

INDONESIA'S MIGRANT WORKERS AND OVERSEAS LABOR POLICY¹

BURUH MIGRAN INDONESIA DAN KEBIJAKAN KETENAGAKERJAAN LUAR NEGERI

Riwanto Tirtosudarmo² and Lilis Mulyani³

Abstrak

Meskipun secara demografis Indonesia merupakan Negara terbesar keempat di dunia, namun persoalan migrasi internasional baru menjadi perdebatan hangat ketika terjadi banyak masalah yang menimpa tenaga kerja Indonesia di luar negeri. Tingginya tingkat permintaan untuk tenaga kerja domestik sejak pertengahan tahun 1980-an dari Negara-negara Teluk, Malaysia, Singapura dan Hong Kong perlahan meningkatkan ketegangan antar Negara, terutama dengan munculnya kasus-kasus eksploitasi dan pelanggaran hak asasi manusia yang menimpa tenaga kerja migran. Pusat ketegangan tersebut sebenarnya terletak pada kebijakan yang mendukung tenaga kerja di luar negeri dan kegagalan Negara untuk menyediakan regulasi yang memadai untuk perlindungan mereka. Untuk memahami masalah tenaga kerja Indonesia di luar negeri, tulisan ini mencoba menelusuri hubungan antara migrasi dan hubungannya dengan Negara; serta sejarah kebijakan Negara mengenai migrasi itu sendiri. Evaluasi juga dilakukan terhadap stakeholder dalam "industri migrasi" yang penting untuk memahami kurangnya pemahaman dan sikap reaktif serta ad hoc yang diperlihatkan stakeholder Negara dalam bentuk kebijakan dan peraturan yang dikeluarkannya.

¹This article was initially a paper prepared for Workshop on Exit and Integration Strategies for Labor Migrants in South East Asia: Putting Principles into Practices, Monash University, Sunway campus, Kuala Lumpur, Malaysia, 29-30 November 2011.

² Researcher at Research Center for Society and Culture, The Indonesian Institute of Sciences. To contact the writer, email: tirtosudarmo@yahoo.com.

³Researcher on Law and Legal Issues at Research Center for Society and Culture, The Indonesian Institute of Sciences (PMB-LIPI). Contact: lilis.mulyani@lipi.go.id or lilismulyani@yahoo.com.

Kata kunci: kebijakan tenaga kerja di luar negeri, pekerja migran, migrasi tenaga kerja

Abstract

Demographically, Indonesia is the fourth largest country in the world, yet international migration is a meager issues and only recently becoming a hot policy debates on the problem of migrant workers protection. The huge demand for domestic workers since the mid 1980s from the Gulf countries, Malaysia, Singapore and Hong Kong, continue unabated, increasingly creates tensions between the state and the civil societies, as many migrant workers exposed to exploitation and human right abuses. The center of the tension lays on the wide discrepancy between the policy to bolster the overseas labor and the failure of the state in providing a proper regulation in which protection for migrant workers is secured. To understand the current problems of overseas labor policy in Indonesia is necessary to trace the relationship between migration and the state and the history of state policy on migration. Assessing the role of stake holders in this migration industry is important in able to understand the apparently lack of grasp and continuously reactionary and ad hock nature of the policy and related regulations.

Keywords: Indonesia's overseas labor policies, migrant workers, migration of labor

Introduction

Migration or movement of people between places is an old phenomenon in the region that is now known as Indonesia. International migration, as well as migrant workers, however is newly constructed terms after the creation of a nation-state following the decolonization process. The boundary of the nation-states delineates movement of peoples into an officially defined categorization of people movement, namely internal and international migration. In the border areas, movement of people, historically part of the people's tradition, now becoming cross borders, and officially imposed as international migration with all its legal sanctions. International migration is always closely related to the state's official policy and its related immigration bureaucratic process of legal documentations.

The primacy of legal aspects in international migration constitutes the complex relation between various parties, in which migrant workers supposed to be the center of attention, and the state as the sole agent to authorize the legitimacy of migrant workers. But it is precisely on the issue of the legal aspects that the weaknesses of the Indonesian overseas labor policy apparently rooted. The increasing demand of migrant workers abroad, particularly female domestic workers, since around mid 1980s, created the pressure for the state to securely manage the flows of cross border migrants into their destination countries, and when they return into their place of residents in the country of origin. In the post Suharto period, the immense state's involvement in the process of recruitment, placement and integration of migrant workers reflects the perceived important contribution of migrant workers into the current national economy, particularly through remittance.

This article assesses the Indonesian overseas labor policy, at the national level, by looking specifically into the source of problems that continually haunted the overseas labor policy.⁴ It cannot be denied that the state's rhetoric to provide a good policy is far from realities as migrant workers still unprotected from human right abuses and economically exploited parties within the migration industry, in Indonesia and abroad. The article began by tracing back the history of migration policy in colonial time that continues after independence. A particular attention is given to the development of regulations in the post Suharto era that in our conclusion far from the expectation of a departure from the old paradigm into the new one. A lesson learned will be the final part of the paper.

