

Joint Submission to the 41st Session on the Rights of Migrant Workers

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Introduction

This report was prepared by a number of CSOs with a concentration on issues of migrant workers in Indonesia: Migrant Care, Human Rights Working Group (HRWG), Jaringan Buruh Migran, Serikat Buruh Migran Indonesia and Koalisi Buruh Migran Berdaulat.

1. Migrant Care is a non-governmental organization (NGO) in Indonesia which has focused on the migrant worker's rights advocacy. With a vision to strengthen the migrant workers movement as part of social movement, Migrant CARE tries to encourage the realization of global justice for Indonesian migrant workers and their families. (www.migrantcare.net)
2. The Human Rights Working Group (HRWG) is a working group of Indonesian Non-Governmental Organizations (NGOs) for international human rights advocacy, consisting of more than 48 nongovernmental organizations working to promote human rights in Indonesia. HRWG was established in 2003 with the aim of promoting government accountability on constitutional obligations and international standards to respect, protect and fulfill human rights in Indonesia by maximizing human rights mechanisms available at different levels at the United Nations (UN), Organization of Islamic Cooperation (OIC) and Association of Southeast Asian Nations (ASEAN). (www.hrwg.org)
3. Jaringan Buruh Migran, abbreviated as JBM, is a network of organizations and working groups focusing on policy and legislation advocacy for Indonesia Migrant Worker protection. JBM existed from 2010, at that time the name was JARI-PPTKLN. In 2015, JARI – PPTKLN changed into Jaringan Buruh Migran (JBM). JBM has 28 members from national labour union, migrant workers labour union and CSO. The JBM structure consists of three presidiums, namely 1) Legislation; 2) Case handling; and 3) Protection of migrant workers at the ASEAN and international levels and the JBM Secretariat to support the work of the presidium and JBM members. (jaringanburuhmigran.org)
4. SBMI is the Indonesian Migrant Workers Union is an organization/trade union of migrant workers and their family members. Founded on February 25, 2003. Previously it was named the Federation of Indonesian Migrant Workers Organizations (FOBMI). It was initiated and nurtured by the Consortium for the Defenders of Migrant Workers (KOPBUMI) since 2000 through the forerunner of an organization called the National Network for Migrant Workers. SBMI is the antithesis of the bad condition of the many problems faced by Indonesian migrant workers. SBMI was later recognized as a Labor Union in 2006. The vision of SBMI is the realization of dignity, gender equality and welfare for Indonesian Migrant Workers (BMI) and their families. (sbmi.or.id)
5. Koalisi Buruh Migran Berdaulat is a civil society movement that works on the protection and fulfilment of the rights of migrant workers in Indonesia. The initial establishment was inspired by the challenging situations faced by Indonesian migrant workers during Covid-19 Pandemic. (<https://migranberdaulat.org/>)

1. General overview on the situation of Indonesian migrant workers

- 1.1. Based on the third cycle of UPR reports in 2017, Indonesia has supported three recommendations concerning the protection of migrant workers and one recommendation addressing the protection of domestic workers:

- 1) To strengthen its leadership in enhancing regional inclusive mechanisms for the protection of migrant workers through legally binding instruments¹
- 2) Continuing with efforts for the protection of Indonesian migrants outside the country and of migrants in their territory
- 3) Continuing its efforts to protect migrant workers as well as carrying out capacity-building training for them

1.2. In addition to these three recommendations, underpinning the framework of intersectionality in the areas of gender, migration and disability, another recommendation supported by Indonesia and two other recommendations which mirror the connected nature of women, migrant workers, and disability as are interconnected to migrant workers highlighted in this submission. They are:

- 1) Considering the ratification of the International Labour Organization (ILO) Domestic Workers Convention, 2011 (189)
- 2) Continue with its programmes to promote and protect the rights of women, children, disabled persons and the elderly²

1.3. While appreciating efforts taken by Indonesia to implement supported recommendations, it is important to note that these efforts have yet far from adequate to demonstrate a strong commitment to enhancing the protection of migrant workers both inside the countries and when they are abroad. The commitment to provide capacity building programs for migrant workers, in general, is provided through pre-departure training as discussed in detail below and failed to respond to the practical needs of migrant workers. As a result, many migrant workers travel abroad without adequate skills and basic information on their rights and protection services available in the receiving countries.

