the interior freight rates were too high; a system for the distribution of industrial machinery was missing; and import duties on industrial goods were too low to afford sufficient protection.

Penders (1969) argues, however, that Van Oorschot does not mention - or at least does not spell out fully - the fundamental reasons for the failure of industrializations that is related to strong opposition from the Dutch capitalists. The plantation companies for instance perceived large-scale industrialization will increase the demand for labour that in turn raising the labour costs. The plantation is known as largely dependent for their profits on low wages. In addition, Dutch industrialists as well as Dutch labour were unwilling to be priced out of the Indonesian market which was one of the most important outlets for Dutch industrial products. The industrialization of Indonesia, as Pender's has argued basically militated against the interests of the imperial economy as a whole.

Among the new national leaders, Hatta (1954) argued most forcefully that emigration should be continued after Indonesia's independence. However, the idea of 'transmigration' as proposed by Hatta was somewhat different from the colonization policy implemented by the Dutch. Transmigration was to be implemented in conjunction with the industrialization of the Outer Islands. Hatta's ideas on transmigration were understandable. The superiority of industrialization over transmigration was an old idea among socialists in the Netherlands, who had strongly influenced his thinking. Hatta's political and economic ideas crystallized during his period as a student in the Netherlands in the 1920s at a time when socialism was strong in Europe. The socialist politicians in the Netherlands, in contrast with the Dutch industrialists, demanded a genuine process of industrialization to improve the economic conditions of the indigenous people, rather than merely the emigration of Javanese to the islands outside Java:

Without industrialization, transmigration will never solve the problems. Transmigration will only postpone the problems that eventually will return sometime in the future. Transmigration settlements, therefore, should be formed simultaneously with industrial locations.³

Hatta strongly criticized the colonial policy which had, basically, only shifted landless farmers from Java to become farmers in the other islands. He argued that:

Transmigration, which had been conducted by the Dutch, only resulted in shifting peasants to be peasants. In new settlements, those peasants established their villages based on traditions in Java. Even their house construction is also a replication of their customs. Everything is done primitively. Their spirit is static. In their former villages their conditions were very bad; in the new villages, they continue their backward way of living. This way of life, which does not bring any progress, will continue in the new settlement. There is no fresh spirit. Their lives have only postponed the coming problems, until the time when their families are

*grown-up. Therefore, wherever they go they will be caught up by the misery which they left behind.*⁴

Hatta (1954) also suggested that:

*'Emigratie' or 'transmigrasi' will achieve its goal in opening up prosperity if the people are given guidance and technical assistance in their new environment. If they are ignored and neglected, their life will never change. So far, all efforts have been made with a very narrow mind. Therefore, sooner or later, they will be people 'who eat land'. Their family members will grow up and the village, therefore, will need to be extended, and it will not be surprising that they will encroach on every available piece of land.*⁵

After independence, the so-called *Panitia Siasat Ekonomi* (Committee for Economic Strategies), of which Hatta was one of the masterminds, formulated a plan in which industrialization and population resettlement were the two major components.⁶ Thompson (1947) who observed the plan of the first Indonesian government noted that although the post-colonial resettlement program is essentially an amplification of a prewar project, it is planned in conjunction with the industrialization schemes for the Outer Islands. The idea of industrialization as the backbone of Hatta's transmigration policy in practice however proved unattainable.

After independence transmigration program is also perceived by the nationalist leaders as vehicle to assimilate the Javanese and the locals that under colonial government tend to be separated. As Wertheim (1959) observed in 1956 however, the expected process of assimilation in not materialized as the Javanese continue to life with their own society. Transmigration policy as practiced by the Indonesian government to

solve the population and related problems of Java was described by Wertheim (1959: 196) as not only impractical, but also illogical:

Why repeat a pattern which has produced in Java a scarcely enviable situation? Why should a solution of the population problems of the outer islands be exclusively sought in the agrarian sector, which inevitably leads to increasing competition for land? Why not try, in this early stage of development, an industrial development which would attract workers both from Java and Sumatra with appreciably less friction.

Jaspan (1960, cited in Hardjosudarmo, 1965) argued that transmigration as practiced by the Indonesian government was only ‘old stuffing with new cloth’, and merely a ‘dead end’ (*jalan buntu*). He also wondered why the emigration policy, which essentially served the capitalists’ interests and was characterized by its exploitative character, was continued by the Indonesian government since its ideology ‘Pancasila’ was obviously opposed to such exploitation (cited in Hardjosudarmo, 1965). According to J. Rigg (1991, cited from Nas and Boenders, 2002) the key to the improvement of conditions in Java does not lie in the ‘outer islands’, but in Java itself. Transmigration studies should indeed focus on the success of the program in isolated cases, but should not overlook a solution to overpopulation in Java itself. Rigg therefore stresses that, besides family planning, the urban-industrial sector seems to be particularly important, as the greatest potential for labour absorption can be achieved there.

Irregular Migration and the Incompetent State

Movement of people is in fact a normal daily event in Indonesia. People are moving from one place to another, whether they reside in their new destinations permanently or temporarily. As a multi-ethnic country, Indonesia has ethnic groups such

as the Minangkabaus, Madurese, Banjarese and Bugis, which are well known for their migration tradition (*merantau*). Their tradition to journey around the Malay World either to trade or to spread religious teachings dates back to pre-modern times. Most people have long moved to other locations voluntarily either for economic and political reasons. However, the migration tradition later became a problem particularly after the creation of nation-state as the migration of these people then transgressed the newly erected state's borders. As Ludden (2003) argued:

Modernity consigned human mobility to the dusty dark corners of archives that document the hegemonic space of national territorialism. As a result, we imagine that mobility is border crossing, as though borders came first, and mobility, second. The truth is more the other way around.

Within the definition of state boundaries, migration⁷ is then generally differentiated as either international or internal. The Indonesian state policies regulating migration therefore fall into two broad categories: policies regulating international or cross-border movements of people, and policies regulating movement of people within the country. Regularity or irregularity in the movement of people is therefore, narrowly and formally, defined on the basis whether or not the movement is conducted legally or illegally in relation to the existing state's laws and government regulations. Perhaps the most contentious migration issue in Indonesia today is the irregular migration of Indonesians who are crossing the state's border to work in foreign countries. It is estimated that around one-third of overseas migrant workers are considered by some observers as irregular migrants.

The notion of "irregular migration" is used among experts and agencies to capture the increasingly important issue of international migration which is going beyond the

previously existing terminology and discourses on migration. Irregular migrants consist of three categories: migrants arriving clandestinely, migrants staying beyond the permitted period of entry and residence, and migrants working without proper documents. Yet, these categories are limited only to the situation in the receiving countries. I argue that these categories should be expanded to cover the documented migrants who are often the product of irregular or rigged recruitment processes (Tirtosudarmo, 2009). It should be noted that irregular migration is a process involving both the country of origin and the country of destination. Before I further discuss the irregularity of the international migration among Indonesian workers, I discuss briefly the irregular migration within Indonesia.

The issue of irregular migration in the context of internal migration in Indonesia arises mostly in relation to the attempts of municipal governments to control the incoming flows of migrants from other, often rural, areas. The pull factors for people from rural areas to migrate to cities are their perceived economic opportunities. While it is a basic right of citizens to move within the confines of their home country, many of them will find their hopes for a better life being unfulfilled creating an increase in unemployment figure, poverty and slum areas. Municipal governments are usually unwelcome as many do not carry any required documents such as a personal identity card or a job invitation letter and have no place to stay. Major cities such as Jakarta, Surabaya, Makassar and Medan are regularly conducting surveillance operations in order to curb the incoming flow of migrants.

With regard to cross-border migration, Indonesians do not only migrate for economic motives, but also for security reasons, especially from areas with separatist

movements like Aceh (before the Helsinki Peace Agreement in 2005, East Timor (before independence in 1999), and Papua. The increasing military presence and the frequent human right abuses committed by the military in those areas has created a climate of fear among the population that drove large numbers of people away to neighboring countries – most of them clandestinely. Many Acehnese migrated and sought refuge in Malaysia; East Timorese and many Papuans made Australia their destination. While some migrants constitute of asylum seekers or political refugees, others are solely motivated by social and economic reasons. The government has lent some support to the latter group.

A state policy on overseas migrant workers was set up in the early 1980s. In 1981, a private but well connected Indonesian Labour Supply Association was formed to tap the economic benefits coming from the increasing flow of labour to the Middle East. This Labour Association is a consortium of labour recruiting agencies, officially licensed by the Ministry of Manpower to be a broker for job contracts with overseas employers and arranging for the conveyance of workers. As the stream of workers to the Middle East increased, the state began to see overseas employments as a useful strategy to solve its labour surplus problems. For the first time, the state explicitly and formally set the target of the deployment of the workers overseas in its five year development plan in 1983. Since then, overseas migration continues to increase and so does the number of countries serving as destination. The high demand for unskilled and semi-skilled labours in factories, the plantation and construction industries, particularly in Malaysia and the Middle East, boosted the number of private labour recruiters. The migrants' jobs, however, often do not offer any legal protection. Workers are mostly contract workers, often for a two-year period with the possibility for extension. It is estimated that around

80 per cent of Indonesian overseas migrants are female labourers⁸. The gender imbalances is due to the growing demand for female domestic workers such as baby sitters and nannies and also care workers for the elderly throughout the more developed economies in East Asia and the Middle East.

Around the mid 1980s when the government became aware of the perceived advantages of large-scaled labour migration, the Indonesian press began to report cases of abuse against Indonesian female domestic workers in the Middle East, especially Saudi Arabia. The Indonesian government's response, however, suggested a lack of political will to protect the overseas migrant workers. It primarily aimed to maintain the bilateral relations with the Saudi Arabian Government accusing the press of bias. The then Minister of Manpower, retired admiral Sudomo, a former Chief Executive of the Operation to Restore Order and Security Command, in 1985 went as far as announcing a ministerial decree which would disallow these workers to talk to the press about their experiences. Yet, while press reports on the migrant workers in the Middle East remained in the eye of the public, the slow but steady increase of cross-border movement to Malaysia went ahead rather unnoticed. Migration of Indonesian workers to Malaysia, both to West (Malay Peninsula) and East Malaysia (Sabah and Sarawak states) has a long tradition helped by ethnical and linguistic connections. Since the early 1970s, rapid economic growth in Malaysia has increased the welfare of its population, resulting in a rising demand for foreign labour to be employed in low wage jobs. These employment gaps became the main pulling factors for foreign workers to go to Malaysia, either legally or illegally. The Indonesian state and the public gave been giving little attention to the

cross-border labour movements to their neighbor country. In Malaysia, by contrast, the influx of foreign migrant labours has always been a major social and political issue.

The irregular character of these overseas migrant workers is a result of the state's failure to regularize the migration processes (Tirtosudarmo 1999).⁹ The overseas labour regulation in 2004 emphasizes the authority on overseas labour policy on Minister of Manpower and the Indonesian embassy in the receiving countries. The labour recruiter agencies operate both in the receiving country and in Indonesia. After the labour recruiter agency in the receiving country obtain a job order, namely the letter stating the list of labour demand, they have to obtain an approval letter from the Indonesian embassy office before sending the job order to their labour recruiter counterpart in Indonesia. The Indonesian labour recruiter brings the job order to the Ministry of Manpower to obtain approval letter and the number or the quota of labour that they could recruit in a certain period of time. It should be noted that only Ministry of Manpower could authorize the permit for the labour recruiter agencies. This authorization process is the beginning of the corrupt practices in the long process of overseas labour policy.

The second corrupt practices are occurred at the time when the labour recruiter agencies submit their request to get the letter of approval and the quota of labour that they could recruit. Based on the approval letter and the quota that the labour recruiter agencies obtain from the Ministry of Manpower, the process of recruitment and placement officially begins. In practice, however, the various forms of labour brokers have already operated in the country to recruit prospective labourers from places that are known as the major sources for overseas migrant workers. The labour brokers, that constitute several layers of actors -- from village, district, province up to Jakarta -- operate to serve the

national labour recruiter agencies in recruiting and processing the potential migrants according to the formal bureaucratic requirements, ranging from personal identification, supporting letter from family, approval letter from the village head, the health certificate, and the passport. In this stage of documentation processes, falsification and bribing the officials occurred without any possible noticed and controlled from the public. After potential migrant workers are “collected”, they are then accommodated in the holding centers, mostly located in Jakarta, firstly to be trained, and secondly to wait for placement abroad. In this stage, a waiting time for the migrant workers to be placed in destination country could be unlimited. In this uncertain circumstance, potential migrant workers have literally imprisoned and treated as merely an economic commodity by the labour recruitment agency.¹⁰

Migrant workers have no power to negotiate and their employment prospect lies in the hand of the brokers that operates on behalf of the recruiting agency. Extortion, bribing, sexual harassment, forced labour could happened to the potential migrant workers at this waiting stage of deployment. The labour recruitment agency and its brokers, while having an approval letter and the legitimate number of quota, practically only used such letters as the legitimacy to recruits potential migrant workers as much as they can, to be traded, often with other agencies, both within Indonesia and in the receiving countries. The potential migrant workers, which the majority is female, have no possibility to leave the holding centers as they will be charged for room and meals according to the duration of their stay in the holding centers. The labour agencies create indebtedness that restricts the human right of the potential migrant workers. The

migration irregularity and the practice of human trafficking could occur along the process of placement that ironically is authorized by the state.