Migration as Perceived by the Ruling Elites

Actually, in Indonesia, internal migration has always been an important issue within the state political agenda. This was mainly because both colonial and post colonial states perceived that a range of the state goals could be achieved through a migration engineering policy. The state engineering policy on migration was formulated at the beginning of the twentieth century as a result of developments within the colonial elite class that eventually culminated in the formulation of the so called Ethical

⁴An ethnographic description on the intricate processes of recruitment of migrant workers at the local level and its relation to the question of migration industry, can be read at Lindquist (2010) based on his fieldwork in Lombok, West Nusatenggara.

Policy in which migration is one of its concerns. The Ethical Policy, however, was mostly concerned with raising agricultural productivity, particularly in Java, and had no intention of introducing drastic changes in the colonial economic structure by such means as large scale industrialization. While the general perception on the problem of Java at the time was mostly confined to rapidly growing population and deterioration of economic conditions, Kartodirdjo (1973) perceives that the rural history of Java in the nineteenth and early twentieth centuries was actually marked by sporadic movements of peasant unrest. Many of these erupted in more or less violent clashes with the colonial authorities. Protest movements and social unrest occurred between 1900 and 1902 in various places in rural Java, such as Tangerang, Pamanukan, Sukabumi, Ciasem, Kuningan (West Java), Pekalongan, Gombong, Semarang (Central Java), Mojokerto, Sidoarjo, Kediri, and Jember (East Java).⁵ Although a direct link between social unrest in rural Java and the initiation of the migration policy cannot be established, it is not implausible to posit a cause-effect relationship.

As one of the three Ethical Policy objectives, Dutch colonial migration policy (*emigratie*) was conceptualized, arguably, as a result of a combination of three main factors: First, the political changes in the Netherlands which allowed the Calvinist-Catholic Coalition to come to power in 1901. The outstanding feature of the policy outcomes from this new coalition was the official abandonment of the goal of the economic exploitation and the introduction of direct intervention in the economic sphere to improve the conditions of the indigenous population; The second factor was economic opportunity, particularly as seen by the Dutch capitalists after the whole archipelago was successfully brought under effective colonial control. The vast land areas on the outer islands attracted private companies looking to establish plantations. Given the scarcity of labor, Javanese were recruited as cheap labor for the new economic activities; The third factor was social unrest in many parts of rural Java, as shown by Kartodirdjo, caused by entrenched economic exploitation. These, in turn, had encouraged the colonial government to deal with social unrest by moving people to the islands outside Java.

⁵These movements have been comprehensively documented by the National Archives of the Republic of Indonesia (Arsip Nasional Republik Indonesia) in 1981.

Over ten years after Independence, the government formulated its first Five Year Development Plan from 1956-60 in which transmigration was described as an instrument to reduce population pressure on Java to provide labor in sparsely populated provinces; support military strategy, and to accelerate the process of assimilation (Hardjosudarmo 1965: 128-29). The plan's most significant change in transmigration policy was its explicit reference to strategic military purposes where industrialization was no longer the goal. This was apparently due to increased political unrest in some regions resulting from disappointment with central government. The important strategic role of transmigration was further emphasized in 1962 as a result of a change in the national Constitution whereby President Sukarno proclaimed the so called Guided Democracy system of government to replace the Parliamentary Democracy system that he considered a failure. The establishment of the autocratic Guided Democracy took place with the support of the central military leadership (Kuntjorojakti 1978: 138-39).

Widjojo Nitisastro, an economist that later in the New Order period become the chief architect of its economic development, from a somewhat nationalist stance, criticized the Dutch assumptions that had led to enclave politics (Heeren 1979: 17). According to Nitisastro, the typical Dutchman's conservative politics had hampered the assimilation process among ethnic communities in the resettlement areas. Furthermore, Nitisastro argued that enclave politics were obviously in contradiction with the primary goal of Indonesian independence: building one Indonesian nation. Assimilating the Javanese with the local population was expected to bolster unification. However, this goal proved to be more difficult than the government or nationalists like Nitisastro, had anticipated. Wertheim (1959: 196), for example, notes from his observations in Lampung in 1956 that the assimilation of Javanese migrants resulted in neither a Sumatran nor a general Indonesian society, but rather a Javanese society modified by a Sumatran environment. This situation, according to Wertheim, led to the increasing resistance of *Sumatrans* to resettlement policies. Such resistance could seriously hamper further transmigration efforts, Wertheim argues, since the absorptive capacity of the outer islands is not only restricted by spatial and technical factors, but by social ones as well.⁶

⁶ Wertheim's prediction about the probability of social conflict in Lampung as a consequence of rapid population growth and social tensions

At the beginning of the New Order, the real motive of President Suharto for the continuation of transmigration, however, is not difficult to identify. The explanation lies in the idea of harmony among Javanese, which in the Indonesian political context can be translated into the concept of national unity and national integration, as suggested by Koentjaraningrat, the doyen of Indonesian anthropologists, and strongly endorsed by the President and the military.⁷ In this context, transmigration was perceived as an instrument to accelerate the process of national integration. Government policies to relocate people from overcrowded Java to other islands were also considered as an alternative to land reform.⁸ Despite this, the legacy of colonial policies, as well as the population policies of the Old Order (which was basically pro-natalist and viewed the uneven distribution of population as the main population problem), could not be easily eliminated from the thinking of the ruling elite.