1.4. The protection for migrant workers abroad has still been based on the case by case approach, therefore in general, there has yet to be a systematic approach and strategy in how to improve the services accessible to migrant workers abroad. This condition illustrates in the information about the migrant workers' experience in the difficulties to access services provided by the Indonesian Labour representatives and Consulate general in the receiving countries provided in this submission.

1.5. We appreciate the efforts taken by the government of Indonesia in promoting awareness of the protection of migrant workers at the regional level of ASEAN, however, they have not yet been able to improve the existing regional mechanism to be a legally binding mechanism for ASEAN member countries. As a result, the regional mechanism available failed to improve the protection of migrant workers and migrant workers continue to suffer from discrimination, violence, torture and degrading treatments, which have led them to be disabled persons.

2. Lack of enforcement of Law no 18/2017 on the Protection of Indonesian migrant workers

2.1. Law no 18/2017 aims to reform the governance of labour migration particularly for migrant workers, by introducing a set of normative legal frameworks applicable for the recruitment process, eliminating the exploitation of migrant workers from private

¹ See para 139.13. A/HRC/36/7

² Para 139.14 , A/HRC/36/7

placement agencies by strengthening the requirement for recruitment and placement of migrant workers as well as strengthening the control over private agencies providing placement services for migrant workers. However, based on Migrant Care research undertaken in 2021 demonstrated considerable gaps in the implementation of the Law as provided in the following paragraphs:

- 2.2. The law failed to eliminate the dominant roles of private recruitment agencies in the migration process. Based on the data provided by the Indonesia Migrant Workers Protection Board (*hereafter BP2MI*) in 2022, out of 6436 placements of migrant workers recorded, 5 253 placements of migrant workers abroad were carried out by private recruitment agencies.³ Private recruitment agencies continue to be the key source of the necessary information on jobs availability, working placement, and labour-related regulations in the receiving countries. Migrant workers do not have adequate access to better information due to the lack of information produced by government agencies.
- 2.3. The dominant roles of private brokers (the middlemen who link migrant workers to private recruitment agencies) have increased the vulnerability of migrant workers in the pre-departure phase, and further increased the prospective migrant workers to suffer from non-procedural migration. Although a systematic dataset is not available at the moment due to the lack of access to the Indonesia Migrant Workers Protection Board (BP2MI), anecdotal evidence on cases repeatedly reported by the media illustrates this condition.⁴ In some cases, the non-procedural migration has increased the vulnerability of migrant workers to be victims of trafficking in persons.⁵
- 2.4. The lack of enforcement of the law also is due to the lack of capacity of government agencies at the local level, particularly at the district and subdistrict levels.⁶ The head of Villages and the head of sub-districts play key roles in ensuring safe migration for migrant workers. However, lack of capacity has hindered these government agencies to provide protection for migrant workers from non-procedural recruitments. To date, the prosecution of trafficking in persons continues to be low despite the enactment of Law no 21/2007 on the Eradication of crimes against trafficking in persons. In 2020

³ See BP2MI, Data Pekerja Migran Indonesia periode Januari 2022 [*BP2MI, Data on Indonesian Migrant Workers, January 2022*], available at <https://drive.google.com/drive/folders/1WT7UQcv6hO0w-rMeATOhz1uL0vuuBjn4>

⁴ See for examples : <https://jabarnews.com/read/93340/bp2mi-gagalkan-pemberangkatan-25-calon-pmi-ilegal-di-wilayah-cirebon> [*BP2MI stopped 25 illegal migrant workers in Cirebon*] and <https://news.detik.com/berita-jawa-barat/d-5547390/hendak-diberangkatkan-ke-irak-5-calon-pekerja-migran-ilegal-diamankan>