The irregularity in authorizing documentation embedded within the inefficient and corrupt bureaucracy in collaboration with the private labour recruiting agencies that only look for profit. In this context, irregular migration is a product of a lack of political will and weak policy process that reflects the state incompetence in regulating migration.

The porous state's border with Malaysia contributes significantly to the burgeoning number of irregular migration to Malaysia. The inability to properly manage the labour drifting to other countries resulted in the burgeoning number of irregular overseas labour migration. Combating irregular migration should indeed start at home by improving state capacity in policy making processes and at the same time international and regional cooperation is urgently needed to support as irregular migration is basically a transnational rather than a domestic problem.

The plight of Indonesian migrant worker has received greater attention in the post-New Order period when the government's failings in managing voluntary migration have become more apparent. In general, however, labour union activists still find it difficult to enter politics after three decades of political marginalization under Suharto's authoritarian regime. A propagandized association of the labour movement with communism has given a long-term blow to labour politics. In addition, the relatively small number of workers and the narrow base of industrialization processes in Indonesia has been a contributing factor limiting their political mobilization and playing a greater role in national politics.

Under the current government an attempt has been made to improve the policy on overseas migrant workers through the recent creation of BNP2TKI, the national body reporting to the government on the placement and protection of Indonesian overseas workers. Greater action had been increasingly necessitated by ongoing human right abuses against migrant workers abroad. At the same time, migrant workers contribute an important source of national revenue through their remittances. Yet, clear policy changes on overseas migrant workers still unseen so far. The overlapping authority between Ministry of Manpower and the newly created BNP2TKI for example reflect the continuously acute problem of coordination among the government agencies. Without a concrete overseas policy change, irregularities definitely will still be dominating the overseas labour migration in Indonesia. The irregular migration is a result of the state's incompetence in managing overseas labour migration that has been around since the early 1980s. The persistence of inward looking policy on migration no doubt emanating from strong emphasis on the resettlement policies of people from overcrowded Java to the other islands as discussed in the previous section of the chapter. The failure to create sufficient job opportunities at home and the increasing economic development gaps with neighboring countries are underlying factors for Indonesians to look for jobs abroad. Irregular migration, however, is not solely due to the shortcomings and the incompetent of the Indonesian government but also the result of similar government policy weaknesses of the receiving countries.

The Need to Advocating Citizenship in Indonesia

The challenges emanating from the movement of people operates in indirect and subtle ways. Movement of people should be seen as the reflection of the structural change in society. In this case, movement of people reflects the undergoing process of increasing economic inequality within Indonesia, and between Indonesia and other countries. The increasing movement of Indonesians, especially the women, to seek employment abroad is therefore challenging the state competent in creating the economic opportunities for women domestically, which insured the fulfillment of the welfare for its citizens.

Movement of people, within and crossing the state's borders, will be increasing as the world will become more integrated. The increasing globalization brought by the power of capitalist economy could not be resisted by any nation-states. This unprecedented trajectory characterizes the world in the twenty-first century. Indonesia is not an exception. The challenges brought by movement of people constitute the new challenges that have never been experienced by Indonesia before. The idea of Indonesia and its indonesianess that is representing the long historical processes will face an unprecedented consequence in its history. Indonesian nationalism will have to face the reality as more and more Indonesia will live outside its national boundaries. Indonesian transnational communities are now in the making that could emulate new nationalism or trans-nationalism.

As a nation-state, Indonesia presumably should have a strong bound to its people, as the people are the backbone of the state and the nation. The link between the people and the state is commonly through the notion of citizenship. Yet, the concept of citizenship is alien and largely beyond the consciousness and imagination of the

Indonesian people. The notion of citizenship is apparently not an urgent issue for most of the Indonesian people. It has been rarely discussed in the public discourse except in the case of the Indonesian Chinese that is considered as immigrants. My speculation why citizenship is a minor issue in Indonesia is because Indonesia is not an immigration country like Singapore, Malaysia or Australia. In the immigrant countries citizenship has been always seriously debated in public discourse as the high flow of immigration will influence the racial balance of the population. In Indonesia the majority of the populations are locals and immigration flow is considered as always low. The weak sense of citizenship in Indonesia, according to Nordhold (2008) influences the state in guaranteeing the rule of law and the consolidation of democracy in the post-Suharto era. Quoting Elson (2008) Nordhold (2008) argued that a strong national identity is not fulfilled “after 1998 the elite was not capable of providing a new sense of what the idea of Indonesia represented”. Reflecting on the future of democracy and citizenship in Indonesia, Nordhold (2008) lamented, as the following:

Electoral democracy has been established but the future of democracy in Indonesia will depend on the capacity of the state to guarantee the rule of law. Whereas the new political elites see the state primarily as a resource through which they can feed their clients, democracy requires more state capacity through which the rule of law and citizenship can be strengthened. This cannot be achieved overnight; it will take decades to improve the quality of the state to strengthen Indonesian citizenship.

The idea of citizenship is perceived by the Indonesians as something that are relevant and meaningful if the population has a stake on it. In order to strengthen the feeling of being a member and Indonesian citizen, the state has to show its constitutional responsibilities to its citizens. Unless a truly development paradigm that is pro poor, treating labour as human beings not as an economic commodity, and oriented toward the

welfare of the majority of the Indonesian citizens, which is officially stated in the state's constitution, what Sukarno has lamented more than a half of a century ago, "...a nation of coolies, and a coolie among nations", will be a real curse for Indonesia's future.

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NOTES

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- ¹ See Angus McIntyre (2005) *The Indonesian Presidency: The shift from Personal Toward Constitutional Rule*, pp. 86.
 - ² On Monday, 10 November 2008, the occasion of "heroes day" (Hari Pahlawan), *Kompas* published a public pooling result. A couple of striking indicators revealed from this public pooling. Combating corruption and law enforcement (stated by 40.6 per cent of the respondents) and combating poverty (stated by 39.3 per cent of the respondents) were two heroic attitudes (*sikap kepahlawanan*) that currently needed for Indonesia. The public (83.2 per cent of the respondents) also perceived that the current Indonesian leaders (*tokoh masyarakat*), unfortunately, only concerned about their own personal interests and having a very low sense of nationalism and patriotism. The polling was conducted through phone on 5-6 November 2008 to respondents age 17 and above in 10 provincial capitals. This public pooling repeating the result of the previous survey that state's incompetent and social divisiveness apparently plaguing the current Indonesia.
 - ³ Hatta (1954, p.169), author's translation.
 - ⁴ Hatta (1954, p. 170), author's translation.
 - ⁵ Hatta (1954), author's translation.
 - ⁶ The fact that resettlement became an important part of the government plan immediately after independence was, according to some observers, rather strange. Newly independent Indonesia had been born of a rhetoric that called for the rapid destruction of colonial and economic institutions (Paauw, 1963).
 - ⁷ In Indonesian language, the term of 'migration' has been translated as 'migrasi' that is used interchangeably with the word '*perpindahan*' or '*mobilitas penduduk*'.
 - ⁸ The discourse on migrant workers cannot be isolated from the broader development ideology adopted by the economist-technocrats that dominated the economic planning after 1965. This group of economist-technocrats provided the Suharto's regime a quasi-scientific legitimating ideology for suppressing the right for labour to form free trade unions. The political discourse on labour during this time was encapsulated into the notion of human resources within the economic development paradigm advocated by the economist-technocrats. The word "buruh" (labour) was officially replaced by "pekerja" (manpower, worker) as the term "buruh" connotes the socialist-communist terminology that were officially banned perhaps to avoid the possible development of class-consciousness among the labourers.
 - ⁹ The discussion on the state's response to migration in Indonesia, see Tirtosudarmo (1999).
 - ¹⁰ On the detail elaboration of this systematic abusive official processes of overseas migrant workers, see *Indonesian Migrant Domestic Workers: Their Vulnerabilities*

and New Initiative for the Protection of Their Rights. Indonesian Country Report to the UN Special Rapporteur on Human Rights of Migrants (2003), in which the author is one of the team members in preparing the report.

Significance of the amendment of Law 39/2004 on Overseas Placement & Protection for Indonesian Migrant Labor

The Institute for Ecosoc Rights
P. Prasetyohadi

The role and condition of Indonesian migrant laborers (TKI)

In national economy:

- Third largest contributors to foreign exchange after oil & gas, tourism
- Lighten govt's burden in reducing unemployment and poverty and rural development

However in their real condition: maltreated as commodity, objects of human rights abuses, with inadequate state protection either within the country or overseas.

As a result ..

Cases of TKIs in distress keep increasing in number by years and remain unresolved.

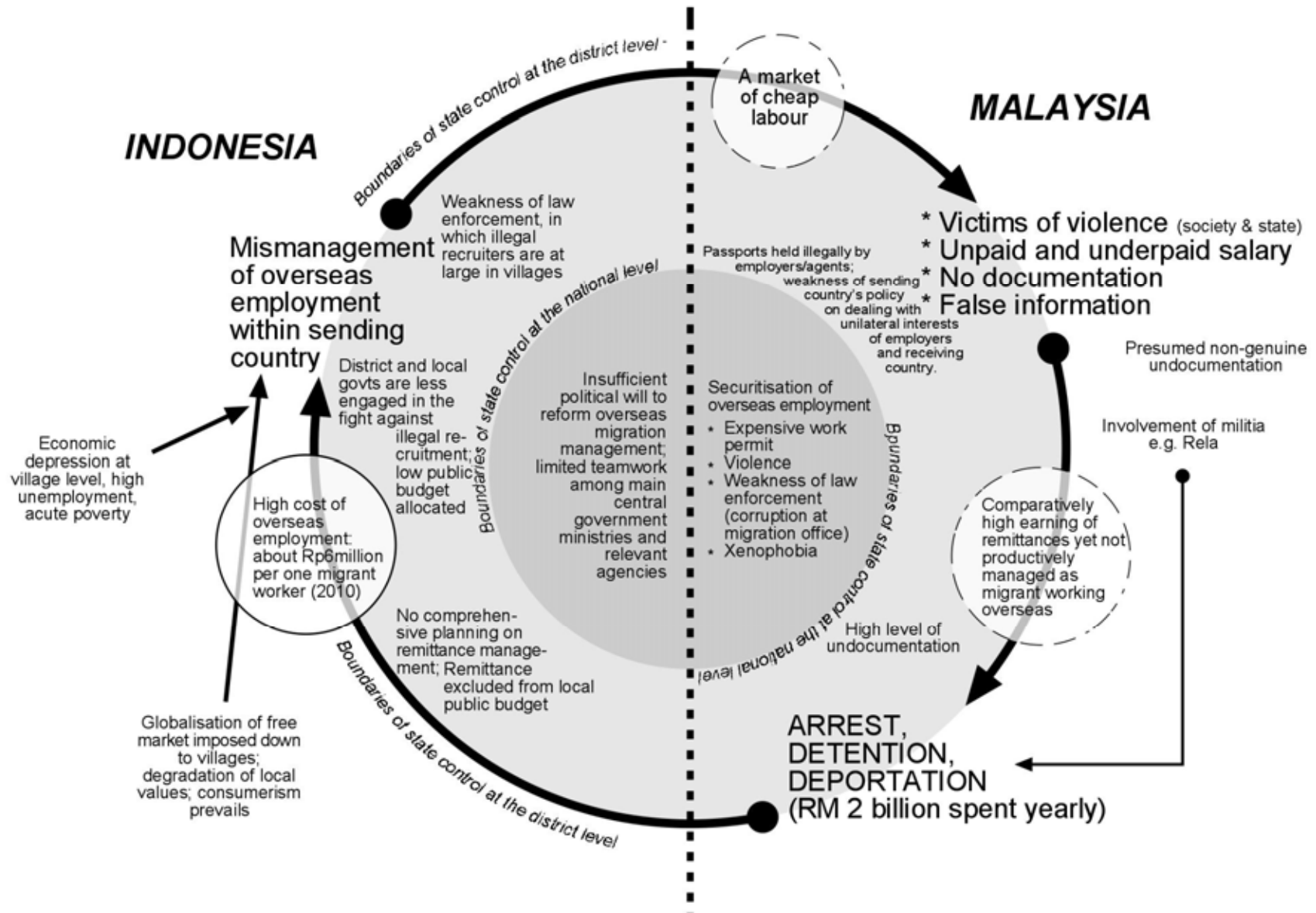
- Each year at least 450000 work overseas; 70% women, 60% illegal/undocumented
 - 2001: 2,234,143 cases of TKIs in distress recorded, 33 TKIs died or killed
 - 2002: 1,308,765 cases of TKIs in distress recorded, 177 TKIs died or killed
 - 2005/2006: 300 TKIs died or killed overseas
 - 2008: 513 TKIs died or killed in Malaysia
- Each year at least about 25,000 TKIs face different cases pertaining physical abuses or labor rights
- UNICEF 2006 recorded about 100,000 women and children were trafficked, mostly as sex workers

How does govt manage “protection” for TKIs?

