



Spotlight
Initiative



Safe and Fair: Realizing women migrant workers' rights and opportunities in the ASEAN region

Report

**Preliminary Consultation Meeting on Gender-Responsiveness
Guidelines Required for Tripartite Plus
(Strengthening a Gender Lens on the Implementation of Law 18/17
on the Protection of Indonesian Migrant Workers)
19 December 2018, Century Park Hotel, Jakarta**



Resources Persons:

- Ms. Arini, Director of Placement, **BNP2TKI**
- Mr. Yuli Adiratna, Deputy Director for Migrant Worker Protection **Ministry of Manpower**
- Mr. Rafael Walangetan, Assistant Deputy of Women's Right Protection **Ministry of Women Empowerment and Child protection**
- Ms. Yatini Sulistyawati, Migrant Worker Focal Point - **KSBSI** - Labour Union Confederation (Member of Migrant Workers Network Alliance (JBM))
- Mr. Hariyanto, President of **SBMI** (Indonesia Migrant Workers Union)
- Mr. Filius Yandono, Secretary General **ASPATAKI (Recruitment Agency Association)**
- *Moderator and Facilitator:* Prof. Dr.Sulistyowati Irianto, Ms. Theresia Dyah Wirastri, S.H., M.A., Ph.D and team from **Center of Women and Gender Studies University of Indonesia**

Note: Report unedited - For programme use



1. Rationale for the Workshop

Safe and Fair: Realizing women migrant workers' rights and opportunities in the ASEAN region (2018-2022) is part of the multi-year EU-UN Spotlight Initiative to Eliminate Violence against Women and Girls. Safe and Fair is implemented by the ILO and UN Women, led by the ILO Regional Office for Asia and the Pacific. SAFE & FAIR delivers technical assistance and support with the overall objective of making labour migration safe and fair for all women in the ASEAN region. Safe and Fair engages with ASEAN Member States' government authorities; ASEAN institutions; workers' organizations; employers and recruitment agencies; civil society organizations; community-based organizations; families and communities; research institutions and academia, media networks, youth, and the general public and supports programming in ten countries (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam). Safe and Fair programme works to make labour migration gender equitable in access, opportunity and conditions.

Gender-responsive labour migration policies and management in ASEAN will make a significant difference to the living and working conditions of women and men migrant workers, and their families. Women's economic and social empowerment alongside men's is widely recognized as one of the key foundations for promoting gender equality and sustainable and inclusive economic growth and development. Therefore, improving employment and working conditions in sectors dominated by women migrant workers is vital to the broader picture of migration and development (ILO GEM Toolkit, 2016).

In Indonesia 67 per cent of all migrant workers are women, and 65 per cent of migrant workers graduated from primary and junior high school. 52 per cent of migrant workers work in the informal sector. Most female migration is from poor rural areas where there are lack of alternative job opportunities for prospective migrant workers (BNP2TKI). Female migrants with low levels of education are more likely to find work in the Middle East and Malaysia (World Bank Report, 2017).

Women migrant workers face gendered vulnerabilities specific to the labour market sectors in which they work. Domestic work, for example, is not fully covered by labour protections and not subject to labour inspection in ASEAN and beyond, meaning that migrant domestic workers are likely to experience poor working conditions and rights violations, with little regulation of working hours, limited freedom of movement and poor wages. Irregular migration status also increases vulnerability to labor market abuses. Large numbers of women migrate irregularly into informal employment sectors, where they can face high job insecurity, low pay and unsafe working conditions.

ASEAN member states face challenges in terms of developing and enforcing legislation and policy that address the needs of women migrant workers specifically. There is a general lack of understanding about the specificities of women's labour migration. Policy responses needed to ensure labour migration is safe and fair for women are therefore generally not gender responsive. In addition limited resources,



and in some cases lack of political will, are further compounded by the lack of standardised and sex disaggregated data on migration. Institutionally, women are under-represented in labour ministries, the labour inspectorate and public services. To address these issues, under Safe and Fair's specific objective 1, the ILO will work with regional and national stakeholders to support inclusive dialogue and facilitate policy development to strengthen fair and safe labour migration for women in the countries, sectors, and corridors of focus.