⁵ There is no official data available on the numbers of migrant workers who suffered from trafficking in persons. The National Commission on Violence against Women recorded 255 cases of migrant workers suffering from the crimes of trafficking in persons. See Komnas Perempuan, Catatan Tahunan Kekerasan terhadap Perempuan 2021, [The National Commission on Violence against Women, Annual report on the violence against women, 2021] available (in Indonesian version) at

<https://komnasperempuan.go.id/uploadedFiles/1466.1614933645.pdf>, also See <https://www.alinea.id/nasional/dari-2016-hingga-juni-2020-288-pmi-korban-tpo-ajukan-perlindungan-ke-lpsk>

⁶ Based on the data provided by BP2MI, the highest proportion of migrant workers originated from East Java which is recorded at 2 373 persons, available at <https://drive.google.com/drive/folders/1WT7UQcv6hO0w-rMeATOhz1uL0vuuBjn4>

alone, The National Police recorded only 148 cases.⁷ The Supreme Court recorded 158 decisions made on the cases of trafficking in persons in 2021.⁸

Proposed Recommendations:

- 2.5. To enhance capacity of civil servants in all levels; national and local in order to comply with the mandate by the law 18/2017 on the protection of Indonesian migrant workers;
- 2.6. To eradicate the excessive recruitment and placement fees and to eliminate the role of middlemen who arrange non-procedural placement which led to trafficking;
- 2.7. Encourage the government to enact the government regulations as mandated by the law 18/2017;

3. Lack of adequate capacity building programs for migrant workers at pre-departure stage

- 3.1. Access to capacity building programs through vocational trainings are guaranteed under Law no 18/2017 which provides that candidates of migrant workers are provided vocational training programs in which the budget for the program is allocated from the educational function of government agencies concerned⁹. However, many potential migrant workers cannot have access to such vocational training programs due to the limited availability of training programs and facilities provided by the government. This is problematic as each migrant worker is required to obtain a certificate of competence to be qualified for any placement abroad.
- 3.2. Limited availability of government-provided vocational training has increased the profiting practice of private agencies. Migrant workers have to access vocational training provided by private agencies often at their own cost. An illustrative example of the cost of this private-based vocational training ranges from 20 to 40 million rupiahs. Moreover, there is a lack of monitoring and quality control from the government over these private agencies' vocational training programs, including in ensuring that the curriculum and their trainers have adequate qualifications. There was a case reported to a local NGO where a migrant worker obtained a certificate without attending the training. Further in other cases reported to local NGOs in Riau Islands Province, migrant workers of palm oil plantations did not receive both vocational training and a certificate of competence on the pretext that such training would be carried out by the companies in the form of On Job Training (OJT) in the receiving countries once migrant workers arrive at the working sites.
- 3.3. The lack of vocational training and the extensive practice of profiting from providing certificates of competence by private agencies has violated the rights of migrant workers to be free from any placement cost guaranteed by art 30 of the Law no 18/2017, and further is provided by the implementing regulation issued by BP2MI (BP2MI regulation no 9/2020). However, this regulation failed to be enforced. On the contrary, BP2MI issued another regulation to introduce a small loan scheme to

⁷ See Solahudin Al Ayyubi, Polri tangani 148 Kasus perdagangan orang, 22 belum selesai, bisnis.com, 22/12/2020 available at Bareskrim Polri Tangani 148 Kasus Perdagangan Orang, 22 Belum Rampung <https://kabar24.bisnis.com/read/20201222/16/1334379/bareskrim-polri-tangani-148-kasus-perdagangan-orang-22-belum-rampung>.