- Govt has insufficiently prepared would-be TKIs including in ‘equipping’ them w/ necessary knowledge and skills (particularly language, related works)
- Insufficiently managed orientation program for would-be TKIs on all things necessary for overseas works, including regulation relevant to them, culture and political condition of the destination countries
- Weak control/management system over overseas work placement; as a result, migration management is too close to facilitation to trafficking in human beings
- Weak protection system for overseas TKIs for lack of capacity in facing intractably complicated problems encountered.

Condition of the destination country regarding foreign workers

- Strict regulation towards foreign workers pertaining to immigration and works requirements, such as:
- Limitation of stay and the duration of work
- Discriminatory treatment
- Stressing that foreign workers take “3Ds” kinds of work
- Prohibition to engage with local people and movement control during work period (passports held)
- Expensive levies and placement/recruitment fees
- Apprenticeship applicable
- Heavy penalty for breaches against immigration regulations
- Prevailing market preference including in ‘protecting’ TKIs, ignoring human rights
- None of destination countries has ratified the convention on migrant workers protection



- Meanwhile, who will go against that in the international context of work/economic migration, TKIs condition .. represents national dignity.
- Employers and destination countries can no longer be taken responsibility over migrant labor conditions
- Therefore, the only hope for real, genuine protection should come from within the country.

However, let's see how 'protection' system is developed in Indonesia, particularly according to the law no. 39/2004 entitled "Overseas Placement and Protection of TKIs"?

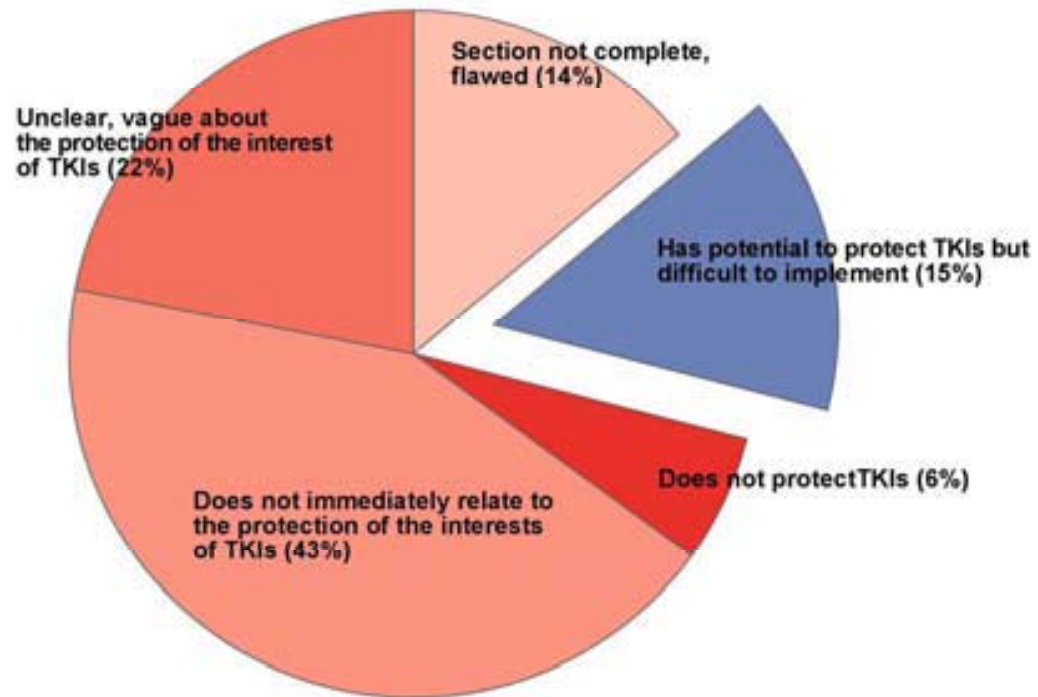
Protection is Void! Why?

- All articles about the so-called ‘protection’ are isolated particularly in Section VI (Bab VI)
- It is only mentioned that “protection is conducted from before work placement, during placement, up to after placement (Art.27 [2]). No flesh out.
- The section on protection contains articles that have to wait for further details of provision that are yet to be enacted by Govt Regulations .. (art.80, 81, 84)
- There are 30 important matters pertaining to work migration that have to detailed in the forms of different govt regulations, presidential regulations, ministry regulations; while so far there have only half of the whole supposed expected regulations enacted; and those published not adequately reflecting protection for TKIs.

Protection is Void! Why?

Continued ..

- There are 107 articles in the whole body of the law, but only 15% contains explicitly or implicitly about protecting TKIs; and yet, they are not yet completed
- Matters related to govt's affairs towards agencies dominate the main content of the law. It is law for facilitating labor export businesses
- No clear-cut provision about prohibiting TKIs deployment to countries that do not respect human rights
- Even in the statement of policy (*konsiderans*) there is no protection perspective being emphasized.

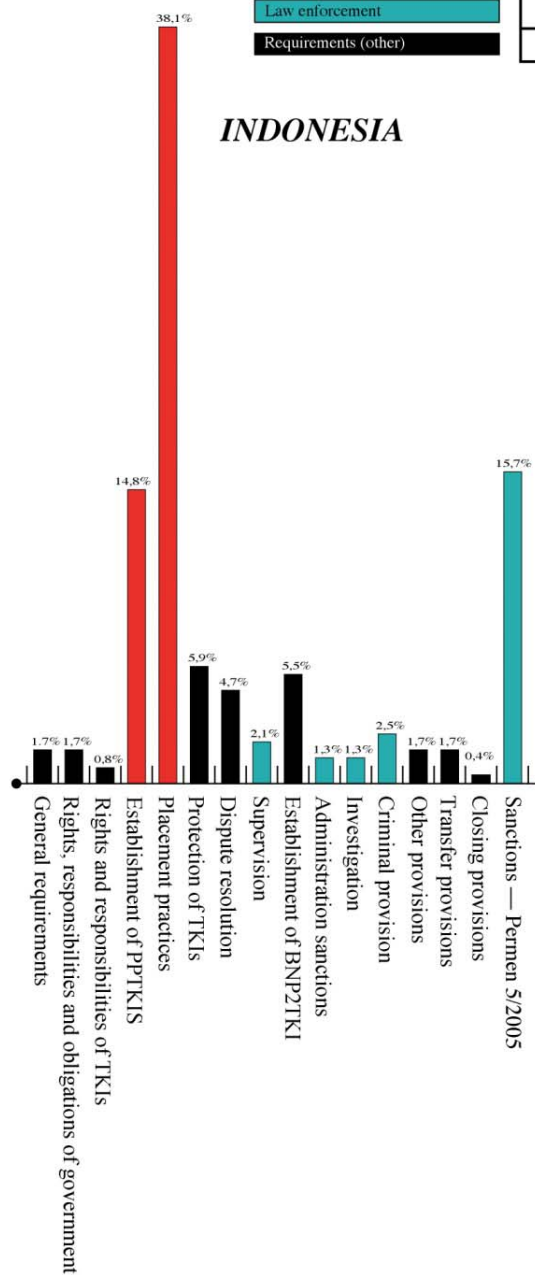


Compare Indonesia to the Philippines

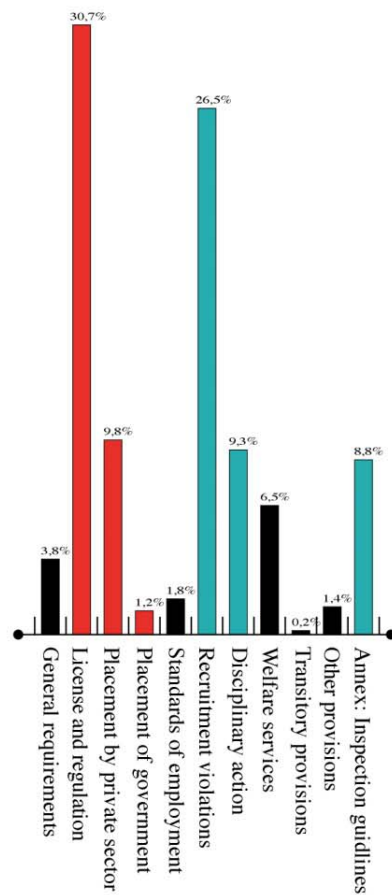
- Filipino RA 8042 and RA 10022 are definitely not everything Indonesia needs (25% undocumented?), and yet ..
- It is not clear what is the meaning of law enforcement in the Law 39/2004. In RA 8042 we can at least trace the following details:
 - 1) penalties for regulation breaches;
 - 2) definition on illegal recruitment;
 - 3) endeavors to control over agencies
- Distribution of articles: 61% on overseas placement business, 7% on protecting TKIs

Placement of emphasis

INDONESIA



THE PHILIPPINES



Indonesia

Filipina

Placement of migrant workers

55,5%

41,7%

Law enforcement

22,9%

44,7%

Requirements (other)

21,6%

13,6%

Inconsistent and unaccountable

- In one side: protecting TKIs is the responsibility of the state (art.5). On other side: the obligation of protecting TKIs is “granted” to agencies (art.82)
- ‘Unaccountability’ clouds the affairs between govt. and agencies
- Conflicting rights of the govt., i.e. to regulate, implement, and, at the same time: to conduct surveillance. Possible?
- The govt.’s rights to regulate, implement, surveillance are not equipped by provisions that condition/enable join-work and coordination among govt. offices
- Imbalance of govt responsibility as compared to govt capacity in fulfilling it
- No details of govt roles in controlling, conducting surveillance and law enforcement in general, which are susceptible to colluding among migration-related parties

Lack of coordination triggers conflicts

- Law 39/2004 does not progressively provide mandatory coordination, developing necessary work relation among relevant govt offices. They work on their own affairs. What would happen while private sector of agencies largely take most burden of overseas placement ..
- This has induced conflicts but also interest collusions, such as between BNP2TKI and Ministry of Manpower: no clear provision on the relation between both; even provision on BNP2TKI can be identified to annul all articles related to govt's responsibilities on overseas placement.
- President has no —as he has yet to indicate— an enough authority to request relevant govt offices to thoroughly set up comprehensive plan of preventing serious problems of TKIs
- Only on 'emergency' condition for TKIs in serious distress, coordination among govt offices is provided yet nothing on preventing kept-recurring cases of TKIs in distress.

Continued ..

- Insubstantial provisions on role of provincial, district govts.
- ~ Migrant workers' problems as "non-issue": particularly at districts they are not equally recognized within the context of rural development; their huge remittance is not assumed yet even as part of general income in district budgeting policy
- No clear room, procedures and witnesses protection for TKIs and their families to report abuses, while in fact kept-recurring TKI cases have required most time allocation of all parties to resolve
- The law does not recognize the role of civil society that supposes to guarantee the provision of minimum public accountability

What is called 'protection' is very limited

- Undocumented TKIs are not covered within
- The rights of the family of TKIs not covered
- No 'protection' for post-overseas placement for re-integration

Poor gender perspectives

- While most TKIs are women, the law does not base on women's experiences
- 'Protection' has nothing to do with women's vulnerability for exploitation and human rights abuses. The word 'woman' is only once mentioned from 7400 words of the law (on prohibition of pregnancy)
- In the statement of policy, equality and gender justice, anti-discrimination and anti-human trafficking. Yet, they are void as they remain as words, while the whole body of the law represents more about how easy human trafficking can take place ..
- Ministry for Women and Children Protection is not included (excluded?)

Present responses and challenges

from different parties in the legislative process of the amendment of UU 39/2004:

- **Fear of possible conflict among relevant parties** when/if articles on control, surveillance of PPTKIS are really proposed)
 - **Claims of unidentified additional, necessary, requested funds.** Mandate on relevant, additional funds are yet to provide for the implementation of a reformed law of protecting TKIs (which only indicates the unwillingness of a genuine protection policy for TKIs); so far funds for TKIs protection are taken from national budgets; In fact, only from 2011 national budget, govt has granted 140.4 billion rupiah (~Ph705.2million/USD16.5million) for Ministry of Foreign Affairs, BNP2TKI, Ministry of Manpower
 - **Divided parties.** Parties particularly among govt officials --susceptible of external influences from among political parties and businesses— incapable to bring along together unified interests of protecting TKIs.
 - **Present govt body lacks of power.** BNP2TKI so far is understood not to have sufficient portfolio to conduct comprehensive protection scheme; BNP2TKI officials were taken from different related govt offices yet originating from lower ranks having less power to implement. Ministry of Manpower that has the licensing policy and authority is separated away in work coordination from implementing agency of BNP2TKI.