The Indonesian Government has made progress including through Parliament passing Law No. 18/2017 on the Protection of Indonesian Migrant Workers. Following up on the inputs from National Programme Advisory Committee (NPAC) in September 2018. It has been agreed that the programme will support the development of gender responsiveness guideline for Tripartite Plus on the implementation Law No. 18/17 in national and subnational level. It is expected that the support from ILO will bringing the gender lens to bear on the implementation of Law 18/17 in order to strengthen the development of policy and guideline that meets the needs of all migration women. To ensure the guideline is develop in inclusive dialogue with meaningful participation from tripartite plus, especially women's agency, the ILO in partnership with Ministry of Manpower will conduct Preliminary Consultation Meeting on Gender-Responsiveness Guidelines Required for Tripartite Plus. The recommendation from this meeting will be a guidance for ILO's consultant on developing the Gender Responsiveness Guideline on the implementation of Law 18/17.

Synergism and collaboration is one of the key to achieve greater impact on the improvement of inclusive policy dialogue and practice on labour rights protection and empowerment of women migrant workers in country of origin and destination.

2. About the Workshop

A one day Preliminary Consultation Meeting on Gender-Responsiveness Guidelines Required for Tripartite Plus (*Strengthening a Gender Lens on the Implementation of Law 18/17 on the Protection of Indonesian Migrant Workers*) held in Jakarta, December 19, 2019, which brought together 40 participants female: 26 person and male: 14 person (*include ILO and UN Women team*) from relevant ministries and government bodies (*Ministry of Manpower, Ministry of Women Empowerment, BNP2TKI, Ministry of Health, National Women's Rights Commission, Criminal Investigation Agency*), Indonesia Employers Association (*APINDO*), Recruitment Agencies Associations (*ASPATAKI, APJATI*), labour unions (*KSBSI, KSPSI, KSPI, KSPSI ATUC, SBMI*), CSOs (*Migrant Workers Alliance(JBM), Migrant Care, Women Solidarity (SP), Justice Without Border*) university/research institute (*Centre of South East Asian Studies*).

The opening remarks were given by Director of Protection and Placement of Overseas Workers (OIC), Ministry of Manpower and Country Director of ILO Jakarta. This followed by a panel discussion with theme "Overview 18/17 and Current practices, on the Gender Mainstreaming in Labour Migration Policies and



Programme, featuring Mr. Yuli Adiratna, Deputy Director for Migrant Worker Protection Ministry of Manpower, Mr. Rafael Walangetan, Assistant Deputy of Women's Right Protection Ministry of Women Empowerment and Child protection and Ms. Yatini Sulistyawati, Migrant Worker Focal Point - KSBSI - Labour Union Confederation (Member of Migrant Workers Network Alliance (JBM)).

The second session was a talk show on Readiness to implement Law No18/17 in national and subnational (current gender mainstreaming programme and its challenges). Speakers for this sessions are: Ms. Arini – Director of Placement BNP2TKI (National Agency for Placement and Protection Indonesia Migrant Workers, Mr. Filius Yandono, Secretary General ASPATAKI (Recruitment Agency Association), Mr. Hariyanto President of SBMI (Indonesia Migrant Workers Labour Union)

The third and fourth session consisted of group discussion and presentation on (i) Pertinent migration issues and thematic areas required for guideline development based on the each of tripartite roles and mandates, (ii) Needs of regular multi-stakeholders (tripartite plus) dialogue platform to provide participatory advisory; (iii) Recommendations on the development of gender responsiveness guideline for tripartite plus on the implementation Law18/17. All of the session moderated and facilitated by Center of Women and Gender Studies University of Indonesia (PKWG UI)

The presentations and discussions centred on four key subjects:

- a) Dialogue and knowledge sharing by tripartite plus on the current practices, challenges and lesson learned on the gender mainstreaming in labour migration policies and programme that will stimulate collaboration among stakeholders and strengthen the implementation of Law No. 18/17 as well elevate the basic understanding and promotion of women's right protection and empowerment amongst tripartite plus;
- b) Identify pertinent migration issues and thematic areas required for guideline development based on the each of tripartite roles and mandates.
- c) The needs of multi-stakeholders platform to facilitate regular dialogue and provide technical assistance to Tripartite Plus on the process of gender mainstreaming in labour migration policy and practice in their organization or institution;
- d) Produce detailed and realistic recommendations for the effective development of gender responsiveness guideline for tripartite plus on the implementation Law18/17.