The conventional view among Indonesia's New Order economist-technocrats was that the rate of population growth was a significant determinant of the success of a country's economic development efforts. Compared with the problem of rapid population growth, which at the beginning of the New Order was accorded high priority; the problem of uneven population distribution between Java and the outer islands had not been generally regarded by the economist-technocrats as an issue of urgency. Nitisastro (1979:238), widely known as the architect of the New Order's economic development policies, strongly argued that what was needed to overcome the population problem in Indonesia was a massive development effort to create expanding employment opportunities accompanied by a rapid spread of fertility control. Yet, curiously enough, the problem of uneven population distribution and the role of transmigration as a means of overcoming it had long been a focus of government thinking, and became a very important policy within the national development plans during the New Order period. The ruling elite's obsession with internal migration – a legacy of the colonial past – emphasized the inward looking character of

between migrants and local people occurred in the so called Lampung Affair which broke out in February 1989

⁷“An Interview with Koentjaraningrat” (Visser 1988)

⁸Land reform, which was aggressively promoted by the Indonesian Communist Party (PKI) prior to the 1965 abortive coup, was identified by the New Order as a Communist policy.

the state perception of migration. In this regards, the notion of international migration has been mostly overlooked and apparently no prior knowledge on how to manage this matter.⁹

Migrant Workers in the New Order: Marginal Issues and ad hoc Policy

As described earlier, both in the colonial and early post colonial periods, the state apparently paid little attention to the issue of international migration. Apart from the fact that the number of voluntary international migrants was relatively small, it had not yet become a political-economic issue in international relations. Many studies, however, have shown that labor movements from Indonesia to other countries were practiced during the colonial period. Following Independence, particularly after the 1970s, the increasing international migration of unskilled laborers, particularly to Malaysia and Saudi Arabia, apparently had begun to attract the state attention to the issues of international migration. It was not until the mid 1980s that the Indonesian Government began to pay more attention to the increasing number of international migrant workers, particularly those going to the Middle Eastern countries. In 1981, a private but well-connected Indonesian Manpower Supply Association (Asosiasi Jasa Tenaga Kerja Indonesia, APJATI) was formed to regulate the flow of workers to the Middle East. APJATI was a consortium of labor recruiting agencies, officially licensed by the Ministry of Manpower to broker job contracts with employers abroad and arrange for the conveyance of workers. As the stream of workers to the Middle East increased, the state began to see overseas employment as a useful tool to solve its own surplus labor problem, identifying it explicitly as such for the first time in the Fourth Five Year Development Plan (1984-89).

Around the mid 1980s, just as the government realized the advantages of large scale labor migration, the Indonesian Press increasingly began to report cases of abuse against Indonesian women domestic workers in the Middle East, who constituted 87 per cent of the total Indonesian workforce employed there. The state response to migrant workers in the Middle East (mostly as domestic helpers) was instigated

⁹Perhaps, is interesting to make a reference to neighboring Philippine, as for the Philippine, international migration has a long historical roots compare to Indonesia.

by the increasing Press reports on the violence and sexual abuse experienced by the workers in Saudi Arabia. The state response to the issue of the negative experiences of female migrant workers shows the lack of intention to create policy measures to protect the overseas migrant workers. Instead, the state response was primarily aimed at saving the bilateral relations with the Saudi Arabian Government and complained that the Press reporting was biased against the Saudi Arabian Government. The then Minister of Labor, Retired Admiral Sudomo, a former Chief Executive of the Operation to Restore Order and Security Command (Komando Operasi Keamanan dan Ketertiban, KOPKAMTIB), in 1985, announced a ministerial decree stating that the migrant workers were not allowed to talk to the Press about their experiences.

While Press reports on the migrant workers in the Middle Eastern countries are more available, the slow but steady increase of the cross border movement to Malaysia seems to have gone unnoticed by the public. The flows of migration to Malaysia, both to the Malay Peninsula and Sabah as well as Sarawak in Kalimantan, have a long tradition as many Malaysians originate from Indonesia. Since the early 1970s the rapid economic growth in Malaysia has increased the welfare of its population and resulted in a need for foreign laborers to fill low wage occupations. The labor movement from Indonesia is therefore a natural economic trade since Indonesia has always had a labor surplus. The Indonesian Government, as well as the public, apparently gave little attention to the labor movements to Malaysia. While in Malaysia the influx of Indonesian migrants had always been a major political issue, it attracted very little attention in Indonesia.