Continued

- **Drafters yet to ground on the real problems of TKIs:** Law amendment drafters take a marginal angle of reform i.e. temporal division of the overseas recruitment & placement i.e. before, during, after overseas placement, an inadequate approach.
- **Yet to appear the real challengers** against the amendment of UU 39/2004 i.e. the die-hard recruitment & placement business backed by public officials
- **Too few good agencies:** Some agencies seem to be willing to improve public performance. They may be a start in mobilizing supports/compromise for amendment legislation among die-hard anti-reform groups. Estimation: 60/700 or many be smaller
- **Lacks of social movement:** Institutional weakness of the only migrant workers union of SBMI; extra-parliamentary movement is indeed expected to form on the ground. Parliamentary/legislative effort is not enough as there are too many interests within the political parties representing the people. Ideally: Supports each other between intra- & extra-parliamentary endeavor for reform.

Strategic points to integrate within the amendment of TKI protection law

- 1) Control against agencies, travel, insurance, medical test and skills training institutions, particularly in the strategic efforts to curb rampant illegal recruitment,
- 2) Overhaul within the govt's different offices of overseas placement and recruitment (Ministry of Manpower/BNP2TKI/Ministry of Foreign Affairs/President) – to reach public transparency, accountability, and more importantly to stipulate provisions that oblige related govt officials to be the defender of the TKIs' interests
- 3) Verification of employers, as far as conducted by the team-working between foreign affairs offices and labor attaché offices
- 4) Integrated body/commission for the TKI protection that explicitly opens/allows civil society's participation particularly including for surveillance
- 5) Maximum social security and insurance for TKIs and their families
- 6) Comprehensive re-integration services for TKIs and their families



International Organization for Migration (IOM)

Assisting a World on the Move for 60 Years



Migration for the Benefit of All

Migrant Workers Protection through
Safe Migration



- Established in 1951 as an intergovernmental organization to resettle millions of people displaced by the Second World War.
- Now > IOM = leading organization working on promoting a comprehensive approach to migration management.
- 132 member states, 97 state and non-state observers.



Safe Migration – a sending country perspective

The experience of Colombo Process Countries



Colombo Process

LABOUR MIGRATION FROM COLOMBO PROCESS COUNTRIES GOOD PRACTICES, CHALLENGES AND WAY FORWARD DRAFT

- Report presented at the Fourth Colombo Process Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin in Asia, April 2011.
- CP set up in 2004 with support of IOM.
- 11 CP countries: Afghanistan, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam.

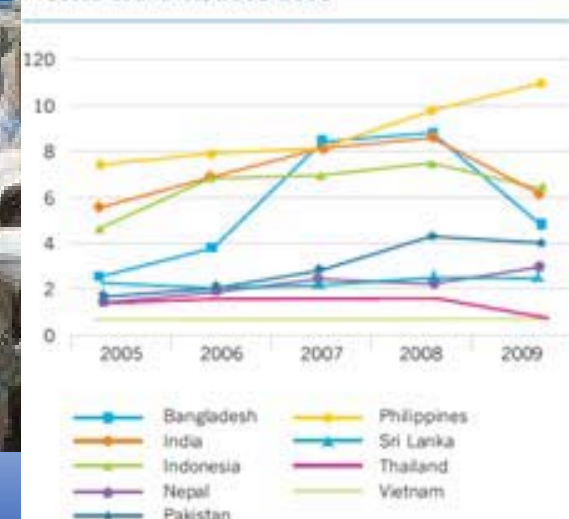




- 1 Billion Migrants Worldwide

- 215 million international migrants (World Bank; UNDESA)
 - 740 million internal migrants (UNDP)
 - Of the top 10 emigration countries 2010 > 5 are CP countries: India, China, Bangladesh, Pakistan, Philippines.
- 
- Figure 1: Migration flow from

- 45 million people from CP countries in 2010 to work abroad > 42% increase compared to 2005 and expected to increase.



Source: IOM country assessment reports.



Characteristics of Labour Migration from CP countries

- **Main destination countries:** GCC countries, Malaysia, Singapore, Hong Kong SAR, Taiwan Province of China and South Korea.
- **Majority of low or semi-skilled labour;**
- **Majority of temporary migration;**
- **Recruitment market dominated by private sector**
- **Gender-based distribution per main sector of employment:**
 - Male migrants > construction, manufacturing, agriculture.
 - Female migrants > domestic work and care giving.
- **Gender-based distribution per country of origin (2009):**
 - Majority female: Indonesia (83%)
 - Majority male: Pakistan (97%), Nepal (97%), Bangladesh (95%), Thailand (85%), Vietnam (70%).
- **Remittances:** USD 173 billion sent to CP countries in 2010 (WVB 2010). This represents 42% of global remittances.

Figure 3: Distribution of migrants by region of destination, 2009



Source: Computations from IOM country assessments.





Labour Migration from CP countries

- **Irregular migration** of labour force remains an issue > smuggling channels/unintentionally end up or forced into irregular situation > vulnerable to abuse and/or exploitation, including human trafficking.
- labour migration through **legal channels** can also entail difficulties and risks: discrimination, hostility, abuse and exploitation (including human trafficking) **in both the sending and host countries. Women are the worst affected.**
- Indonesia > 76.6% of the 3,840 victims so far assisted by IOM recruited through recruitment agents - including agents of legally registered recruitment agencies (29.3%) - **reflecting a high prevalence of human trafficking through labour migration channels.**





- Costly, complex and long legal migration procedures.
- Limited legal migration opportunities.
- Lack of adequate information on legal migration procedures.
- Lack of awareness on the risks and realities of migration.
- Insufficient regulatory measures or law enforcement by both the home and host countries to better protect migrant workers against abuse.
- Sectors largely unregulated.





Safe Migration

- Aims at curbing irregular migration and human trafficking while promoting legal migration by **empowering** migrants, potential migrants and families in their **decision-making process** to migrate as well as **throughout their migration journey**.
- Most of migrant workers' problems finds their root causes prior to departure > safe migration starts at home!



Overall findings

- Since 2005 > concrete, pro-active steps taken to manage labour migration in the best interest of migrant workers.
- Good practices can be identified BUT Challenges remains





Areas of Focus

- Legislation, policy and institutions
- Pre-recruitment/Pre-deployment services
- Management of the recruitment market
- Welfare support for migrant workers



Legislation, policy and institutions



2005-2010

- 8 CP countries amended existing regulations or adopted new legislation concerning labour migration
> focus on:
 1. managing the recruitment market
 2. improving welfare support and protection of migrant workers
- 7 CP countries created new government structures dedicated to manage labour outflow and the welfare of overseas migrants.
- 10 CP countries have signed 59 BAs and MoUs with destination countries.



Pre-recruitment/Pre-deployment services

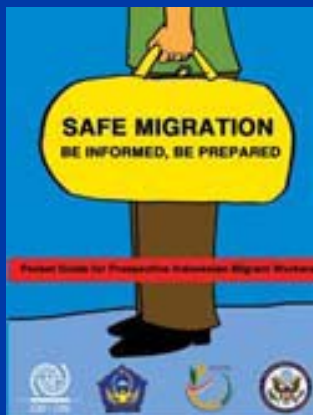


Good Practices

• Public awareness campaigns/Community information

Examples: Philippines > Free Pre-Employment Orientation Seminar (PEOS) by POEA
 Indonesia > Launch Safe Migration Materials and Safe Migration information Sessions in migrant source communities. Partnership IOM/GoI/CSO.

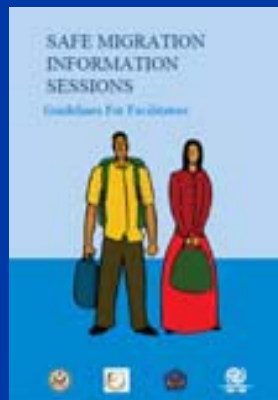
Aim: equip communities and prospective migrants with the necessary knowledge to help them **take informed decisions**, **build realistic expectations** of migration (including legal migration), **better anticipate risks and challenges** and **better face problems** before and throughout the migration process.



Pocket Book



Poster



Facilitator Guide



Boards





Good Practices

Innovative elements:

- Preventive approach.
- Information provided well before migrants make the decision to migrate.
- Target communities at large, including those not considering migrating (risks of trafficking can happen at any time and any place) and those having a decision-making role within the family or community.



Good Practices

- **Migrant Resource Centres (MRCs)**

- Examples: Philippines, India, Nepal, Bangladesh (with support from IOM).



- Function: offer a variety of services (walk-in, telephone, email, sms) to potential migrants, migrants and families, to facilitate the migration process.

- Services: group information or individual counseling on migration opportunities, schemes, procedures and costs; selection/recruitment; medical check-up; language training and cultural pre-departure orientation; consular services.





Good Practices

Innovative elements:

- Some embed within existing government structures and others are set up in partnership with CSOs > avoid duplication of efforts and resources and ensure reliable and coherent information.
- Post-deployment reintegration support
- Complain referral mechanism > Free 24/7 hotline service (India, Indonesia)
- Provide information in various languages (India)
- Decentralize to provinces and states (India (Delhi, Kochi, Hyderabad), Nepal (Jhapa, Chitwan)).





Good Practices

- **Pre-departure orientation**

- 9 out of 11 CP countries require all migrants to attend pre-departure orientation.
- Aim to familiarize and inform departing migrants on: (i) the language, culture and practices of the destination countries; (ii) procedures at departure from home country and upon arrival at destination country; (iii) respective rights and obligations of migrants, recruiters and employers; (iv) the role of Embassies and Consulates to assist and protect migrant workers; (v) Where and how to seek assistance; (vi) financial literacy > safe banking and remittances channels; (vii) health safety > including reproductive health, risks of HIV/AIDS; (viii) Other risks and challenges > human trafficking, drugs; culture shock, loneliness; (ix) procedures to return home.

Innovative elements:

- Make the training free, subsidized or paid by the employer (Philippines, Nepal, Indonesia);
- Provide information in local language (Pakistan, Philippines, Sri Lanka);
- Partnership with NGOs accredited by the Government (Philippines, Bangladesh);
- Test/Examination;
- Include family members (Sri Lanka).



Challenges

- Small-scale, sporadic and unsustainable public information efforts.
- MRC > limited geographical coverage (still concentrated in capitals or other main urban centres) and limited resources to sustain quality services (lack of updated information and qualified human resources).
- Non-provision of pre-departure orientation (e.g. Jember, Banyumas > 50-65% TKI did not receive compulsory PAP).
- Low quality of pre-departure orientation (material, duration, timing, methodology, lack of gender-sensitiveness, etc.)
- No monitoring system to conduct quality control of orientation delivered by non-state partners.
- Fee of pre-departure orientation often imposed on migrants.



Managing the recruitment market





- Licensing scheme > 10 of 11 CP countries have adopted licensing scheme
- Government officials cannot engage in recruitment business.
- 'Co-employers' > Make agencies jointly liable with employer (Philippines)
- Partner agency and job orders endorsed by diplomatic mission (Indonesia)
- Install a placement ceiling fee
- Standard employment contracts
- Translation of contract in language of source country and English (Indonesia)
- Signature of contract in front of government officials (Indonesia, Sri Lanka)
- Develop a code of conduct among agencies





Good Practices

- **Government-run recruitment process**

Examples:

1. **Thailand > TOEA recruiting for private foreign employers**

- interested employers should apply to TOEA (need to provide business registration permit, standard contract).
- If approved, employer registered to TOEA and has access to TOEA's pool of registered workers.

2. **South Korea > Employment Permit System (EPS)**

- 15 source countries, including 10 CP members.
- Half million workers recruited through EPS, majority from Vietnam, China, Thailand and Philippines.
- Recruitment and placement process conducted by government affiliated agency or selected private agencies in both South Korea and source country.
- Apply standard selection criteria, terms of contract, migration costs and skills/language requirements.
- Use of standard contract for all source countries: guaranteed same rights as Koreans, receive health insurance, industrial accidental compensation and a guaranteed minimum wage.



Challenges

- Inspection and sanctioning of recruitment agencies > not systematic and transparent (continued abusive practices by private sector: excessive and unauthorized fees, use of fraudulent ID and travel documents, use of unregistered brokers/intermediaries recruiting directly in villages and paying families, etc.)
- Limited loan facilities, loans with high interest rates, indebtedness, or debt bondage.
- Long legal migration process (Indonesia > min. 3 mths for domestic workers). Long stay in shelters often in inadequate conditions.
- Signing of contract right before departure.
- Limited capacity of government to apply large-scale G-to-G deployment and meet the demand of dynamic global labour market.



