

10-31-2016

REGIONAL COOPERATION AND LEGAL PROTECTION TO INDONESIAN WOMEN MIGRANT WORKER

Sukawarsini Djelantik

Follow this and additional works at: <https://scholarhub.ui.ac.id/ijil>

Recommended Citation

Djelantik, Sukawarsini (2016) "REGIONAL COOPERATION AND LEGAL PROTECTION TO INDONESIAN WOMEN MIGRANT WORKER," *Indonesian Journal of International Law*: Vol. 14: No. 1, Article 5.

DOI: 10.17304/ijil.vol14.1.678

Available at: <https://scholarhub.ui.ac.id/ijil/vol14/iss1/5>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in Indonesian Journal of International Law by an authorized editor of UI Scholars Hub.

REGIONAL COOPERATION AND LEGAL PROTECTION TO INDONESIAN WOMEN MIGRANT WORKER

Sukawarsini Djelantik*

Abstract

The increasing number of Indonesian women migrant workers (IWMWs) started since 1997, and remain high after the global financial crisis in 2008. The impact for Indonesian economy is quite significant in terms of social and economy. Unemployment rate increased significantly as well as number of people living below poverty line. Social and family relations changed as women forced to work in public sectors to support family economy. Domestic job scarcity turned thousands of Indonesian women as family bread winner by working overseas. The above push factors are combines by increasing demands of IWMWs in the newly industrialized countries in Southeast Asia, especially Singapore and Malaysia. Geographic and cultural proximity also become reasons both countries are favorite destination to IMWs. As IMWs are mostly uneducated, so they left with no or little choices rather than working as domestic servant or other low income jobs known as 4D's jobs (dirty, dangerous, difficult, demeaning) under poor working conditions. These marginal conditions were the result of weak bargaining position especially compared to other nationality, such as the Filipinos. Marginality also led to the emergence of the issue related to the violation of human and worker rights. To solve the problems, ASEAN countries need to cooperate and to build a solid legal system to protect IWMWs. The conflicting interests within ASEAN member countries between the receiving (Singapore, Malaysia) and sending (Indonesia, The Philippines, Thailand) have prevented the regional organization to produce binding legal products to protect its migrant workers. This research will answer questions: "what are solutions to increase IWMWs bargaining position in regional work force?" Other question would be: "How ASEAN solve regional migration issue".

Keywords: ASEAN, migrant worker, legal protection.

I. INTRODUCTION

The issue of women migrant workers or *tenaga kerja wanita* (TKW) for Indonesia has become a significant social-economic problem. It's strongly related to the backwardness of Indonesian development, especially since the economic crisis that had increased numbers poverty. Due to social and cultural position, women are the poorest group of the poor. The government had neglected women issue for decades, and not many people, including women, are aware of this significant problem. After 70 years of independence, TKW remain as modern age's slaves, as their fate mostly dependent on their foreign employers' mercy or corrupt agents both national and overseas. I believe that the government should have stronger political will and TKW should be supported

* Lecturer at Parahyangan Catholic University-Bandung Indonesia

by adequate policies and law enforcement mechanism. I admitted if the government had tried to solve the problem, however, a comprehensive handling is still necessary. In globalize economy; the issue of TKW is not specific to Indonesia, but also other developing nations. Therefore, international cooperation is needed, especially with other sending as well as receiving countries. Through dissemination of information and academic researches, I hope that this research could help to focus the issue on regional cooperation within ASEAN member countries.

II. WOMEN, MIGRATION AND GLOBALIZATION

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)¹ defines migrant worker is someone who work away from their home country to have income. Another definition is: *A migrant worker is someone who regularly works away from home, if they even have a home.*²

In globalize era, migration is a common practice, however, it is unaccepted if during migration, their rights are continuously being violated and experiences other violations conducted by the agent, employer, and government apparatuses. The increased number of women migrant workers is a normal practice in globalizes world and accordance to economic supply and demand. Problem occurred when migrant workers from sending country migrate illegally and/or without supporting skills and did not fulfill other immigration requirements. For Indonesian context, there are two types of migration; legal and illegal. The latest type is the source of most socio-psychological and human rights violations. They were subjects to verbal and physical violent, debt, and exceed exploitation, from recruitment process, in receiving countries, and upon their return.³ Labor act and other government regulation unable to solve

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families *International Migration Review*, Vol. 25, No. 4, Special Edition: U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Winter, 1991, New York).

² [...] “The Global Campaign for Ratification of the Convention on Rights of Migrants”, available at: <http://www.migrantsrights.org/>, accessed on January 30th, 2008.