⁸ See Mahkamah Agung RI, Direktori Putusan Perdagangan Orang tahun 2021, available at <https://putusan3.mahkamahagung.go.id/direktori/index/kategori/perdagangan-orang-1/tahunjenis/putus/tahun/2021.html>

⁹ See Law no 18/2007 art 39 (o), 40 (g) and 41(i)

facilitate migrant workers to cover placement fees through a non-collateral mortgage provided by government-owned banks and/or regional government banks.¹⁰

Proposed Recommendations:

3.4 To enhance the capacity of local government officials in providing reliable and accessible vocational training and certificates of competence for potential migrant workers.

3.5 To organise a series of training and capacity building programs from government officials at the local level to ensure their compliance to their roles and duty in providing protection for migrant workers as mandated by the law no 18/2017.

3.6 the government to organise extensive campaign targeting potential migrant workers who will be placed abroad on safe migration and official placement procedures.

3.7 To eradicate the practice of private brokering on migrant workers' placement and recruitment to go for work abroad as provided by the Law no 18/2017 and through the enforcement of the Law against trafficking in persons.

4. The absence of a Legally binding instrument to protect migrant workers at the regional level of ASEAN

4.1. ASEAN Consensus was adopted in 2017 and since then has been the key reference to implementing ASEAN Declaration on Migrant Workers 2007. To date, there has no progress been made to transform this declaration into a treaty body that legally binds all ASEAN countries. The existing ASEAN Committee on Migrant Workers (ACMW) is an Ad-hoc body and does not represent all stakeholders in the protection of migrant workers, including civil society groups. Regular meetings organised by ASEAN member states such as ASEAN Forum on Migrant Labour (AFML) failed to encourage inclusive participation from other stakeholders and have been predominantly led by governments representations.

4.2. ASEAN Consensus has never been a key reference in the MoU and bilateral agreements made by ASEAN member states or in addressing pressing issues on migration and migrant workers such as in the case of the Covid19 pandemic.

4.3. ASEAN Convention against trafficking in person, as the key regional instrument has never been utilised to enhance the protection of migrant workers in ASEAN, including in handling migrant workers' cases who suffered from the operation of the international syndicate of trafficking in persons.

4.4. Undocumented migrant workers continue to be a major problem that has led to the deportation of migrant workers. As repeatedly reported in various civil society organisations' reports, deportation has been plagued by corruption¹¹ and inhuman treatment of migrant workers. The case of Adelina Lisao, a migrant worker from East Nusa Tenggara who died after suffering from torture when working in Malaysia has illustrated this alarming condition of undocumented migrant workers, particularly in

¹⁰ See BP2MI regulation no 214/2021 on the guidelines to implement placement cost exemption for migrant workers. One of the clause in this regulation provides that placement cost can be paid through a small non-collateral loans provided by state-owned banks and/or regional government banks.

¹¹ <https://nasional.tempo.co/read/1028424/kasus-suap-eks-atase-imigrasi-kbri-malaysia-dibui-35-tahun> , <https://news.detik.com/berita/d-4446489/eks-atase-tki-kbri-di-singapura-jadi-tersangka-korupsi>

Malaysia.¹²

Proposed Recommendations:

- 4.5. To encourage all ASEAN member states to refer to the International Convention on Migrant Workers and ASEAN Consensus on Migrant Workers as the basis of the protection and promotion of the rights of migrant workers.
- 4.6. Calling for a meaningful participation in the AFML, especially migrant workers themselves and workers unions.

5. The lack of access to the consular services provided by the government labour Attaché and governments' embassies in the receiving countries

- 5.1. Government officials abroad have not adequately provided accurate information regarding official recruitment agencies (licensed agencies) abroad. For example, in Hongkong, many migrant workers found difficulties in identifying official agencies. When they reported their case to Government of Indonesia representatives in Hongkong, the official staff showed lack of support to the case and sometimes cornered migrant workers to be liable for the problem by referring that Indonesian migrant workers' recruitment agencies do not have a valid license. In 2019, the media reported inappropriate treatment of an Indonesian embassy staff to one migrant worker who attended the embassy to report her case. The staff of Indonesian Embassy in Damascus who received the case berated the migrant worker with abusive language and further asked for (USD8000) to cover the cost for sending the worker back to Indonesia¹³