3. Key findings from the workshop

Session 1: Panel Discussion “Overview 18/17 and Current practices, on the Gender Mainstreaming in Labour Migration Policies and Programme



- a) *Overview of Law 18/17, roles and responsibilities of government agencies and other stakeholders in implementing Law 18/17 was presented by Mr. Yuli Adiratna Deputy Director for Indonesian Migrant Worker Protection Ministry of Manpower*
- The Indonesian Government has made progress including through Parliament passing Law No. 18/2017 on the Protection of Indonesian Migrant Workers. In the new Law 18/17 the term of “Indonesian Labour or TKI” have been change to Indonesia Migrant Workers or Pekerja Migran Indonesia (PMI). This changes is aim to change the negative perspective and stigma of Indonesia Migrant Workers, that used to associated with low skills and harmful working conditions. The new law is focus on how the state has duty to protect the workers’ rights and facilitate the migration process to ensure positive migration experience. It is expected that the Indonesia migrant workers is a professional workers which having a high competence that include knowledge, skills, and attitude. The government have plan to reduce the number of migrant domestic workers through improvement of their services to ensure women migrant workers having better jobs opportunities in the country of destinations.
 - Protection of Indonesian Migrant Workers has the following principles:
 - a. cohesion;
 - b. equality of rights;
 - c. recognition of dignity and human rights;
 - d. democracy;
 - e. social justice;
 - f. gender equality and equity;
 - g. non-discrimination;
 - h. anti-trafficking;
 - i. transparency;
 - j. accountability; and
 - k. sustainable
 - Indonesian Migrant Workers shall include:
 - a. Indonesian Migrant Workers working for Employer of legal entity;
 - b. Indonesian Migrant Workers working for Individual Employer or Household; and
 - c. Seafarers and fishers.
 - Protection of Prospective Indonesian Migrant Workers or Indonesian Migrant Workers includes:
 - a. Pre-employment protection;
 - b. During employment protection; and
 - c. Post employment protection.
 - The importance of Gender Mainstreaming on Law 18/17 and Labour Migration Governance. Based on the data statistic 70% of Indonesia Migrant Workers is Women Migrant Workers and currently all the services is provide equally between men and women migrant workers. There is no differences treatment and services to the man and women migrant workers. Ministry of Manpower is appreciate and



- support the Safe and Fair Programme to provide technical assistance to ensure gender responsiveness in policy and programme on labour migration.
- The Law 18/17 have significant changes in divide the role and responsibility of Government and Private Recruitment Agencies (PRAs). Based on the Law 18/17 they have changes PRAs into The Indonesian Migrant Worker Placement Company (P3MI).
 - In the previous Law, the role and responsibility was taken by Private Recruitment Agencies (PRAs), PRAs facilitate all the process of migration and allowed to do the direct recruitment from village level. In the new Law PRAs is not allowed to do the direct recruitment from village level, PRAs will act as a “travel agent”, all the facilitation of migration process will be done by Government. The Government start from Village level has role and responsibility to provide protection to the migrant workers and their families, as well facilitate the migration process.
 - In the new law there is no recruitment process. Prospective migrant workers must register themselves or submitted their required documents to the LTSA (Integrated One Stop Services).
 - Administrative process must be through authoritative Subnational Government office, namely Integrated One Stop Services (LTSA). This services aim to ensure there is no illegal recruitment and administrative process is easier, cheaper, and transparent. All the migration process is under government responsibility. Therefore the migrant workers will be the active actor to register and apply for the overseas job. Government is also encourage the migrant workers to process their required administrative documents (ID, Passport,etc) by themselves or facilitate by Village Facilitator. This is one of challenge how to have better socialization to ensure the potential migrant workers to process it by themselves, since previously they have high dependency to the middle man and PRAs to facilitate their administrative process.
 - The Indonesian Migrant Workers Placement Company as referred to in Article 49 letter b has the duties and responsibilities:
 - a. to look for job opportunities;
 - b. to place Indonesian Migrant Workers; and
 - c. to resolve the problems the Indonesian migrant workers they placed have. Further provisions regarding duties and responsibilities of the Indonesian Migrant Worker Placement Company as referred to in paragraph (1) shall be regulated by a Government Regulation.
 - Indonesian Migrant Workers Placement Company may establish branch offices outside the domicile of its head office. Activities undertaken by the branch office of the Indonesian Migrant Worker Placement Company are duly responsibility of the head office of the Indonesian Migrant Workers Placement Company. The branch offices as referred to in paragraph (1) shall be registered with the provincial government. Further provisions concerning the procedure of establishing a branch office of the Indonesian Migrant Worker Placement Company as referred to in paragraph (1) shall be regulated by a Ministerial Regulation.