Welfare support for migrant workers





Good Practices

- **Insurance & Welfare fund**

- Financed by migrant workers, recruiter and/or employer.
- Cover: health costs, legal aid, pre-departure orientation, repatriation.

Innovative elements:

- Emergency shelter for distressed migrants
- Reintegration assistance
- Family support of deceased worker
- Scholarship for children of migrant workers (Pakistan, Sri Lanka)





Good Practices

- **Diplomatic missions**

- 9 of 11 CP countries have welfare and/or labour attachés responsible to assist distressed workers.
- Standard service include: mediation, legal aid, counseling, jail visit.

Innovative elements:

- Orientation briefing
- Regular group meetings with migrant workers
- Monitor migrant workers' place and accommodation
- Provide shelter
- Use of hotline numbers
- Use of female Labour Attachés
- Referral of victims of trafficking
- Partnering with civil society to reach out to migrant communities





Challenges

- Migrant workers not inform about their insurance rights and how to claim for insurance compensation.
- Non-processing or long processing of claims.
- Most welfare funds are only available for documented migrants.
- Limited capacities and resources of embassies.
- Isolation of certain categories of migrants – i.e. domestic workers.
- No systematic screening and referral of victims of trafficking.





Way Forward

- Build on progress already made through more rigorous law-enforcement, implementation and monitoring.
- Conduct evaluation, improve and up-scale current efforts through capacity building and greater budgetary resources.
- Minimize the role of private sector agencies if not, close monitoring.
- Make labour migration system more transparent with sufficient information publicly available.
- Promote greater financial inclusion of migrant workers.
- Seek effective strategies to reach out to domestic workers and indorse Convention on Domestic Worker.
- Tap potential of civil society as strong partners.
- Continue sharing best practices and international cooperation
- Research





Malaysia - Kebijakan Program Amnesty 6P 2011 untuk Pendatang Asing Tanpa Izin (PATI)

Oleh : Alex Ong
Migrant Care
alexmigrantcare@gmail.com

Tarikh Amnesty sdh berubah 3 kali

- July 11, 2011
- July 18, 2011
- August 1, 2011

APAKAH PROGRAM 6P?

- Program 6P adalah singkatan bagi Program Penyelesaian Menyeluruh Pekerja Asing dan Pendatang Asing Tanpa Izin.
- Ia adalah satu program yang di rekomendasikan oleh Makmal Pengurusan Warga Asing (MPWA) sebagai pendekatan terkini oleh Kerajaan untuk memantapkan pengurusan warga asing di Malaysia.

Rasional Keselamatan

- mendapatkan data serta biometrik pendatang asing tanpa izin di Negara ini
- memantapkan pengurusan warga asing di negara ini,
- membuang persepsi negatif rakyat terhadap Kerajaan
- membolehkan pelaksanaan penguatkuasaan undang-undang dilakukan secara besar-besaran untuk tujuan mengurangkan bilangan PATI
- mengekang perkembangan jenayah yang membabitkan PATI.

RASIONAL INDUSTRI

- menangani masalah kekurangan tenaga kerja dalam sektor tertentu dengan menukar status tidak sah pekerja asing tanpa izin.
- Empat sektor Ekonomi yang strategik, Jasa, Pembuatan, Perkebunan dan Binaan



Rasional Kebijakan Ekonomi Politik

- Political Rent Seeking - Pengswastaan Proses Pendaftaran dan perlantikkan 384 agen.
- Monopoli servis provider dgn sewa alat bimetric dan komputer – RM 15,000/ set X 2 X 384
- Tidak boleh mengumumkan tariff resmi dan pengumuman agen resmi.
- Tidak ada Standard Operating Prosedure yang jelas.
- Mendaftar Pekerja Asing Resmi
- Daftar dgn imigresen -Gratis, Persatuan majikan -RM 35, Agen- RM 300

SIAPAKAH YANG PERLU MENDAFTAR BAGI PROGRAM 6P INI

- Semua warga asing yang telah masuk ke Malaysia tanpa izin dan kini tinggal serta bekerja
- Semua warga asing yang masih tinggal di Malaysia selepas pas atau permit kerjanya tamat tempoh atau dibatalkan;
- warga asing yang telah menyalahgunakan permit masuk, pas atau dokumen perjalanan yang dipinda atau dipalsukan;
- warga asing yang melanggar syarat pas atau permit seperti yang ditetapkan undang-undang

Orang TANGGUNGAN PATI

- mereka perlu pulang dahulu ke negara asal bersama ibu atau ayah masing-masing sebelum masuk semula ke negara ini menggunakan Pas Lawatan Sosial



PELARIAN YANG MEMEGANG KAD UNHCR

Orang Pelarian DI Malaysia

- **PERLU MENDAFTAR** di bawah program 6P
- Majoriti Pelarian di Malaysia ialah warga Myanmar (Chin, Kachin, Myong, Karen) Rohingya, Afganist
- Aceh



Pelarian Myanmar di Gereja



BAYARAN UNTUK PROSES PENDAFTARAN

- Tiada – jika pendaftaran dibuat di pejabat Imigresen.
- Ya –Biaya perkhidmatan akan dikenakan jika pendaftaran dibuat dengan syarikat pengurus. Senarai bayaran akan dimaklumkan

Program Amnesty - 6P

- 1. Pendaftaran, (Registration)**
- 2. Pengampunan, (Amnesty)**
- 3. Pemutihan, (Legalising)**
- 4. Pemantauan, (Monitoring)**
- 5. Penguatkuasaan (Enforcement) dan**
- 6. Pengusiran (Deportation)**

Data TKI 2010

Data Resmi Disember 2010 Pekerja Indonesia di Malaysia

Bidang Pekerjaan	Jumlah	Peratus
Perladanagn	202,425	21.89
Pertanian	84,357	9.12
Pembantu Rumah	202,725	21.93
Konstruksi	194,542	21.04
Kilang	201,654	21.81
Servis	38,845	4.20
Jumlah Pekerja Indonesia	924,548	100.00

* Remarks: 68% Tenaga Kerja Asing (Resmi) Di Malaysia ialah Warga Indonesia

Penytaan Wakil Menteri Di Parlimen

Maznah: Most runaway maids were Indonesian

MOST of the maids who ran away from their employers were Indonesians, making up 92.3% of the 18,716 cases recorded as at December.

Deputy Human Resources Minister Datuk Maznah Mazlan said the Government had taken several measures to overcome the problem, which included the signing of an agreement with the Indonesian government on May 30.

"According to the agreement, an employer is eligible for a replacement if the maid runs away within the first six months of her employment," she said in reply to Lim Lip Eng (DAP-Segambut).

"The protocol also aims to solve various issues related to the maid's wages," she said, adding that the agreement protected the rights of both the employers as well as their maids.

The biometric system, implemented by the Home Ministry recently, could trace runaway maids if they applied to work for another employer, Maznah added.

"We have been organising monthly seminars and dialogues in every state since March last year to educate employers, maids and employment agencies on their rights and responsibilities," she said.

She added that since last year, 1,869 employers, 1,650 maids and 365 employment agencies had attended 89 such seminars nationwide.

"The ministry has even published a guide for maids and the employers on their benefits, welfare and protection that they are entitled to under the country's laws."

Maznah said 76.7% of the 247,069 maids in the country as at December were Indonesians.

Orang Asing Bukan Pekerja buruh Di Malaysia

Lain-Lain	Jumlah	Peratus
Expatriates	5,000	0.22
Tourists	2,000,000	89.93
Students	15,000	0.67
Penduduk tetap	200,000	8.99
UNHCR Status (Aceh)/ Tsunami	4,000	0.18
	2,224,000	100.00

Data Masalah Pekerja Indonesia di Malaysia 2010

No	Jenis Kes	Jumlah	Peratus
1	Gaji	577	30.43
2	Disharmoni	232	12.24
3	Eksplotasi	23	1.21
4	Termination	15	0.79
5	Tdk Sesuai Kontrak	212	11.18
6	Fisikal Abuse	97	5.12
7	Sexual Abuse	24	1.27
8	Trafficking	34	1.79
9	Sakit Stress	47	2.48
10	Stranded/ Illegal	294	15.51
11	Immigrasi	187	9.86
12	Kriminal	23	1.21
13	Mati	13	0.69
14	Accident	7	0.37
15	Lain-Lain	111	5.85
	Total	1896	100.00

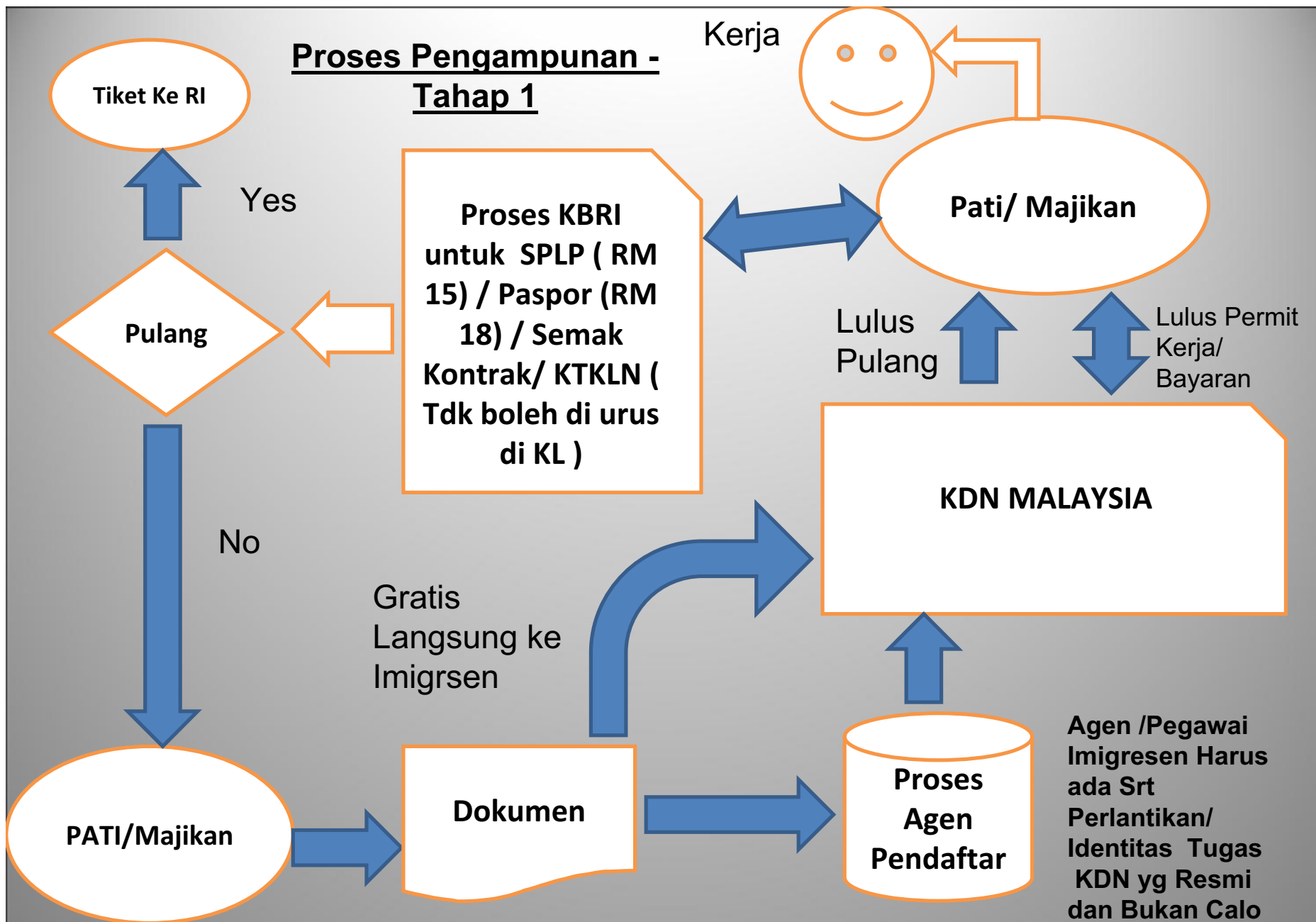
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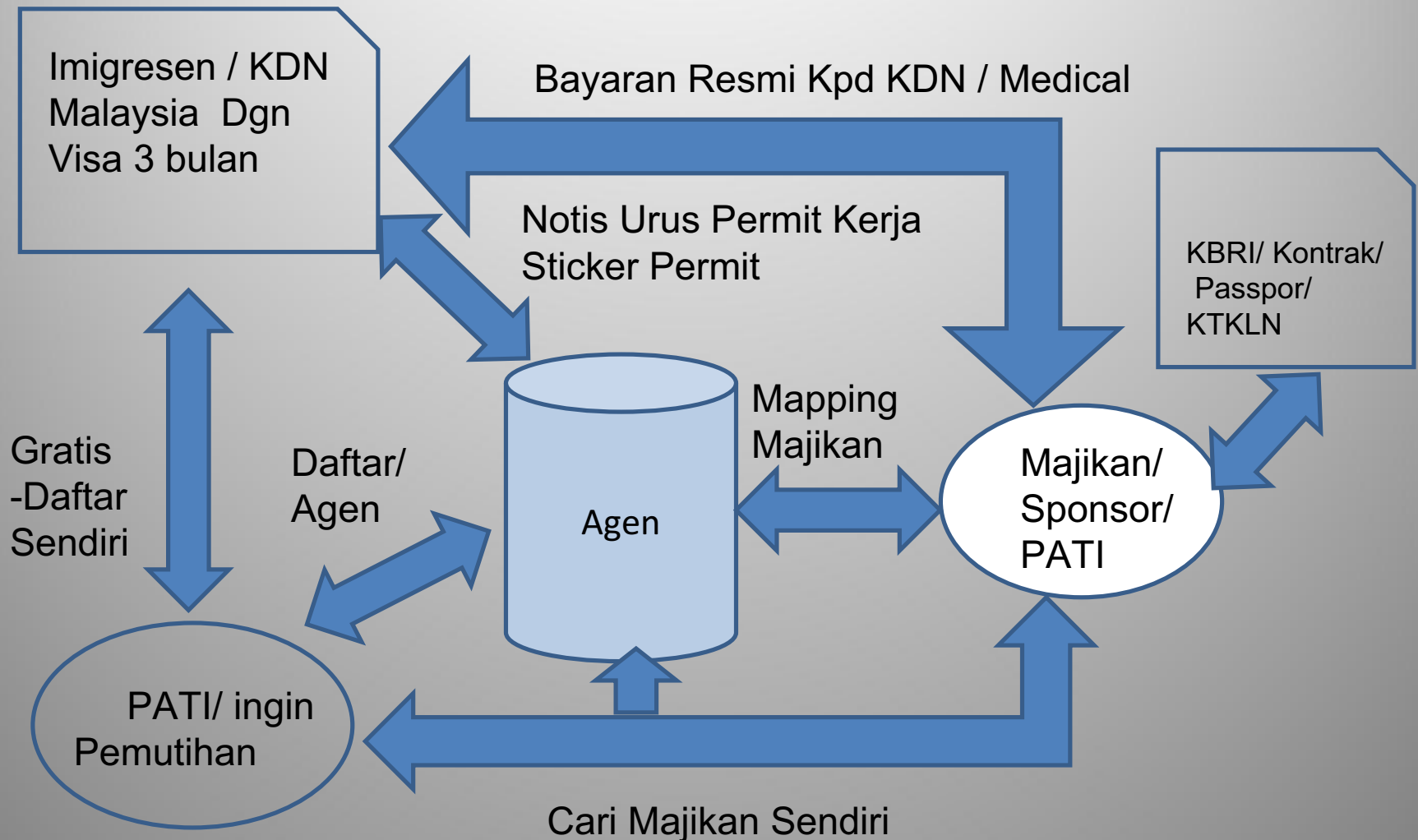
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Proses Pengampunan - Tahap 1