³ [...] “Combating Trafficking in Women and Childrean, United Nations Development Fund For Women”, see di www.hawaii.edu/global/projects_activities/Trafficking/Noeleen.pdf, accessed on January 30th, 2008. See also: Migrant Workers, Traf-

issues. Weak bargaining position and low education often led to increasing number of those above mentioned human rights violations as well as work violation such as sexual harassment, rape, and in several cases, death.

There are pull and push factors to the increase number of women migrant workers. The push factor is poverty and economic crisis. Since 1998, when Soeharto administration falls down, Indonesia experiences several crises from economic to almost all other aspect of life. This economic and monetary crisis had led to the closure of several factories and led to increasing number of unemployment. This condition forced workers to accept working in low income in Indonesia or going overseas even though they are not equipped with necessary education, skill, and training. They mostly attracted to relatively higher income overseas. Some workers who chosen the Arab countries are as well motivated by other reasons such as going to pilgrimage (Hajj, umroh).⁴ As trend in globalize world, Indonesia is experiencing what so called “feminism migration”, a migration that dominated by women from developing economy or women from conflicting countries or war.⁵ Nowadays, almost half of migrant workers are women. Collapse of local economic system forced women going overseas to survive and being involve in global work forces. Beside going to oil rich countries like the Arab worlds, other new industrialized countries such as Malaysia, Singapore, Taiwan, and Hong Kong, has strong demand on Indonesian workers.⁶

Pull factors are the emergence of newly industrialized countries, such as Singapore, Taiwan, Hong Kong, and Malaysia. Industrialization in those countries had led to the change of gender role and increas-

ficking & Forced Labor, http://hrw.org/doc/?t=migrants_forced_labor, accessed on November 24th, 2007.

⁴ Summarised from interviews with returnees TKW in Garut, Indramayu dan Bandung, December 2007.

⁵ [...] “Gender Dimension of International Migration, Global Migration Perspectives, No 35, May 2005. see: Global Commission on International Migration”, available at: <http://www.gcim.org/mm/File/GMP%20No%2035.pdf>, access on February 4th, 2008.

⁶ Singapore (2002) have about 450.000 migrant workers, 140.000 are domestic workers. From Indonesia, domestic workers about 60.000, and the rest came from the Philippines, India, Sri Lanka and Myanmar, see ELSAM report, 2002.

ing demand for women to participate in work forces in industrial and service sectors. Domestic workers from lower economic countries like Indonesia are fulfilling the demand for domestic jobs.⁷ For Indonesian TKWs, being domestic workers or other low income jobs are sole option even though confronted by higher social risks. The jobs would help themselves and their family economic status.⁸ According to report of International Monetary Fund (IMF), for most developing countries, income from migrant workers become an important source of foreign exchange, increasing export, *Foreign Direct Investment (FDI)* and flow of individual capital.⁹

III. PROBLEMS OF MIGRANT WORKERS

Even though the TKWs are significant contributor to national economy, however, the government had failed to protect and provide them with basic human rights laws.¹⁰ Working as domestic worker means high social cost, however, the government had lack of monitoring process during recruitment, yet unable to change discriminative labor law against women. In addition, there is discriminate immigration policy against women, apathy government apparatuses that led to continuing law violations.

The TKWs mainly sign contract for two years, and could be renew afterwards. Even though slavery system has been abolished all over the world after the application of *Universal Declaration of Human Rights (UDHR)* in 1948¹¹ that been ratified by most countries, however, the

⁷ [...] “Asian Women Migrants: Going the Distance, But Not Far Enough, Migration Information Source, March 2003”, see : <http://www.migrationinformation.org/Feature/display.cfm?ID=103>, accessed on Januari 30th, 2008.

⁸ Muhidin, Syarif, M. Fadhil Nurdin dan Teti Asiati Gunawan (2003), “Kajian Masalah Tenaga Kerja Indonesia (TKI) Asal Jawa Barat di Saudi Arabia dan Hongkong Sebagai Bahan Penyusunan PERDA”, Universitas Langlangbuana Research Institute, Bandung.

⁹ [...] “A World Bank report recommends a fresh look at migrant workers, International Herald Tribune, Januari 17th, 2007”. See : <http://www.iht.com/articles/2007/01/17/business/remmit.php>, accessed on February 4th, 2008.

¹⁰ Summarised from interviews in Bandung, Garut dan Indramayu, December 2007.