- In the new law sub-national Government have role and responsibility to provide training to migrant workers. The training provide by government is must be free of charge, but the PRAs still allowed to provide training to the migrant workers with charge.
- Regarding the implementation of Law No.18/17, The Ministry of Manpower still have responsibility to develop 28 subordinate regulations of Law 18/17, but it have been decided to simplify the 28 regulations into 3 Government Regulations, 2 Presidential Regulations, 5 Minister Regulations and 3 Head of Body regulations. Up to know there is only one Ministerial Regulation have been issuance, Minister of Manpower Regulation No18/2018 on Social Protection for Indonesia Migrant Workers. As stated in the Law18/17 all the sub-ordinate regulations must be finalized in 2019.
- The division of duties and responsibilities between central government and local government.

The Central Government has the duties and responsibilities:

- a. to guarantee the protection of Prospective Migrant Workers Indonesia and / or Indonesian Migrant Workers and their families;
- b. to manage, supervise, execute and monitor administration of the Indonesian Mi-grant Workers placement;
- c. to guarantee the fulfilment of the rights of Prospective Indonesian Migrant Work-ers and / or Indonesian Migrant Workers and their families;
- d. to establish and develop an integrated information system in the administration of Indonesian Migrant Workers Placement and Protection;
- e. to coordinate collaboration of related agencies in response to complaints and handling of cases of Prospective Indonesian Migrant Workers and / or Indonesian Migrant Workers;
- f. to arrange repatriation of Indonesian Migrant Workers in the event of wars, natu-ral disasters, epidemics illness, deportation, and troubled Indonesian Migrant Workers;
- g. to ensure the optimal fulfilment of the rights and protection of Indonesian migrant workers in the destination country of placement;
- h. to develop policies on the Protection of Indonesian Migrant Workers and their families;
- i. to stop or ban the placement of Indonesian Migrant Workers to certain countries or on certain occupations overseas;
- j. to open certain countries or the occupations that were closed for Indonesian Mi-grant Workers placement;
- k. to issue and revoke SIP3MI;



- l. to issue and revoke SIP2MI;
 - m. to manage inter-agency coordination on the policy of Indonesian Migrant Workers Protection;
 - n. to designate officials as labor attachés to be posted in the representative office of the Republic of Indonesia at Minister's request; and
 - o. provide and facilitate trainings for Prospective Indonesian Migrant Workers through vocational training with the budget from the educational function.
- Provincial Government has duties and responsibilities:
- a. to organize education and job training provided by accredited government and / or private education and training institutions;
 - b. to arrange repatriation of Indonesian Migrant Workers in the event of wars, disas-ters, epidemics, deportation, and troubled Indonesian Migrant Workers according to their authority;
 - c. to issue permit for Indonesian Migrant Workers Company's Branch Office;
 - d. to report results of the evaluation of the Indonesian Migrant Workers Placement Company in tiered and periodic manner to the Minister;
 - e. to provide protection for Indonesian migrant workers pre-employment and post-employment;
 - f. to provide on-site help and service centers that meet health requirements and standards, at the Indonesian Migrant Workers' place of departure and repatriation;
 - g. to provide and facilitate trainings for Prospective Indonesian Migrant Workers e.g. vocational training with the budget from the educational function;
 - h. to organize, supervise, execute and monitor the administration of the placement of Indonesian Migrant Workers; and
 - i. may establish one stop service for placement and Protection of Indonesian Mi-grant Workers at the provincial level.
- District / City governments are tasked and responsible:
- a. to raise awareness about the information on and demand for Indonesian Migrant Workers to the community;
 - b. to create a database of Indonesian Migrant Workers;
 - c. to report the results of the evaluation of the Indonesian Migrant Workers Placement Company periodically to the Provincial Government;
 - d. to arrange repatriation of Indonesian Migrant Workers in the event of war, natural disaster, pestilence, deportation, and troubled Indonesian Migrant Workers, according to their authority;