The relatively unimportant position of migrant issues also reflects the general situation of labor politics in Indonesia: a marginal issue for mainstream politicians. The effort of the formerly suppressed labor union activists to enter mainstream politics is hampered by the fact that the political basis of the labor movement had been almost totally destroyed in less than three decades of New Order authoritarian regime. The New Order propaganda that the labor movement was always associated with the Communist Party had significantly depoliticized labor issues. In addition, the relatively narrow base of the industrialization process in Indonesia, contributed to the small size of the worker population that also limited their mobilization to play a significant role in national politics. Furthermore, the developmentalist ideology adopted by the economist-

technocrats provided the New Order regime with a quasi-scientific legitimation for suppressing the right for labor to freely organize. The political discourse on labor during the New Order regime was therefore encapsulated in the notion by the economist-technocrats. In this regard, the replacement of the word *buruh* (laborer) by *pekerja* (worker) clearly reflects the gross attempt by the state to erase the collapse of the New Order regime and release the state restrictions on laborers forming free labor unions as well as entering national politics. Several worker political parties were established by labor activists to articulate the political interests of laborers, their political influence is, however, still very slight.

Since the mid 1980s, compared with the issues of domestic labor, overseas migrant worker issues seem to get more public attention, particularly as far as the Press is concerned. Perhaps, this is due to the apolitical nature of the Government, which no longer suppresses the reports. Only in 1985, during the time when Sudomo was the Labor Minister, the migrants prohibited from talking to the Press regarding their problems as migrant workers in the Middle East. The Press coverage of the plight of migrant workers, particularly those who worked in the Middle East and Malaysia, successfully raised their issues to the national level. In the case of migrant workers in the Middle East, the Press specifically reported the human right abuses experienced by Indonesian female domestic workers. In the case of migrant labor to Malaysia, the focus of Press coverage was on the various fatal risk incidents many migrants entered Malaysia illegally. The horrifying risks experienced by illegal migrants to Malaysia ranged from the sinking of their boats before landing on the Malaysian shore to the brutal experience of enforced deportation by the authorities. It is partly because of the widely publicized Press reports that the issue of overseas migrant workers has attracted major public attention since the mid 1980s. The flourishing number of non government organizations which had taken up the cause of overseas migrant workers in their critical stand against the New Order regime, further placed the issue of migrant workers clearly at the centre of the political arena.

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, labor 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 labor movement with

communism has given a long-term blow to labor 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. As will be presented in the following section, although laws and regulations were created in the new atmosphere of political reforms, the better protection promises for overseas migrant workers still far from realities, and the laws and regulation continue to be elusive as before.

Laws and Regulations in the Reform Era

Indonesian reform era marked the changes in laws and political structure of Indonesia. Law reform involved the substance, with the elaboration of human rights principles in the Indonesian Constitution through four times of amendment processes, institutionally was the establishment of a new Indonesian Constitutional Court that aimed to protect the constitutional rights of Indonesian citizen, but also settled dispute among state bodies. The elaboration of human rights principles (followed by the enactment of Human Rights Law No. 39 of 1999), burst out the awareness of people's rights, including workers rights, domestically and overseas. On the other side of the story, the reform era, was also initiated by the economic fall down in Indonesia, which forced millions of workers becoming unemployed. In order to seek remedies for the crises, the number of Indonesian workers who went overseas to find employment rose drastically.

In 2003, the Indonesian government established the new Labor Law No. 13 of 2003. Despite its comprehensive process that involved tripartite cooperation (government, employers and workers), only limited articles regulate the Indonesian overseas workers. The deportation of hundreds of thousand undocumented Indonesian workers from Malaysia in late 2002, has given a "shock therapy" effect, and gave the Indonesian government the reality on the condition of Indonesian overseas workers.¹⁰

¹⁰The failure of the Indonesian Government in delivering sufficient protection to the thousands of desperate migrant workers and their families in Nunukan have become a public issue in the mass media and have galvanized the NGO community to strongly criticize the government in handling the matter. In an unprecedented move several NGOs have decided to establish a coalition and take the Nunukan case to court. These NGOs have mobilized support from the public to sue the government under the so called Citizen Lawsuit. The first court

The events, among other notorious cases concerning migrant workers, had forced the government to enact new laws and regulation regarding the Indonesian overseas workers or migrant workers. It was then in 2004 the Indonesian Government and Parliament stipulated a new Law No. 39 of 2004 on the Placement and Protection of Indonesian Overseas Workers. The law was the first law in the form of *undang-undang (UU)* that aimed supposedly to regulate the placement process and protection of particularly informal Indonesian overseas workers. Yet as many observers have noted, the condition of migrant workers were remain mostly unchanged and the respected law prove to be empirically irrelevance. From 2004 to 2010 the government produced many regulations concerning the overseas labor policy. These laws and regulations majorly have objectives to protect Indonesian overseas migrant workers, such the effort to reform the system of placement and protection of Indonesia's migrant workers. Among of these new law and regulations are:

1. Law No. 39 of 2004 on Placement and Protection of Indonesian Overseas Workers. This law regulates: (1) the increase control and better mechanism of workers recruitment processes by the private sectors; (2) the establishment of National Authority; (3) the changing approach of workers placement that prioritize the workers' protection; (4) the better documentation of Indonesian workers to work overseas; (5) the requirements for workers and private companies providing service in worker's placement for pre-departure trainings; (6) the requirements for workers to be registered for insurance protection program; (7) the control over private sector companies that provide service for overseas workers placement; (8) the possibilities to create bilateral agreement with receiving countries; and (9) sanctions.
2. Presidential Instruction No. 6 of 2006 on Reforming the System of Placement and Protection of Indonesian Migrant Workers. This Presidential Instruction gave orders for related ministries and local

hearing was conducted on 31 March 2003, and was followed by a second hearing on 14 April 2003. According to Nursyahbani Katjasungkana, one of the lawyers and the chairwoman of the Women's Coalition for Democracy and Justice, in an interview with the author, the aim of the action was basically to educate and to strengthen public awareness of their citizen rights and responsibilities so they could respond critically to any government policies and programs that in the past have always been overlooked and undermined the people's interests. (See Tirtosudarmo, 2004).

- governments to coordinate in order to implement the Law No. 39 of 2004. Ministries involved are: Ministry of Manpower and Transmigration, Ministry of Foreign Affairs, Ministry of Internal Affairs, Coordinating Ministry of Social Welfare, Ministry of Law and Human Rights, BNP2TKI, Head of Districts (*Bupati and/or Walikota*), Ministry of Transportation (and Head of Airport or Seaport Authorities), and the Head of Indonesian Police (*KAPOLRI*);
3. Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers. This regulation established the – now known as – BNP2TKI, its authorities, functions, and coordinative function with other state agencies;
 4. Presidential Decree No. 15 of 2011 on the Establishment of Integrated Team for Indonesian Overseas Workers Protection. The Team has function to inventoried all cases related to overseas Indonesian workers; review policies, review any Memorandum of Understanding made as bilateral agreement, and provide recommendation and possible solution for the cases faced by Indonesian workers overseas. The team comprises representatives from related state agencies, including the Ministry of Women Empowerment and Child Protection;
 5. Ministry of Manpower and Transmigration Decree No. KEP-14/MEN/I/2005 on the Prevention of Non-Procedural Departures of Indonesian Labor Migrants and Repatriation Services for Indonesian Labor Migrants;
 6. Ministry of Manpower and Transmigration Regulation, including No. PER-04/MEN/III/2005 on Implementation of the Pre-Departure Briefing on Indonesian Overseas Migrant Workers;
 7. Ministry of Manpower and Transmigration Decree No. PER-05/MEN/III/2005 on Regulations on Administrative Sanctions and Means of Determining Sanctions in the Placement and Protection of Indonesian Overseas Workers;
 8. Ministry of Manpower and Transmigration Decree No. Per-07/MEN/IV/2005 on Accommodation Standards for Prospective Migrant Workers;
 9. Ministry of Manpower and Transmigration Decree No. PER-19/MEN/V/2006 on Managing the Placement and Protection of Indonesian Overseas Workers;
 10. Ministry of Manpower and Transmigration Decree No. PER-23/MEN/V/2006 on Insurance for Indonesian Migrant Workers;

11. Regulation related to Immigration policy to name here is the latest Regulation of Immigration from the Director General of Immigration Office, the Ministry of Law and Human Rights No. IMI.1040. GR.01.01 of 2010 on the Fifth Amendment of the Implementation of the Regulation of Director General of Immigration Office No. F-458.IZ.02.03 of 1997 on Republic of Indonesia's Letter of Overseas Journey or *Surat Perjalanan Republik Indonesia (SPRI)*.
12. And regulation related to tax, which is still implemented is Government Regulation No. 92 of 2000 on Types of Valid Non-Tax State Revenues in the Ministry of Manpower and Transmigration.

Apart from creating the new law, the Indonesian government also established a new institution, the BNP2TKI, or the *National Body for Placement and Protection of Indonesian Overseas Workers*. The Body is currently under the structure of Ministry of Manpower and Transmigration, nonetheless it was aimed to have more coordinative functions with other related ministries, such as the Ministry of Foreign Affairs and the Ministry of Law and Human Rights particularly the Director General of Immigration Office. Other implementing regulation were also established in the conformity with the Law No. 39 of 2004, including those related to sanctions, taxes, workers insurance and immigration policies.