¹¹ [...] “Universal Declaration of Human Rights (UDHR)” see: <http://www.un.org/Overview/rights.html>, accessed on January 30th, 2008.

phenomena of TKWs are remain portrait the condition of “slaves of the new century”. Violations occurred in every steps of migration process. The following discussions on violations towards TKWs will be discussed during the departure, working, and returning periods.

A. VIOLATION DURING RECRUITMENT AND TRAINING

The TKWs are being exploit and abuse in every steps of their working period. Firstly, agents involved in recruitment and training process charged them excessive amount of money. The money should be returned by deducting their salaries for several months. They also misled by information regarding working condition. Indonesia has more than 400 legal and unknown numbers of illegal agents, and yet the government has inadequate mechanism to supervise. In addition, legal procedures are managed by corrupt public services in almost every office. Bureaucratic structure in recruitment process also led to increase risk of exploitation.

The TKWs firstly recruited by local agent that operates in villages. These agents did not received regular salary but working on commission based. The TKWs did not realized being recruited by illegal agent and unaware when provided by false travel documents. Illegal migration process had positioned TKWs in higher risk when confronted by immigration issue; beside more difficult to assist when they have legal problems. Legal TKWs in Asia do not expected to pay administrative and training program, as their incoming wages would be deducted. But in reality, agent charged them before their departure.

The role of money lender is significant in most cases to provide TKWs fund that should be paid with high interest rate. The agent often charged higher cost than official rate to apply, obtain immigration and travel documents, and to conduct training program. Those expenses would be paid by deducting their future salary for the first certain months. This practice applied to TKWs working in Hong Kong, Taiwan, Singapore and Malaysia. In the Middle Eastern countries, TKWs would lend from agent, also with high interest-rate, often 100%. The agent mission is to have investment refund, and conducting illegal business is more profitable. Mistreatment towards TKWs is not the concern

of this type of agent. The TKWs also threatened when unable to pay the debt or if breaking the contract before two years. Penalty would be applied or the TKWs are threatened to work as prostitutes.

Labor law in Indonesia did not adequately regulate recruitment process and working condition. In Indonesian legal system, domestic workers are excluded from the definition of “worker”, so the TKWs were not subject to government regulations (minimum wage, working hours, day off or paid holiday). These conditions are contributive to the exploitation of domestic workers by employers both in sending and receiving countries. The agent has also a significant position to handle disputes between employer and worker. The absence of government’s regulation and legal rights even increased the agents’ dominant role. Agent left as sole actor to regulate work conditions includes wages and day-off arrangements.

Prior to departure, the TKWs signed working contract, without copy provided to workers. They neither provided with comprehensive information on conditions as stated on the contract or given opportunity to question the content. They mostly understood regarding two years working, however, detailed clauses on type of work and workers’ rights are often unclear.

The TKWs attended training program prior to their departure, and live in training center for several months. Violations happened during training are includes physical abuse, threats, and/or given illegal or dangerous tasks. The training center is an over-crowded room with poor condition and minimum facilities. Agent in Singapore also charges TKW daily for food and lodging during transfer. The TKWs must pay \$Sin10-20 (USD 6-12) per-night, transfer fee that equal to 1-3 months of their salary. Debt in home country, abusive working condition, continuous threat, and misinformation on working condition, has illustrated TKWs condition as indebted slavery.

During interview, TKW returnee from Singapore and Malaysia informed on the condition on training center; rooms more like a jail, lack of food, no-running water, and verbal and physical abuses from the training employee. The workers did not allow going outside, as they afraid they would run away.

B. VIOLATION IN WORKING PLACE

In receiving countries, the TKWs continuously became the subject of discriminative immigration law and regulation. Employers exploit the TKWs and took advantages of their marginal position are common practices. Due to low law enforcement, the fate of TKWs is entirely depending on employers' condition. Their working hour are often excessive (more than 12 hour per day), and paid in a minimum wages. In case when workers trapped in abusive work condition, the agents refuse to take responsibility to transfer TKWs to find a new place.