Kerja



Pemutihan - Proses Tahap II



Illicit Collection Document

Typical Cost Sheet From Agent

[illegible]

A Simple Amnesty Form

FORMULIR PENDAFTARAN PESERTA BAKS 2018
 REGISTRASI - AFFILIATION FORM 2018

Daftar Tanda

☐ Psikologi
☐ Matematika
☐ Biologi
☒ Pendidikan
☐ Manajemen
☐ Pendidikan Agama
☐ Pendidikan
☐ Pendidikan

3. MAJLIS PEMERIKHAAN
ENTER CARE OF APPLICANT

1. Nama Lengkap
 2. Nama
 3. Tempat Lahir
 4. Tanggal Lahir
 5. Alamat

6. Nomor Pendaftaran
 7. Nomor
 8. Tanggal Lahir
 9. Alamat

10. Nama Asrama
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Kos Urusan Pengampunan untuk Pemulangan

No	Item	Perkhidmatan	Kilang	Binaan	Ladang	Pertanian	Pembantu
1	Pendaftaran	10.00	10.00	10.00	10.00	10.00	10.00
2	Visa 3 bulan	300.00	300.00	300.00	300.00	300.00	300.00
3	Pass 1 bulan	100.00	100.00	100.00	100.00	100.00	100.00
4	SPLP KBRI	15.00	15.00	15.00	15.00	15.00	15.00
5	Tiket sampe desa	500.00	500.00	500.00	500.00	500.00	500.00
6	Proses	50.00	50.00	50.00	50.00	50.00	50.00
7	Jumlah (Urus Sendiri)	975.00	975.00	975.00	975.00	975.00	975.00
8	Fee Agen	300.00	300.00	300.00	300.00	300.00	300.00
9	Melalui Agen Pendaftar	1,275.00	1,275.00	1,275.00	1,275.00	1,275.00	1,275.00

Malaysia- Kos Program Amnesti 6P 2011

No	Item	Perkhidmatan	Kilang	Binaan	Ladang	Pertanian	Pembantu	Remarks
1	Pendaftaran	10.00	10.00	10.00	10.00	10.00	10.00	Bayaran Kepada
2	Kompon	300.00	300.00	300.00	300.00	300.00	300.00	
3	Visa 1 bulan	100.00	100.00	100.00	100.00	100.00	100.00	
4	Job Performance (JP) Visa	500.00	500.00	500.00	500.00	500.00	500.00	
5	Proses	50.00	50.00	50.00	50.00	50.00	50.00	
6	Re-Entry Visa	15.00	15.00	15.00	15.00	15.00	15.00	
7	Levi	1,800.00	1,200.00	1,200.00	540.00	360.00	360.00	Pemerintah Malaysia
8	Fomema	190.00	190.00	190.00	190.00	190.00	190.00	Fomema
9	Insurance Bond	80.00	80.00	80.00	80.00	80.00	80.00	Insurance Agent
10	PA Insuran	87.00	87.00	87.00	87.00	87.00	87.00	Insurance Agent
11	Hospitalization Insurance	140.00	140.00	140.00	140.00	140.00	140.00	Insurance Agent
12	Bayaran Resmi Di Imigresen	3,272.00	2,672.00	2,672.00	2,012.00	1,832.00	1,832.00	
13	Fee Agen Pendaftaran	500.00	500.00	500.00	500.00	500.00	500.00	
14	Bayaran Resmi Melalui Agen	3,772.00	3,172.00	3,172.00	2,512.00	2,332.00	2,332.00	

Kos Pengampunan hingga ke Pemutihan melalui Outsourcing agent

No	Item	Perkhidmatan	Kilang	Binaan	Ladang	Pertanian	Pembantu	Remarks
1	Pendaftaran	10.00	10.00	10.00	10.00	10.00	10.00	Bayaran Kepada Pemerintah Malaysia
2	Kompon	300.00	300.00	300.00	300.00	300.00	300.00	
3	Visa 1 bulan	100.00	100.00	100.00	100.00	100.00	100.00	
4	Job Performance (JP) Visa	500.00	500.00	500.00	500.00	500.00	500.00	
5	Proses	50.00	50.00	50.00	50.00	50.00	50.00	
6	Re-Entry Visa	15.00	15.00	15.00	15.00	15.00	15.00	
7	Levi	1,800.00	1,200.00	1,200.00	540.00	360.00	360.00	Fomema
8	Fomema	190.00	190.00	190.00	190.00	190.00	190.00	Insurance Agent
9	Insurance Bond	80.00	80.00	80.00	80.00	80.00	80.00	Insurance Agent
10	PA Insuran	87.00	87.00	87.00	87.00	87.00	87.00	Insurance Agent
11	Hospitalization Insurance	140.00	140.00	140.00	140.00	140.00	140.00	
12	Pendaftaran	500.00	500.00	500.00	500.00	500.00	500.00	
13	Pemutihan/ Penempatan	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	1,800.00	
	Total Kos Pemutihan	5,572.00	4,972.00	4,972.00	4,312.00	4,132.00	4,132.00	

Bayaran Resmi Kepada PJTKI

Domestic Workers' Expenses

No	Item	Amt (Rp'000)	Amt (RM)	Remarks
1	Medical Check up	400	143.00	Fomema agent
2	Travel Document	120	43.00	RI Passport
3	TKI Insurance	400	143.00	2 years coverage
4	RI Government Levy	135	48.00	Protection fees
5	Malaysia Embassy Visa	45	16.00	Calling visa
6	Competency Examination	110	39.00	Comptency agen
7	Travel to exit point	225	80.00	to Airport
8	Accommodation	1405	502.00	at Training Center
9	Training	550	196.00	50% of training
9	Agency fees	1650	589.00	Profit
		5040	1,799.00	RM 300 x 6 months

Asuransi Pekerja Asing

Asuransi Pekerja Asing Waktu Kerja

Coverage	Limits of Indemnity
» Death by accident whilst in the course of employment	Up to RM25,000
» Permanent Total /Partial Disablement	Up to RM23,000
» Temporary Disablement (Half Monthly Payment)	RM165 or 1/3 of monthly salary (max. up to 60 months) whichever is lower
» Medical Expenses	As assessed according to the Workmen's Compensation Act
» Occupational disease	As assessed according to the Workmen's Compensation Act
Repatriation Expenses	
Pays for the cost of transportation of the remains of the deceased worker or permanently disabled worker back to his/her country of origin.	Based on actual expenses incurred or RM4,800 whichever is lower

Asuransi Waktu Luar Kerja

Coverage	Limits of Indemnity
» Death by accident whilst in the course of employment	RM23,000
» Permanent Total /Partial Disablement	Based on RM23,000 and calculated according to the Workmen's Compensation Act
» Temporary Disablement	As assessed according to the Workmen's Compensation Act
» Medical Expenses	As assessed according to the Workmen's Compensation Act

Asuransi Kesihatan Pekerja Asing

ITEM	BENEFITS	AMOUNT (RM)
1 (a)	Daily Hospital Room & Board (Maximum up to 30 days)	<p>As charged in accordance to charges consistent with Third (3rd) Class Room and Board to a maximum of RM60.00 per day in a Non-Corporatised Malaysian Government Hospital in conformance to the charges specified under Fees Act 1951, Fees (Medical) Order 1982.</p>
1 (b)	Intensive Care Unit (ICU) (Maximum up to 15 days)	
2	Hospital Supplies and Services	
3	Operating Theatre	
4	Surgical Fees (Exclude Organ Transplantation)	
5	Anaesthetist Fees	
6	In-Hospital Physician Visits (Maximum up to 30 days)	
7	In-Hospital Specialist Consultation Visits (Maximum up to 30 days)	
8	Ambulance Fees/Medical Report Fees	
Maximum Overall Annual Limit (Items 1 to 8)		RM10,000.00

Foreign Workers Insurance Guarantee (FWIG)

Perlindungan Kepada Majikan dari Peraturan 21 Peraturan Imigresen

- a. Jika pekerja berkahwin / mengandung semasa berada di negara ini
- b. Jika pekerja terus berada di Malaysia selepas tamat tempoh permit atau visa
- c. Jika majikan gagal menyediakan penerbangan untuk pekerja pulang ke negara asalnya selepas tamat tempoh permit / visa
- d. Jika majikan gagal menyediakan kos penghantaran pulang mayat pekerja ke negara asalnya
- e. Jika majikan enggan membayar gaji pekerja
- f. Jika majikan terlibat dalam kegiatan menyalahi undang-undang dan kegiatan haram, seperti pengedaran dadah, kerja tidak bermoral dan lain-lain
- g. Jika pekerja melakukan sebarang kerja yang bergaji atau tidak bergaji atau dalam sebarang perniagaan atau sebarang pekerjaan atau aktiviti yang mengancam keselamatan dan kesejahteraan Malaysia

LOKASI PENDAFTARAN AKAN DIBUAT?