At the beginning of the enactment of the law, expectation as well as pessimism (critiques) was heated. The institution has to deal with not only the control on the private companies, but also make plans and appropriate mechanism for overseas workers placement of approximately 748,825 workers in 2008.¹¹ Besides, the institution is also having the coordinative function to other related ministries and local authorities. Some implementing provisions of the Law on placement and protection of Indonesian overseas workers are still being challenged, not only by the PPTKIS, but also by workers themselves. Some formal individual workers, are having difficulties to conform with the Law, particularly Article 63 (1) regarding the requirement for having KTKLN (*Kartu Tenaga Kerja Luar Negeri* or Overseas Workers Card), that serve as "second identity card" besides worker's individual passport with working visa to destination country. The requirement to have this KTKLN card has become an issue for individual independent overseas workers (mostly

¹¹ This number comprises of 269,346 formal overseas workers and 479,470 non-formal Indonesian overseas workers

professional workers), since at their return they usually asked for this card by the immigration officer. These workers assumes that the KTKLN is a card only obliged for workers meant to be protected according to Law No. 39 of 2004, which are the workers in informal sectors. This has been an issue that needs to be resolved by the BNP2TKI and the Immigration Office. Insurance program has also becoming another issue that needs to be resolved, particularly after the DPR RI stipulated the Law on National Authority for Social Security System (BPJS), which merged all the insurance mechanisms for workers, under one roof, that is the BPJS. Currently, PPTKIS are somewhat free to choose insurance company and program they prefer. However, since it has become one requirement under the Law No. 39 of 2004, one integrated mechanism shall be made, therefore, there will be no differential treatment for workers who wish to work overseas.

Currently, the Law No. 39 of 2012 is in the process of revision. The main points of the revisions are: (1) the enlargement of migrant workers protection through thorough planning of overseas migrant workers placement; (2) strengthening the BNP2TKI's role by changing it to become the National Integrated Body for Indonesian Overseas Migrant Workers (*Badan Nasional Terpadu Tenaga Kerja Indonesia Luar Negeri*); (3) enhancing the quality of workers' training through the local Work Training Centers (*Balai Latihan Kerja*); and (4) reducing the role of PPTKIS in the recruitment process of prospective migrant workers.¹²

Before the Law No. 39 of 2004 was stipulated and enacted, there were two important regulations prior to 2004 that regulate the placement, recruitment and protection of Indonesian migrant workers. Those regulations are: (1) Ministerial Decree No. 204 of 1999; and (2) Ministry of Manpower and Transmigration Decree No. 104A of 2002. The International Organization for Migration report on Indonesian Labor Migration (IOM, 2009) specified the Ministerial Decree No. 104A of 2002 as:

...set the tone for the development of public management of Indonesian labor migrant placements and was *an early prototype for the formal protection by the government* of the need to regulate labor migration from Indonesia (IOM, 2009: 12; *italics added*)

¹² For more writings about the revision see BNP2TKI's website <www.bn timer2tki.go.id>.

Some observers have noted that international migration concerning Indonesian labor have becoming a lucrative business (IOM, 2002, Ananta, 2009). The number of overseas labor agencies also increased dramatically after 1998. Therefore, the private recruitments and sending companies are blossoming after 1998. By 2002, there were more than 2,000 (two thousands) private service companies for sending workers abroad (or known as *PJTKI or Perusahaan jasa Tenaga Kerja Indonesia*, not to mention those that are not registered (illegal). After the implementation of Ministerial Decree No. 104A of 2002, which was stipulated under Minister Jacob Nuwawea, hundreds of PJTKI were closed down and raid. The regular raid of these companies found numerous incompliance, even inhumane practice of recruitments, temporary settlement, and other violations. The government was firm at that time, particularly after the so-called Nunukan Tragedy where thousands migrant workers stranded in Nunukan island after deported from Sabah-Malaysia. Newspaper reports during the 2002-2003 were marked by news of the closing down of PJTKI offices, almost at every key sending areas in Indonesia , such as Jakarta, Nunukan, West and East Nusa Tenggara, Riau, West Java.

Problems Continue Beyond The State Boundaries

In 2011, data from BNP2TKI shows that there are approximately 1,400 PPTKIS (*Pelaksana Penempatan Tenaga Kerja Indonesia*) or private companies that employ the placement of Indonesian workers overseas. The number has reduced to more than half than the previous period. Furthermore, the Law No. 39 of 2004, has given greater burden to these private companies shall they wish to do their business. There are some provisions in the Law that would “selected” only companies with strong capital and management would survive the law. *Firstly*, the provision related to establishment of PPTKIS that requires minimum capital of Rp. 3,000,000,000,- (three billion rupiahs) for the establishment of a company, or companies that has already have permit shall comply with the provision in certain amount of time. *Secondly*, these companies shall put a deposit in government owned banks for the amount of Rp. 500,000,000 (five hundred millions rupiahs) as a guarantee shall anything happen with the workers they managed. *Thirdly*, the companies are obliged to pay and added their recruits’ workers into worker’s protection insurance program.