- e. to provide protection for Indonesian migrant workers pre-employment and post-employment in the districts / cities within their duties and authorities;
 - f. to provide education and employment training to Prospective Indonesian Migrant Workers possibly can work with the accredited government and / or private education and training institutions;
 - g. to provide guidance and supervision of educational institutions and training institutions in the districts / cities;
 - h. to conduct social and economic reintegration for Indonesian Migrant Workers and their families;
 - i. to provide and facilitate trainings for Prospective Indonesian Migrant Workers e.g. vocational training with the budget from the educational function;
 - j. organize, supervise, execute and monitor the administration of the Indonesian Mi-grant Workers placement; and
 - k. may establish one-stop service for Placement and Protection of Indonesian Mi-grant Workers at the district / city level.
- Village Administration has the duties and responsibilities:
 - a. to receive and provide information and job order from the institution that carries out government affairs in the field of manpower;
 - b. to verify data and registration of Prospective Indonesian Migrant Workers;
 - c. to facilitate completeness of the administrative requirements of Prospective Indonesian Migrant Workers;
 - d. to monitor the departure and repatriation of Indonesian Migrant Workers; and
 - e. to empower Prospective Indonesian Migrant Workers, Indonesian Migrant Workers, and their families.
 - Further provisions regarding duties and responsibilities of Central Government and Local Governments shall be regulated by Government Regulation.
 - Duties of the Minister as policy maker:
 - a. to compile norms and standards regarding:
 - 1) Protection of Indonesian Migrant Workers;
 - 2) Oversight of the administration of placements;
 - 3) Determination of Social Security provider;
 - 4) Fulfilment of the rights of Indonesian Migrant Workers;
 - b. to oversee and evaluate the implementation of the Indonesian Migrant Workers Protection policy;



- c. to undertake overseas cooperation to ensure the fulfilment of the rights and protection of Indonesian Migrant Workers in coordination with the minister dealing with government affairs in the field of foreign relations;
 - d. to stop or ban the placement of Indonesian Migrant Workers in certain countries or occupations / professions;
 - e. to issue and revoke SIP3MI upon the request of the Agency head no later than 60 (sixty) calendar days from the date of the request;
 - f. to propose officials for labor attaché to the minister who administers government affairs in the field of foreign relations;
 - g. to provide social and economic empowerment of the Indonesian migrant workers; and other duties appropriate to their authority.
- The duties of Indonesian Migrant Workers Protection are carried out by the Agency established by the President. The Agency as referred to in paragraph (1) is headed by an Agency Head appointed by President and accountable to President through Minister. The Agency referred to in paragraph (2) is a government non ministerial agency serving as implementer of the policy in the service of protecting Indonesian migrant workers in an integrated manner.
 - The tasks of Agency Head as the policy implementer are:
 - a. to implement the policy of Placement and Protection of Indonesian Migrant Workers:
 - 1) Serving and protecting Indonesian Migrant Workers;
 - 2) Issuing and revoking SIP2MI;
 - 3) Establishing placement services;
 - 4) Overseeing the implementation of Social Security services;
 - 5) Fulfilling the rights of Indonesian Migrant Workers;
 - 6) Verifying Indonesian Migrant Worker documents;
 - b. to carry out Indonesian Migrant Workers Placement and Protection through co-operation between Central Government and destination country of placement;
 - c. to propose revocation of SIP3MI to the Minister against the Indonesian Migrant Workers Placement Company;
 - d. to provide Protection during Employment in coordination with the Representative of the Republic of Indonesia in the destination country of placement;
 - e. to provide facilitation, rehabilitation and reintegration of ex-Indonesian Migrant Workers;



f. to undertake social and economic empowerment for ex-Indonesian Migrant Workers; and other duties will be according to their authority.

- Ms. Magda, The Commissionaire of National Women Rights Institutions urged the Government to speed up the process of development subordinate regulations, especially the Government regulation on supervision and monitoring of protection and placement of Migrant Workers that written in Article 76:

(1) The Central Government and Local Government oversee implementation of the placement and Protection of Indonesian Migrant Workers.

(2) The Central Government and Local Government in conducting the oversight as referred to in paragraph (1) may involve the community.

(3) Further provisions on oversight of the implementation of the placement and Protection of Indonesian Migrant Workers shall be regulated by a Government Regulation.

In addition she said that the involvement of community or NGOs is very important on the monitoring process, but it is need to have further regulation on system and mechanism. The regulation on the monitoring, supervision and inspection is also urgent, especially on the issues of cost structure, over charging, labour inspection, accountability, good governance and corruption.