- dibuka di setiap daerah di Semenanjung Malaysia
- Untuk Pertanyaan BILIK GERAKAN KDN,
- 03-8886 8110/8112 atau
- talian hotline Bahagian Hal Ehwal Imigresen KDN 1-800-22-9696

1: PENDAFTARAN

- Tujuan - mendaftarkan pebdatang asing tanpa izin (PATI)
- Bina Pangkalan rekod peribadi serta data biometrik PATI sebagai elemen teras bagi rasional pelaksanaan program (menangani isu pemalsuan identiti)
- membolehkan proses pemantauan dilaksanakan secara lebih berkesan,

MAKLUMAT YANG DIPERLUKAN KETIKA PENDAFTARAN

- i. Nama;
- ii. Gambar;
- iii. Cap 10 jari tangan kanan dan kiri;
- iv. Nombor passport/dokumen perjalanan;
- v. Waegnegara;
- vi. Jantina;
- vii. Tarikh lahir;
- viii. Maklumat majikan (nama, no. kad pengenalan, nombor telefon, alamat, e-mel, dan sektor pekerjaan);
- ix. Pengesahan kebenaran maklumat oleh majikan; dan
- x. Tujuan mendaftar – sama ada untuk bekerja (diputihkan), untuk pulang ke negara asal

MAKLUMAT MAJIKAN YANG DIPERLUKAN KETIKA PENDAFTARAN

- 1. Sijil Syarikat**
- 2. Borang 29/ Form B/Form D**
- 3. IC Majikan**
- 4. Lesen Perniagaan**
- 5. Letterhead Syarikat**
- 6. Gambar Pekerja**
- 7. Salinan Passpor Pekerja**
- 8. Boarng Maklumat Pekerja**
- 9. Borang Maklumat Majikan**
- 10. Geran Tanah**
- 11. Lesen-lesen Berkaitan**

2: PEMUTIHAN

- Penempatan PATI dalam sektor tertentu yang mempunyai penawaran kekosongan kerja.
- mengisi kekosongan tersebut mereka akan diputihkan dan seterusnya dijadikan pekerja asing yang sah dengan senarai majikan yang berdaftar.
- Mengambil kira kelayakan majikan berdasarkan keperluan semasa mengikut sektor dan sub-sektor yang akan ditentukan oleh kementerian/agensi kawal selia.

PENGAMPUNAN

- PATI yang tidak tersenarai untuk diputihkan, atau PATI yang secara sukarela memilih untuk pulang ke negara asal mereka.
- dibenarkan pulang atas kos sendiri tanpa dikenakan sebarang bentuk tindakan
- hanya terhadap kepada PATI yang melakukan kesalahan imigresen sahaja.

PEMANTAUAN

- **naziran ke premis-premis majikan seluruh negara akan dilakukan untuk memberi nasihat kepada majikan.**
- **menerangkan implikasi tindakan undang-undang sekiranya mereka didapati melindungi pekerja berstatus PATI yang tidak berdaftar dengan Program 6P.**
- **Akta Anti Pemerdagangan Orang 2007 (Pindaan 2010) dan Akta Imigresen 1959/63**

PENGUATKUASAAN

- operasi penguatkuasaan bersepadu akan dilaksanakan secara besar-besaran dan digerakkan dengan tujuan untuk mengesan serta menangkap PATI serta majikan yang dikenal pasti masih melakukan kesalahan imigresen.

PENGUSIRAN

- PATI yang telah ditangkap melalui operasi penguatkuasaan bersepadu akan dikenakan tindakan undang-undang sebelum diusir keluar dari .
- PATI yang diusir akan turut sama disenaraihitamkan daripada kebenaran untuk masuk semula ke negara ini.

Indonesian Embassy Document

- Formulir Passport / SPLP
- Dependent Pass Application forms
- Job Order / Contract Document
- KTKLN application document (Tidak Wujud)
- Manpower department insurance (RP 400,000)
- Manpower department protection fees (Rp 150,000)

Malaysia Immigration Forms

- Domestic Workers Permit application
- Construction workers
- Plantation/Agriculture workers
- Manufacturing workers Permit
- Services sector workers permit
- Students Pass forms
- Dependents Permit.
- Bond
- Fomema forms
- Insurance Proposal Forms

Isu –Isu Agen Pendaftar Program 6P

- Ia adalah satu Proyek pengswastaan.
- Kos menjadi agen pendafatr Teralalu Tinggi,
Sewa alat RM 14, 750 x 2 sets of equipment +
RM 7,000 x 2 Deposit = RM 43,500
- Waktu Pendaftaran hanya Tiga minggu jadi
kos sewa alat saja ialah RM 2072 se hari.
- Politically linked appointment.

Tahap Pendaftaran

- PATI terpaksa tanggung kos pemutihan
- Setelah di daftar tidak jamin akan dapat pemutihan.
- Imigresen mahukan pendafatran di Tempat Agen.
- Tahap I Semua boleh pulang.
- Semua data dan data bio metric di kumpul oleh KDN Malaysia
- Malaysia Harus Menglibatkan **Pemangku Kepentingan** termasuk LSM Buruh Migran

Tahap 2 Pemutihan

- **Biaya nya sangat tinggi** dan di bebaskan kpd TKI
- Akan wujud **sindikot resmi utk cari untung** kerna swasta yang terlibat.
- Masalah TKI tdk dapat permit dan terus jadi PATI.
- **Outsourcing agen ambil PATI jd karyawan** tanpa kontrak kerja dan tanggung jawab majikan.
- Bisnis Model baru utk Agen outsourcing sebagai **permit bebas** dan majikan dan sponsor yang tidak jelas. End user bukan majikan.
- **Enduser dan TKI sangat tergantung kpd Agen** yang di akui Pemerintah.
- TKI di bebaskan Kos Agen Outsourcing tahunan kerna tdk bisa tukar majikan.
- Masalah tagihan gaji tidak jelas dan tanggung jawab enduser tdk jelas akan ganggu segala usaha program perlindungan TKI



MIGRANT CARE

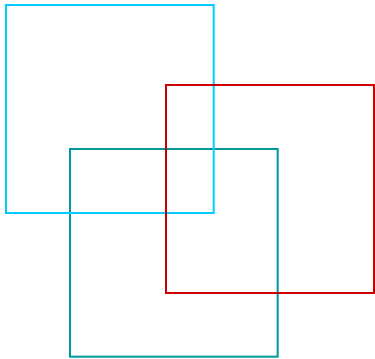
Terima Kasih

Thank You.



International Seminar LIPI/UNESCO, Jakarta 15 July 2011

Labour and Human Rights Protections Required for Indonesian Migrant Workers



A. Y. Bonasahat, S.H., LL.M.
National Project Coordinator of ILO's
Jakarta Combating Forced Labour and
Trafficking of Indonesian Migrant
Workers Project

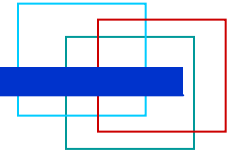
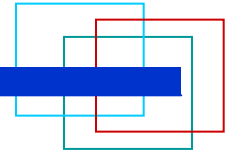


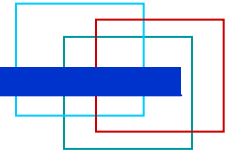
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7. Most Frequently Stated Concerns regarding Ratification of the Convention: FAQs
8. Assistance Available for Indonesian Government in the Ratification Preparations and Implementation of International Standards



Key Data about Migrant Workers

- There are approximately 200 million documented migrants worldwide contributing with around US\$ 150 billion in remittances annually. Globally, 49% of them are constituted by women. 50 million of all migrants are located in Asia (accounting for 1,4% of Asia's population)
- In Indonesia, up to 2008:
 - 4,300,000 documented migrants from Indonesia went abroad for work, mainly to Malaysia and Saudi Arabia (BNP2TKI)
 - Approximately 75 percent of all Indonesian migrant workers are women and the vast majority is working in the domestic sector (BNP2TKI)
- Within the same period of time, Indonesian Government announced:
 - US\$ 8,24 billion in remittances to the national economy (BNP2TKI)



ILO Mandate and Work on Migrant Workers

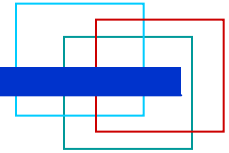
ILO mandate:

- To protect all workers, including migrant workers
- To help to ensure productive employment under decent work conditions (ILO Core conventions)

All labour and human rights conventions include and apply to migrant workers

Decent Work/ ILO Core Conventions

- Non-Discrimination (ILO C 100 & 111) (ILO C 100:163 ratifications, including Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Viet Nam. ILO C 111: 165 ratifications including Cambodia, Indonesia, Philippines, and Viet Nam)
- Freedom of Association (ILO C 87 & 89) (ILO C 87: 147 ratifications including Cambodia, Indonesia, Myanmar, and Philippines. ILO C 89: 65 ratifications including Philippines)
- Ban on Forced Labour (ILO C 29 & 105) (ILO C 29: 171 ratifications including Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand, and Viet Nam. ILO C 105: 167 ratifications including Cambodia, Indonesia, Malaysia, Philippines, Singapore, and Thailand)
- Ban on Child Labour (ILO C 138 & 182) (ILO C 138: 147 ratifications including Cambodia, Indonesia, Malaysia, Philippines, Singapore, Thailand and Viet Nam. ILO C 182: 163 ratifications including Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand and Viet Nam)



Migrant workers have particular conditions and vulnerable to exploitation:

Specific conventions addressing their rights & common violations needed:

ILO C. 97 Migration for Employment (45 ratifications including Malaysia Sabah)

ILO C 143 Migrant Workers (21 ratifications including Philippines)

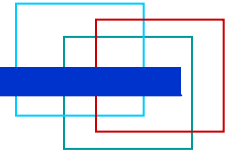
ILO C 181 Private Employment Agencies (20 ratifications with no ratification by ASEAN Countries yet)

ILO C.118 Equality of Treatment (Social Security) (38 ratifications including Philippines)

ILO C 157 Maintenance of Social Security Rights (3 ratifications including Philippines)

UN C Protection of Rights of Migrant Workers & Their Families (1990) (36 ratifications including Philippines)

Problem: low rate of ratifications, particularly by destination countries.



Other International Human Rights Conventions of relevance to Migrant Workers' Rights, with high rates of ratifications

ICCPR I.C. Civil and Political Rights (160 ratifications including Cambodia, Indonesia, Lao PDR, Philippines, Thailand, and Viet Nam)

•ICESCR I.C. Ec. Soc. Cultural Rights (155 ratifications including Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Viet Nam)

•CEDAW C Elimination of Discrimination Against Women (185 ratifications including Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam)

•CERD C Elimination of Racial Discrimination (173 ratifications including Cambodia, Indonesia, Lao PDR, Philippines, Thailand, Viet Nam)

•CAT C. against Torture (144 ratifications including Cambodia, Indonesia, and Philippines,)

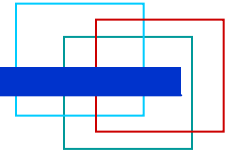
•CRC Rights of the Child (193 ratifications including Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam)

•Trafficking Protocol (ratifications)--- signatories 117, parties 118 (latest status 2008)

•Suppl. C. on the Abolition of Slavery.. and institutions and practices similar to slavery (serfdom, debt bondage) (119 ratifications including Cambodia, Lao PDR, Malaysia, Philippines, Singapore)

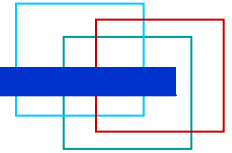
•Treaty bodies & mechanisms (sometimes signing optional protocol required)

•Special Mechanisms, such as Rapporteurs on rights of migrants, -migrant workers, -torture, -violence against women, -trafficking,



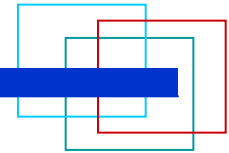
ILO Recent Work on Globalization and Labour Migration:

- reports
- Fair Chance for Migrant Workers
- Globalization and Migration
- ILO Plan of Action on Labour Migration (2005)
- Multilateral Framework on Labour Migration (2005)
- Non-binding guidelines approved by member states
- ILO technical support and project work to assist tripartite members and other stakeholders.



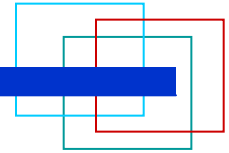
Main Problems as Indicate on the RPJMN 2010

<i>Main Problem</i>
Existence of Calo/Middle Men in the most of recruitment
lack of the acknowledgement and protection of basic labour rights of migrant workers especially female migrant workers
the need to expand and strengthened the access to banking system for migrant workers, the need to strengthen the current insurance system for migrant workers and the need to improve the remittance system for migrant workers



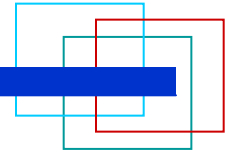
Main Problems and Impact of Indonesian Migrant Workers Placement System (PRE-DEPARTURE)

<i>Main Problem</i>	<i>Impact</i>
Lack of reliable and objective information from proper and authorized source about safe migration system, list of good and government recommended PJTKIs/PPTKIS (private recruitment agencies), rights of workers, requirements, risk of working abroad, government protection services, etc to prospective migrant workers in villages	Prospective migrant workers may be misled by any recruiter (calo) in their villages, put them into vulnerability since the very first step of recruitment steps
Migrant workers pay for, but do generally not receive technically adequate training by PPTKIS. Migrant workers do not receive information about the work and contract conditions, and of the laws and requirements of the destination country	Migrant workers are unprepared for the work tasks they are required to carry out, and cannot communicate effectively with the employer. Migrant workers are unaware of their rights, and vulnerable to exploitation
Lack of government monitoring of PPTKIS and their operation, including its training to prospective migrant workers (regular inspections, spot inspections, regional inspections) Excessive cost and fees paid by prospective migrant workers (mandated & non-mandated costs)	Many prospective migrant workers, who are taking a training program conducted by PJTKI, are locked up in the premises with no communication allowed to families/friends, exposed to occupational and safety and health hazards, and are charged fees disproportionate to the training they receive Prospective migrant workers trapped into debt bondage situation



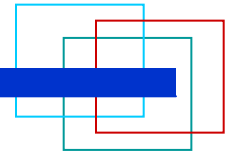
Main Problems and Impact of Indonesian Migrant Workers Placement System (DURING OVERSEAS EMPLOYMENT)

<i>Main Problem</i>	<i>Impact</i>
Lack of knowledge, resources and in some cases willingness by Embassies and consulates to provide the services needed by Indonesian migrant workers abroad (legal advice, assistance, shelter, vocational training, etc.)	Many Indonesian migrant workers do not receive the assistance they are due according to law no. 37, 1999 from Indonesian representatives in destination countries, and the lack of protection encourages further exploitation by employers & agents
Practice, if not official policy, to limit the protection only to well-documented migrant workers alone	Many Indonesian workers who are working abroad with no proper document are having no protection from Indonesian government.
Little cooperation/ outreach by Indonesian Embassies and Consulates with media, NGOs, trade unions, employers, recruitment agencies, police, courts etc.	No effective protection is obtained for migrant workers, and no documentation of the problems is achieved.