As the Association of PPTKIS found these provisions too tough for many of them and infringe their “equality rights”, they file a constitutional review case to the Indonesian Constitutional Court in late 2004. The Judges in Case No. 019-020/PUU-III/2005 denied the application since the Judges also agree with the government that these provisions were formulated in such a way to better protect the rights of the workers, which the Judges’ considered to be more specific as constitutional rights, rather than these companies’ rights. The Law also opened the opportunity for bilateral agreement to be made in order to better protect Indonesian overseas workers. However, Indonesian foreign policies have not supportive to this protection approach. The Indonesian Government always “lost its bargaining power” shall any agreement made with other countries. Take for example the agreement between The Indonesian Government with the Malaysian Government called the *Memorandum of Understanding on Recruitment and Placement of Indonesian Domestic Workers*, which was signed in May 13, 2006. The MoU has little effect on the protection of Indonesian workers in domestic sphere in Malaysia. Other MoU that the Indonesian Government has “succeeded to manage” are with Republic of Korea, Jordania, Kuwait, Republic of China (Taiwan), Qatar, Australia, Japan, Syria and Brunei Darussalam. Yet in most cases in countries such as Kingdom of Saudi Arabia, Indonesia only has MoU regarding formal workers and do not cover workers in informal sectors, not to mention undocumented workers (IOM, 2002).

Writer such as Go (2007) has highlighted the importance of bilateral agreement in dealing with migrant workers cases. She also mentioned some of the difficulties in arranging these bilateral agreements, such as different approaches used to handle foreign workers. Malaysia and Singapore for example, would treat foreign workers from “security” approach, rather than a merely a labor or workers’ approach. Meanwhile, sending countries such as Indonesia would rather approach from labor perspective. There are certainly some reluctance of these receiving countries to treat foreign labor the same way as their own workers. Therefore, these are some differences that need to be bridged over. Regional organization such as ASEAN could serve this important role. Despite the organization struggles to effective implementation of human rights violation issue in the area, Chavez (2009) argued that this organization have some prospective to be able to deal with migrant workers issue in the region.

Although Ford (2009) have noted that Indonesia has adopted “a highly interventionist approach” to labor for overseas placement; this article would argue that, on the contrary, to some extent, Indonesia’s government have failed to initiate adequate bilateral and/or multilateral agreements regarding its migrant workers abroad to better ensure their protection. The intervention is correctly appointed to Indonesia’s policies within the state boundaries; but it has less effect when facing other countries jurisdiction, even with Indonesia’s closest neighboring countries such as Singapore or Malaysia. Prasetyohadi (2011) correctly pointed out that protection approach used in the Law No. 39 of 2004 and its regulations only have a little effect on the real protection of the migrant workers, once abroad. The cooperation with Ministry of Foreign Affairs of the receiving countries is also very limited that makes the protection of the migrant workers become even worse. Sometimes, cases of Indonesian overseas workers, such as criminal punishment they have to face, or even the death of Indonesian workers, are known by mass media first, before taken care by government officials. BNP2TKI apart from their internal problem, also have limited resources and authorities abroad. Particularly for workers indicted by criminal charges, there is little effort can be done, since legal process in every countries cannot be intervene. Unless, there is an initial extradition agreement that migrant workers accused of certain criminal charges will be returned to its own country and face legal process at their home country. For this particular aim, it would be a great challenge for Indonesian government to be able to have such agreement.

The recurrent approach, as it is seen at the moment, of temporary suspension in sending Indonesian workers abroad only reflect the reactionary manner and ad hoc attitude of the Indonesian bureaucrats. It’s a common sense that migrant will continue leaving to work abroad through various available channels. The issue of legality and illegality of crossing the borders to neighboring countries to work, in a recent article by Ford and Menderson (2011) on the case of migrant workers in Riau Islands, prove to be a blurred matter, as in fact no clear boundaries between what is called legal or illegal. Apart from the problem within the Indonesian boundaries the need to be resolved, problems also located beyond the border. Improving bilateral cooperation, or agreement, understanding, or under other names similar to it; with receiving or destination countries should be given high priority in the agenda of the state. Once it is made, these agreements shall be subjected to continuing

and regular evaluation to keep up with dynamic changes of working conditions abroad.

Some Lessons Learned?

The plight of migrant workers, a challenging issue that began in the mid 1980s, continues to press the Indonesian government to provide a coherent and realistic overseas labor policy. The demand for transparent recruitment and placement processes that constituting a domestic matter is only one side of the problems currently faced by the government. The issues of limited protection abroad are other problems that are located beyond the state boundaries. The dominant perception among the ruling elites since the colonial time to post independence period of mainly the important of internal migration, resulted in the lack of knowledge and policy experiences of international migration. The recurrent of ad hoc and reactionary policies concerning overseas labor might be rooted in the lack of tradition and apprehension among the ruling elites and the bureaucracy in managing the flows of cross border migration. Laws and regulations that are created, particularly after the demise of Suharto from power in 1998, apparently help very little to improve the situation. While there is a notion on the primacy of legal aspects, a wide discrepancy persistently occur between the promise of laws and regulations and the social realities concerning the migrant workers. The legality and illegality surrounding the migrant workers and its respected policies seemingly conjured up in a blurred and illusive manner.

References

- Ford, Michele and Lenore Lyons. 2011. Travelling the *aspal* route: grey labour migration through an Indonesian border town, in Edward Aspinall and Gerry van Klinken (eds). *The State and Illegality in Indonesia*. Leiden: KITLV Press.
- Hardjosudarmo, S., 1965. *Kebijaksanaan Transmigrasi dalam rangka Pembangunan Masyarakat Desa di Indonesia (Transmigration Policy in the Context of Rural Development in Indonesia)*. Jakarta: Bhratara.
- Heeren, H. J., 1979. *Transmigrasi di Indonesia (Transmigration in Indonesia)*. Yogyakarta: Gajah Mada University Press.