Proposed recommendations:

- 5.2. Encourage the Indonesian government to enact regulation on labour attache with have competence and having human rights perspective;
- 5.3. Indonesian embassies or consulates provide remedy service including shelter, professional staff who have a gender sensitive perspective and provide sanction or punishment to those staffs who degrade, violate the rights of migrant workers;

6. Vulnerable migrant workers

A. Seafarers working as vessel crew and modern day of slavery

Legal frameworks

- 6.1. In June 2017 Indonesia ratified the Maritime Labour Convention 2006 (MLC 2006), which governs jobs onboard commercial vessels. There are as yet any derivative regulations made by the Ministry of Manpower (MoM) to implement this convention.
- 6.2. Law No. 18 of 2017 on the Protection of Indonesian migrant workers, particularly article 1, which contains 13 items of protection rules. This law has not been translated into government regulation, particularly for vessel crew's protection.
- 6.3. Regulation of the Minister (Permen) of Marine Affairs and Fisheries No. 2 of 2017 on the Requirements and Mechanism of Certification of Human Rights in the Fishery

¹² See <https://regional.kompas.com/read/2021/12/10/061600578/jalan-panjang-mencari-keadilan-untuk-adelina-lisao-buruh-migran-yang-tewas?page=all>

¹³ <https://kabar24.bisnis.com/read/20190409/16/909671/kisah-tragis-korban-tpo-minta-bantuan-eh-mengaku-malah-diusir-dan-disuruh-bayar-oleh-oknum-kbri-damaskus>

Sector, which complements the Ministerial Regulation No. 42 of 2016 on Working Agreement at Sea for Fishing Vessel Crews.

- 6.4. Law No. 17 of 2008 on Seafaring. Article 151 discusses the well-being of vessel crews. Well-being includes: wages, working and rest hours, guarantee of departure to destination and repatriation to place of origin, compensation if a vessel cannot operate due to accident, career development opportunities, provision of accommodation, facility for recreation, nutrition, health maintenance and treatment, as well as work accident insurance.

Law enforcement

- 6.5. Article 337 of Law 17/2008 on Seafaring states that labor provisions in the seafaring sector will be applied in accordance with the manpower laws and regulations. Unfortunately, there has yet to be any derivative regulation from, or amendment of Law 13/2003 on Manpower. Law 39/2004 on the Placement and Protection of Indonesian Migrant Workers, particularly article 28 on the placement of Indonesian migrant workers in certain jobs and positions is supposed to be further governed with a government regulation, however so far the government has not made any derivative regulation since the enactment of both Law 39/2004 and Law 18/2017.
- 6.6. The Draft Government Regulation (RPP) which is the responsibility of a number of relevant ministries and governmental agencies such as the Ministry of Manpower (MoM), Ministry of Transportation (MoT), Ministry of Marine Affairs and Fisheries (MFAF), National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI), MOFA, Ministry of Law and Human Rights, Ministry of Women Empowerment and Child Protection, Cabinet Secretariat, and the Coordinating Ministry of Human Development and Cultural Affairs (Kemenko PMK), has not yet reached any settlement. This indicates the occurrence of the Absence of Law in terms of protecting vessel crews.
- 6.7. Based on the complaint data from 2015-2020 filed to SBMI, there were 115 complaints by Indonesian vessel crews working on 57 China-flag vessels, and a total of 5 crew members who died. the causes of death that happened to Indonesian vessel crews that indicates modern slavery were violence in the form of beating, torture, and direct murder. In addition, abuses also went as far as corpse disposal, unpaid wages, neglect during sickness, transmittable disease, lack of care from the other crews, etc.¹⁴
- 6.8. The case of PT. Setya Jaya Samudera that sent four crews to the fishing vessel named Fu Yuan Yu No. 062 which only moored once in six months. This means there was limited communication between the vessel crews and their family. It also limited the vessel crews' movement as they could hardly communicate with their family. In addition, wage withholding was also another problem for the crews of this vessel, as they were simply not paid throughout their working time there. Furthermore, they were also forced to work excessive hours (overtime) onboard¹⁵.