The employers also keep TKWs passports, working visas, and private belonging. The absence of passport and working visa has prevented the TKWs to change employer or escape abusive working environment. Another violation is related to right to practice religion. Religious intolerance commonly applied when the TKW has a different religion than their employer. Other violations are isolating TKWs from social environment and prevent them from communicating with family and friends. These are violations against social and cultural rights. The employers, agent, and even the local government defend those practices aimed to protect their house, family privacy, and to workers' own safety. Prevention to travel or socializing is violation of rights that dramatically increase tendency and economic exploitation, slavery practice, intimidation, sexual harassment and rapes. Denied on right to socialize was said to prevent them running away to seek help. This mean they would endure every abusive condition, mistreatment, jailed, unpaid or underpaid, or deported. TKWs in Saudi Arabia, Uni Emirates Arab, Malaysia, and Singapore often unilaterally deported after conduct minor offence. Working visa in the Arabian and East Asian countries is related to their employers. This condition means escape would end as being illegal worker and deportation. Isolationism and desperation have increase number of suicidal TKWs. Related to abusive treatment, the TKW have two enemies against them, the agent and employers.

Economic pressure and financial debt before came to receiving country have also increased their vulnerability. Transfer of employers and ending the contract are almost impossible, even they confronted with abusive treatment and violent.¹² Another violation is unpaid wages,

¹² Eddy Soppandi, 2003, "Selayang Pandang Profil Tenaga Kerja Indonesia di Hong-

wages deduction, or unilateral deportation. In most case, the workers have lack of understanding regarding law and regulations in receiving countries. These issues have led them accepting abusive condition, or lost their legal status.¹³

In Singapore, some employer refuses to release the TKWs after two years contract had completed. In Malaysia, immigration detention center is over-crowded with problematic TKWs. In some case, the TKWs family back home should send some amount of money to buy return ticket or they would be kept for months until being released by the Indonesian Embassy (KBRI) or deported by the Malaysian immigration office. Immigration policy in Malaysia also prevents the TKWs to report officially on violations, abusive employer and working condition. To submit official report, the TKWs should apply for special form to stay in Malaysia to be able to precede their report, plus paid 100 RM (USD 26.1) per-months while waiting for hearing schedule. During that period, the status of TKW is unemployed. Being confronted by uncertain waiting period in poor condition detention house, no-income, and desperately wanted to go home after experienced traumatic experiences, usually led the TKWs to cancel their charges even when the employers are already under police detention.

C. REPRODUCTIVE, MARRIAGE AND SEXUAL RIGHTS

National law and immigration policy in several countries have also prevented migrant workers to enjoy their reproductive, marriage and sexual rights. The TKWs would be discriminate when pregnant before and during contract period. If their pregnancy occurred during contract, they would be asked for abortion or remain working. In practice, abortion is difficult or even impossible in Saudi Arabia, even on rape pregnancy case. Immigration policy in Singapore also banned the TKWs to marry local citizen. These are another violation to marriage and freedom to decide own private life. The workers stereotyped as being seductive and become a reason for their freedom to travel.

Immigration law also requested TKWs go through pregnancy test

kong,” see: *Sosiohumaniora*, Universitas Langlangbuana, Vol.V, No.1, Bandung.

¹³ Summarised from interview in Bandung, Garut and Indramayu, December 2007.

(similar to HIV, TBC, malaria and other infectious diseases tests) prior to their arrival. The workers must pay for those tests and added as debt that would be deducted from their forthcoming income. Agent and employers further conducted similar examination upon arrival, and pregnant workers would be deported or go through abortion as a precondition to remain stay and work. The result of health examination is not informed to them privately, nor provides further consultation.

Singaporean immigration policy also discriminate TKWs on their reproductive status. The TKWs must do health test every 6 months (includes pregnancy and HIV test), while male workers only have once in two years. The Singaporean employers also often have misunderstanding on legal policy on abortion. Abortion only possible after 24 weeks pregnancy. Because most TKWs want to stay, they are forced to have illegal abortion or go through unsafe and illegal abortion. The employer also belief that they will loose their \$Sin 5000 (USD 2950) deposit if the TKWs is pregnant. Even if this information is untrue, it prevents TKWs to go out or dating. These are violations to sexual life and mistreatment of mature woman as children that unable to make decision.

Interviews with TKWs on working condition and violation of human rights have also reported by *Human Right Watch (HRW)*.¹⁴ HRW publication would be a complimentary document to press the government to amend law and to plea international community, interest groups, NGOs, and donor countries to defend domestic workers' rights.

IV. CONCLUSION

The above discussions have demonstrated the complexity of TKWs problems. Most of problem rooted from workers' weak bargaining position vis a vis the agent, government, or employer. Violations also happened due to the absence of legal protection or did not support by adequate government regulation. The most important problem to solve is to influence the government to produce law and regulation that more advantageous to women. Political will and concrete action aimed to

¹⁴ [...] "Human Rights Watch", see: <http://www.hrw.org/women/labor/html>, accessed on January 30th, 2008.

protect their rights. Adequate legal protection would allow the TKWs with certainty and unlike today where condition is determine by the employers condition. Legal mechanism should be creating for mutual advantages of worker, agent, employers, and the government.