- Kartodirdjo, Sartono, 1973. *Protest Movement in Rural Java: A Study of Agrarian Unrest in the Nineteenth and Early Twentieth Centuries*. Singapore: Oxford University Press.
- Lindquist, Johan, 2010. Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry, *Pacific Affairs*, Volume 83, Number 1, March 2010 , pp. 115-132
- Pramodhawardani, Jaleswari (Ed.). 2009. *Kebijakan Perlindungan Buruh Migran Perempuan di Malaysia – Protection Policies for Indonesian Migrant Women Workers in Malaysia*. Jakarta: PMB LIPI.
- Prasetyohadi, P. 2011. *Significance of the Amendment of Law 39/2004 on Overseas Placement and Protection for Indonesian Migrant Labor*. Paper presented at MOST LIPI UNESCO Regional Seminar on “Migrant Workers in Asia: Policies and Practices in Social Sciences”, Jakarta 14 – 15 July 2011.
- Tirtosudarmo, Riwanto, 2004. Cross-Border Migration in Indonesia and The Nunukan Tragedy In Ananta, Aris & Arifin, Evi Nurvidya (Eds.), *International Migration in Southeast Asia*. Singapore: ISEAS.
- Visser, L., 1986. ‘An Interview with Koentjaraningrat’, *Current Anthropology* 29, No. 5, December, pp. 749-53.
- Wertheim, W. F., 1989. ‘The Lampung Affairs: A Personal Perspective’, *Inside Indonesia*, No. 19, July, pp. 20-21.
- Wertheim, W.F. 1959. “Sociological Aspects of Inter-Islands in Indonesia”. *Population Studies*, Vol. 7, No, 3, March, pp. 184-201.

Internet Sources

- Ananta, Aris. 2009. *Estimating The Values of the Business of Sending Low-Skilled Workers Abroad: An Indonesian Case*. Paper presented at XXVI IUSSP International Population Conference. Marrakech, Morocco: 27 September – 2 October 2009. Accessed from <<http://iussp2009.princeton.edu/download.aspx?submissionId=91804>> at 23rd September 2011.

- BNP2TKI Website. <<http://www.bnp2tki.go.id>>.
- Chavez, Jenina-Joy. 2007. *Social Policies in ASEAN: The Prospects for Integrating Migrant Labor Rights and Protection*. *Global Social Policy* 2007 7: 358. Accessed from <<http://gsp.sagepub.com/content/7/3/358>> at 25th September 2011.
- Ford, Michele. 2009. *Friedrich Ebert Stiftung (FES) Project Report on Migrant Labors in Southeast Asia: Country Studies: Indonesia*. Accessed from <http://www.fes.de/aktuell/focus_interkulturelles/focus_1/documents/5_000.pdf> at 24th September 2011.
- Go, Stella P. 2007. Asian Labor Migration: The Role of Bilateral Labor or Similar Agreement. Paper presented at the Regional Informal Workshop on Labor Migration in Southeast Asia: What Role for Parliaments, 21-23 September 2007, Manila, Philippines. Accessed from <<http://pstalker.com/ilo/resources/Bilateral%20Agreements%20PHILIPPINES%20by%20Stella%20Go.pdf>> at 2nd October 2011.
- Hugo, Graeme. 2007. Country Profiles: Indonesia's Labor Looks Abroad. Migration Information Website. Accessed from <<http://www.migrationinformation.org/Profiles/display.cfm?ID=594>> at 2nd November 2011.
- Liow, Joseph. 2003. *Malaysia's Illegal Indonesian Migrant Labor Problem: In Search for Solutions*. 25 (1) *Journal of Contemporary Southeast Asia*, April 2003, pp. 44-64. Accessed from <<http://muse.jhu.edu/journals/csa/summary/v025/25.1.liow.html>> at 24th September 2011.
- Rudnyckyj, Daromir. 2003. *Technologies of Servitude: Governmentality and Indonesian Transnational Labor Migration*. Paper presented at the 2003 Cornell University Southeast Asia Symposium "Transformative Moments and Movements in Southeast Asia". Accessed from <<http://web.uvic.ca/~daromir/pdf/Rudnyckyj-TS.pdf>> at 2nd October 2011.
- The International Organization for Migration (IOM). 2005. *Labor Migration from Indonesia: An Overview of Indonesian Migration to Selected Destinations in Asia and the Middle-East*. Accessed from <http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf> on October 2011.

UNESCO, 2007. *Migration and Integration in the Asia-Pacific Region*.
International Journal on Multicultural Societies (IJMS) Volume 9
(2) 2007. Accessed from <<http://unesdoc.unesco.org/images/0015/001584/158473e.pdf>> at 1st October 2011.