Proposed Recommendations:

- 6.9. Urge the Indonesia Government to take immediate action and settle the Draft

¹⁴ <https://sbmi.or.id/laporan-investigasi-kasus-abk-indonesia-di-atas-kapal-cina-2015-juli-2020/> (Accessed on 16 December 2021)

¹⁵ <https://sbmi.or.id/laporan-sbmi-gp-sebut-kapal-ikan-asing-yang-menindas-abk-indonesia/> (Accessed on 17 December 2021)

Government Regulation (RPP) on the protection of vessel crews and other prominent additional regulations focusing on the implementation of laws regarding the protection of vessel crews and workers in fishery.

- 6.10. Encourage the Indonesia Government to ratify the ILO Work in Fishing Convention No. 188 (C188).
- 6.11. Establish forums and regulations with major focuses on the topics related to the protection of vessel crews and workers in fishery on the regional level (ASEAN).

B. Domestic Migrant Workers

- 6.12. Indonesia has stipulated the Law no 18/2017 on the protection of migrant workers, which provides the protection for migrant workers working in the informal sector, including those working as domestic helpers. However, at the domestic level continue to discriminate against migrant workers who work as domestic helpers.¹⁶ For example, to date the government continues to enforce The Ministry of labour regulation no 260/2015 on the Decision to stop and to prohibit the placement of Indonesian migrant workers to private individual users in the Middle East. This Ministerial regulation has discriminated migrant workers by limiting their option for job opportunities and further has violated the recommendation issued by UN CEDAW Committee no 26 on Women migrant workers¹⁷.
- 6.13. The government of Indonesia has not taken substantive steps to ratify the 189 ILO Convention on the decent work of domestic helpers so as to protect Indonesian migrant workers abroad. This stagnation has led to violence, assault, and violations on the rights of domestic workers.
- 6.14. The Ministry of Home Affairs (MoHA) has issued a circular letter no 560/2999/Bangda on the support for facilities for migrant workers. Based on this Circular Letter, the Governors and Regents are encouraged to carry out a series of public awareness and education to eliminate stigma/labeling of migrant workers suffering from different cases abroad, including migrant workers who failed to improve their economic conditions by working abroad. However, the government has not shown strong commitment to eradicate the stigma against migrant workers. This lack of serious commitment has led to the worsening condition in which migrant workers suffering from sexual assault were afraid to voice out their cases and to remain silent.

Proposed recommendations:

- 6.15. Evaluate and to revoke the Kepmenaker no 260/2015 on the Decision to stop

¹⁶ Based on the government's available data, the percentage of migrant workers working as domestic workers has recorded among the biggest numbers compared to the other form of work. However the government has failed to demonstrate strong commitment to protect these workers and discriminate them as shown in some of the policies issued to stop and to prohibit placement for domestic workers abroad.

¹⁷ Implementation of this policy didn't follow with the efforts to improve protection of Indonesian migrant workers especially in the Middle East. As a result, this policy isn't just discriminative, but also impacted and contributed to the increase of trafficking cases, especially women migrant workers

and to prohibit migrant worker placement to individual users in the Middle East countries.

- 6.16. Take necessary actions to ratify the 189 ILO Convention on the Decent Work of Domestic Workers and to expedite the enactment of the draft Law on the protection of Domestic workers which has continuously been excluded from the House of Legislative national legislation priorities.
- 6.17. To stop discriminatory practice against migrant workers who work as domestic workers abroad and to carry out programs to eradicate stigmatization against migrant workers working as domestic workers abroad who have returned to Indonesia.