The issue of TKWs is like a tip of an iceberg, considering the real issues are much more complex compared to media publication. Human rights violations should be minimize or abolish if possible, to create symbiotic mutualism between workers and employers. If law enforcement applied, the existence of TKWs would be benefit not only to individual, bur also to community and state. To optimize the role of TKW, below are some recommendations to the government:

- The government should reduce unemployment rate in West Java. Local economy should be developed, especially rural economic activities. Education opportunity should be provide and developed. If necessary, the government should subsidize undeveloped regions especially in southern coasts; Garut, Cianjur, Sukabumi and northern coast like and Indramayu.
- TKWs requirements should be regulate especially on minimum ages, level of education and to ensure in its implementation. The workers should also well inform on their rights as worker.
- The provincial government should establish a standard procedure to observe recruitment system, includes changing immigration policy that disadvantageous to the TKWs.
- National as well as provincial governments should promote cooperation with receiving countries to protect TKWs' legal rights. The agents should include in their training program a language courses according to TKWs destination. The agent should also provide minimum language proficiency to allow the TKWs actively involve in social life.
- The provincial government should amend labor law with inclusion of clause to protect workers.
- The government should develop diplomatic relations and negotiation with receiving countries. For example, the government could negotiate with the government of Saudi Arabia to provide training course to their police to conduct investigation cases occurred in domestic level. The skill is needed because disputes and problems be-

- tween TKWs and employment mostly happened in private rooms without or with only limited witness.
- The provincial government should coordinate with the Department of Work Forces and Department of Foreign Affairs to negotiate with their counterparts in receiving countries. Negotiate topic includes visa requirements that required employers' sponsorship. This disadvantages rule prohibit the TKWs to leave the country or change employers in case they confronted by abusive condition. The new regulation applied by the Saudi Arabian Ministry of Work Forces to ignore sponsorship in case the employer did not pay TKW salary for three consecutive months is inadequate to solve the problem. The Saudi Arabian government and the Indonesian Embassy are still received thousands of reports regarding works exploitation or abusive conditions. As the issue of TKW is mostly hidden behind domestic walls, unreported cases should be more in number.

REFERENCES

- Heyzer, Noeleen, *Combating Trafficking in Women and Children*, United Nations Development Fund for Women (UNIFEM), Honolulu, Hawaii. 2012.
- Jorgen, Carling, *Gender Dimension of International Migration*, Global Migration Perspectives, No 35, May, Geneva, Switzerland. 2005.
- Muhidin, Syarif, M. Fadhil Nurdin dan Teti Asiati Gunawan, *Kajian Masalah Tenaga Kerja Indonesia (TKI) Asal Jawa Barat di Saudi Arabia dan Hongkong Sebagai Bahan Penyusunan PERDA*", Unila Research Institute and BAPPEDA Jabar, Langlangbuana University, Bandung. 2003
- Soppandi, Eddi (2003), "Selayang Pandang Profil Tenaga Kerja Indonesia di Hongkong," in *Sosiohumaniora journal*, Langlangbuana University, Vol.V, No.1, Bandung.
- , International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1991, *International Migration Review*, Vol. 25, No. 4, New York.
- , Lembaga Studi dan Advokasi Masyarakat (ELSAM), 2002, *Statistik Kematian Buruh Migran di Singapura*, Jakarta.

Internet References

- [...] http://hrw.org/doc/?t=migrants_forced_labor
- [...] "Globalization", available at: <http://en.wikipedia.org/wiki/Globalization>, Accessed on 6 September 2015.
- [...]. Newsweek, 17 Oktober 1994, lihat di: www.newsweek.com

- [...] <http://www.gcim.org/mm/File/GMP%20No%2035.pdf>.
- [...] “Migrant Workers, Trafficking & Forced Labor, available at: http://hrw.org/doc/?t=migrants_forced_labor , Accessed on 6 September 2015.
- [...] “ Globalization”, available at: <http://en.wikipedia.org/wiki/Globalization>,
- [...] “Human Rights Watch,available at: i: <http://www.hrw.org/women/labor/html> Accessed on 6 September 2015
- [...] www.hawaii.edu/global/projects_activities/Trafficking/Noeleen.pdf
- [...] <http://www.iht.com/articles/2007/01/17/business/remit.php>
- [...] http://elsam.or.id/txt/asasi/2002_0506/08.html