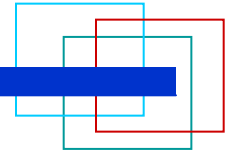
Main Problems and Impact of Indonesian Migrant Workers Placement System (RETURNING TO COUNTRY OF ORIGIN)

<i>Main Problem</i>	<i>Impact</i>
Lack of proper protection system for returned migrant workers in the arrival airport or harbor	Many Indonesian migrant workers are facing security problems and exploitation, when they are returning to Indonesia
Lack of Government support to returnees and their families (counseling, assistance services, facilitating access to banking & remittances transfer services, micro-credit, savings and micro business training etc.)	<p>After short-lived elevated consumption levels, migrant workers are forced to go abroad again in a continuing cycle of hazardous migration with social isolation and economic and physical risks.</p> <p>Indonesia and sending areas are not reaping the development benefits of migration</p>



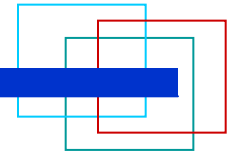
Government Plan for Improving Labour Migration (RPJMN 2010)

- ratification of International UN Convention on Migrant Workers,
- amendment of Law Number 39/2004,
- Issuance of implementing regulation of the amended Law 39/2004,
- bigger percentage of prospective migrant workers who received services given by Disnaker,
- bigger number of prospective migrant workers attended the pre-departure briefing (PAP),
- Issuance of Migrant Workers Identity Card,
- Establishment of computerized data base system of Indonesian Overseas Workers and placement of Labour Attaché



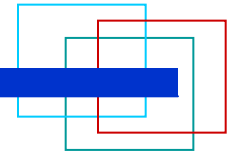
Government Plan for Improving Labour Migration (The Strategic Plan of Ministry of Manpower and Transmigration)

- ratification of International UN Convention on Migrant Workers,
- amendment of Law Number 39/2004,
- Issuance of implementing regulation of the amended Law 39/2004,
- bigger percentage of prospective migrant workers who received services given by Disnaker,
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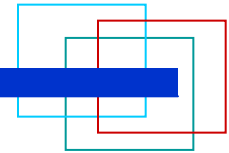
Proposed Government Action for Improving Labour Migration (pre-departure)

<i>Main Problem</i>	<i>Proposed Government Action</i>
Lack of reliable and objective information from proper and authorized source about safe migration system, list of good and government recommended PJTKIs, rights of workers, requirements, risk of working abroad, government protection services, etc to prospective migrant workers in villages	<ul style="list-style-type: none">• Combating Illegal Recruitment: Example: The application of the assertive sanction toward the officials that are involved in the practice of thugs and illegal middlemen to the MW at the embarkation/debarkation by the authorized institutions. Coordinate with Ministry of Home Affairs, with NGOs/trade union• List of good/bad PPTKIS/PJTKI: BNP2TKI has started this program• Providing information for MW: Example: Socialization for the prospective migrant workers on their rights of obtaining legal assistance abroad by involving the NGO, civil society and mass media



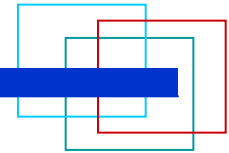
Proposed Government Action for Improving Labour Migration (pre-departure)

<i>Main Problem</i>	<i>Proposed Government Action</i>
<p>Migrant workers pay for, but do generally not receive technically adequate training by PPTKIS.</p> <p>Migrant workers do not receive information about the work and contract conditions, and of the laws and requirements of the destination country</p>	<ul style="list-style-type: none">Improving quality of training center: Examples: Determine the rating of BLKLN (overseas workers training center) by considering the availability of instructors, facility and infrastructure and the management of training. Improvement of the number of accredited Competency Test Place (TUK) and certification institution thus they will be affordable by the prospective migrant workers. The issuing of Permenakertrans should be accelerated as the follow up of the PP Number 31/2006 on Sislakernas



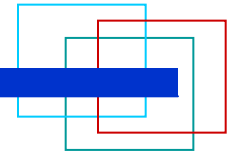
Government's Plan for Improving Labour Migration System

<i>Main Problem</i>	<i>Proposed Government Action</i>
Lack of government monitoring of PPTKIS and their operation, including its training to prospective migrant workers (regular inspections, spot inspections, regional inspections)	Plan to develop intensive monitoring program
Excessive cost and fees paid by prospective migrant workers (mandated & non-mandated costs)	Develop program for facilitating prospective migrant workers with credit facilities through banking system with low interest (Coordinating Ministry for Economic Affairs has initiative to develop this)



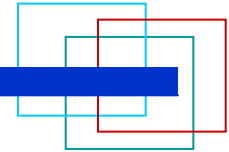
Government's Plan for Improving Labour Migration System (DURING OVERSEAS EMPLOYMENT)

<i>Main Problem</i>	<i>Proposed Government Action</i>
Lack of knowledge, resources and in some cases willingness by Embassies and consulates to provide the services needed by Indonesian migrant workers abroad (legal advice, assistance, shelter, vocational training, etc.)	<p>For giving services to IMW in destination countries: Example: Establishing citizen service centers in South Korea, Brunei Darussalam, Jordan, Syria, Qatar and the pilot project in Singapore (Ministry of Foreign Affairs has started the development of this program)</p> <p>For providing legal assistance: Example: legal assistance institutions with partnership framework have been formed in several cities such as Saudi Arabia. This will be spread out in more countries of destination.</p>
Practice, if not official policy, to limit the protection only to well-documented migrant workers alone	Service and Protection for ALL migrant workers regardless their legal status. This approach actually has been taken by the top leaders of Government (refer to the negotiation in the ASEAN where Indonesia along with the Philippine, choose this approach to be integrated in ASEAN). Needs to be implemented to all level of Government officials)



Government's Plan for Improving Labour Migration System (DURING OVERSEAS EMPLOYMENT)

<i>Main Problem</i>	<i>Proposed Government Action</i>
Little cooperation/ outreach by Indonesian Embassies and Consulates with media, NGOs, trade unions, employers, recruitment agencies, police, courts etc.	<p>For better protection: Continue and expand cooperation with Indonesian police headquarter to assign SLO Polri (Indonesian Police) officers to 6 destination countries.</p> <p>Open cooperation with trade unions/NGOs in destination countries</p>



Government's Plan for Improving Labour Migration System (RETURNING TO COUNTRY OF ORIGIN)

<i>Main Problem</i>	<i>Proposed Government Action</i>
Lack of proper protection system for returned migrant workers in the arrival airport or harbor	<ul style="list-style-type: none">-Provide hotline service for Migrant Workers-Socialize the facility to prospective Migrant Workers- punishment, from down grading and discharging the staff involved in thugs and illegal migration channel practices at embarkation/debarkation areas
Lack of Government support to returnees and their families (counseling, assistance services, facilitating access to banking & remittances transfer services, micro-credit, savings and micro business training etc.)	There is now exist an ongoing process of effort to improve the situation on this issues, coordinated by Coordinating Ministry for Economic Affairs.



Strengthening Labour Rights and Human Rights Protection for Migrant Workers

International Level:

- Adherence to ILO Multilateral Framework on Labour Migration (detailed guidelines and best practices adopted by ILO member states)
- Ratification of International human rights and labour rights conventions protecting migrant workers (UN International Convention on the Rights of All Migrants and Their Families 1990, ILO C 97 & C 143 on migrant workers)
- Ratifying other relevant conventions for migrant workers (ILO C 118 & C 151 on social security rights, C 181 on private recruitment agencies and ***the new ILO Convention 189 on Domestic Workers***)
- Ratifying or strengthening implementation of other relevant conventions (CEDAW, CAT, CSR, CERD, anti-slavery conventions, trafficking protocol, etc.)
- Deepen cooperation on labour migration components and establish agreements in these areas
- Establish institutionalized and dynamic international cooperation mechanisms entailing information-sharing, dialogue, consultation, decision-making and cooperation mechanisms on labour migration



Strengthening Labour Rights and Human Rights Protection for Migrant Workers

Regional Level:

- Adoption and implementation of the draft ASEAN Instrument on the Protection of the Rights of Migrant Workers
- Implementation of the ASEAN Declaration on the Protection of the Rights of Migrant Workers
- Implementation of the ASEAN Vientiane Platform for Action
- Deepen cooperation on labour migration components and establish agreements in these areas
- Establish institutionalized and dynamic regional cooperation mechanisms entailing information-sharing, dialogue, consultation, decision-making and cooperation mechanisms on labour migration



Most Frequently Stated Concerns regarding the Ratification of the Conventions : FAQs

Should the State that wants to ratify a Convention improved its situation prior to the ratification? Should it improve immediately after ratification?

Ratification does not require a State to be 100% ready before it may ratify the Convention nor require a State for an immediate fulfillment of all standards right after a ratification. It does require, and observe, a proper, significant and timely manner progress of improvement which State will have assistance from UN Bodies, including ILO, that sets up the standards, for implementing the ratified standards

It is useless to ratify ICRMW or other Convention on Labour Migration for many destination countries of Indonesian Migrant Workers do not ratify the Convention

First, the ratification of the Convention will still give benefit for Indonesia even if the destination countries of Indonesian migrant workers do not ratify it. It will be give a stronger profile of Indonesia for getting a better bargaining position at the negotiation table. Secondly, it should be remembered that many provisions on the ICRMW are actually relate to the domestic aspects of the protection of Indonesian migrant workers.



Most Frequently Stated Concerns regarding the Ratification of the Conventions : FAQs

The Convention infringes upon State sovereignty

In relation to ICRMW, this notion clearly dispelled by the first sentence of Article 79 of the Convention: *Nothing in the present Convention shall affect the right of each State Party to establish the criteria governing admission of migrant workers and members of their families.* ILO Conventions on Labour Migration and others also has similar provisions, or sentence in provisions, that give clear respect and observation to national laws.

The ICRMW Convention will put burden on Indonesia for giving services to migrant workers who are coming to Indonesia (notably the social security)?

At the moment, type of migrant workers who are coming to Indonesia for employment are those who are working in a formal sectors with a high level skills and position. All of them have already covered by social security mechanism provided by private enterprise and/or public enterprise from the country of origin.



How the International Community Can Assist the Indonesian Government in the Ratification Preparations and Implementation of the International Standards

International organizations, including ILO, can assist by providing technical advice and assistance to government and legislative bodies in consideration of ratification.

This may include review of legal and legislative implications of incorporating the Convention standards in national law, review of draft legislation to do so, provision guidance and sharing good practice models. Normally, such advice and assistance is formally requested by interested government

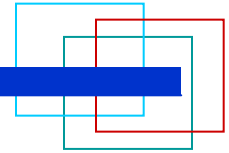
Parliamentary bodies can also call on expertise of the relevant specialized international organizations to support consideration of ratification by inviting participation in hearings, in parliamentary conferences, or by requesting documentation. Organization like ILO have an occasion co-sponsored meetings or seminar with its counterparts to facilitate awareness raising and information sharing



How International Community can Assist Indonesian Government in the Ratification Preparations and Implementation of the International Standards (Cont)

In the context of ICRMW, the Inter-organizational Steering Committee on the ICRMW are valuable resources for expertise, practical action and public support in implementation of the Convention

Relevant UN bodies including ILO opens cooperation with government officials and parliamentarians on ensuring the effective protection of rights of all migrants and productive international cooperation on regulating migration



Thank you for your attention
Your questions and responses are
most welcome

Pls. check ILO web sites for resource
documents:

www.ilo.org (global policy documents,
reports)

www.ilo.org/jakarta/publications
(resource documents, policy reviews
on migrant workers in SEA)