*b) Gender-responsive policies: how to mainstream gender in policy and program. Why Gender Responsive needed in policy and programme was presented by **Drs. Rafail Walangitan, M.A. Assistant Deputy of Women's Right Protection Ministry of Women Empowerment and Child protection***

- Ministry of Women Empowerment seen there is a gap in the process of transformation of women's role, especially when they are become migrant workers, especially to the children and family that left behind.
- Government of Indonesia has issued the Presidential Instruction No9/2000 on Gender Mainstreaming to realizing Gender equity and equality in the Indonesia Development. This is also include the women's migrant workers rights protection.
- From the statistic figure shown that man still dominate the labour force in formal sectors and women in informal sector is 42,04 % (Sakernas August 2018). Even though the domestic sector and work is the most vulnerable works, but there are still high interest of women working as migrant domestic workers and the cases of violence, abuse and trafficking of migrant domestic workers is also increasing in each year.
- There are four focus programme of Ministry of Women Empowerment:
 - a. End violence against women and children
 - b. End human trafficking, through development of early system detection of Human Trafficking



- c. End barriers to economic justice, the remittance must be used to ensure the welfare of family
 - d. Stop discrimination and gender based violence. It is important to implement zero tolerance for violence against women and girls
- (c) *Current situation on the Women's migrant workers' rights protection in country of origin and destination. Why we needed gender responsiveness services (Experience from MTUC MRC-KSBSI) was presented by Ms. Yatini Sulistyawati KSBSI - Labour Union JBM alliance*
- Based on BNP2TKI data there are 67% women migrant workers and 90% working as migrant domestic workers which is one of the vulnerable type of work. Moratoria to Saudi Arabia in 2015 affected many of migrant workers working in Malaysia. Unfortunately most of the migrant workers undocumented and made them more vulnerable to be victim of human trafficking, violence, and abuse.
 - East Nusa Tenggara province is one of the highest number for the human trafficking cases. Many of cases happened because of manipulation of identity and passport of migrant workers. This happened because they lack of authoritative information on safe migration and high dependency to the middle man or PRAs. Most of women migrant workers from East Nusa Tenggara is living in remote areas and graduated from Primary or Junior High School.
 - 51% remittance is come from Women Migrant Workers, but women role and contribution in family economic still did not recognize, this happened because we only acknowledge the men's role as the household head and women is only supporting actor.
 - 68% women Migrant workers living in the rural áreas or remote village with low education (graduate from primary or junior high school). This condition made them taking more role in informal sector. It is important to set up the minimum requirement for background education of migrant workers at least graduated from junior high school. This requirement to ensure they are able to read the contract and write problems if they trap in harmful conditions.
 - There are several cases that most of Women Migrant Workers in Malaysia is not allowed to communicate with their families and they are not allowed to get out from the house.
 - There are several cases that most of Women Migrant Workers in Malaysia is not allowed to communicate with their families and they are not allowed to get out from the house
 - The gender mainstreaming and gender sensitive is important to handling the Women Migrant workers cases or issues in all cycle of migration process. It is also important to have programme on parenting, therefore it will reduce the burden of women migrant workers while they working in country of destination.



- It is also urgent to conduct and develop a proper and comprehensive monitoring system to the agent. Many cases of modern slavery happened because of PRAs did unfair and harmful recruitment practices. One of KSBSI initiative in partnership ITUC is develop Migrant Recruitment Advisor that publicly accessible this is aim to advise all the PRAs based on ILO norm and standards.
- KSBSI has an MOU with MTUC a labour union in Malaysia. The process of MOU has started since 2010 and the process of negotiation is not easy. This cooperation is seen by Indonesia Embassy as positive support especially, when they need advocate the domestic workers. Indonesia Embassy already have many of shelters for migrant workers.

Second Session was a talk show on Readiness to implement Law No18/17 in national and subnational (current gender mainstreaming programme and its challenges).

Speakers for this sessions: Ms. Arini – Director of Placement BNP2TKI (National Agency for Placement and Protection Indonesia Migrant Workers), Mr. Filius Yandono, Secretary General ASPATAKI (Recruitment Agency Association), Mr. Hariyanto President of SBMI (Labour Union)

1. With the new Law 18/17, what challenges will be faced by stakeholders in the field?

Mrs. Arini BNP2TKI

- There are many things that need to be prepared, especially, the legal instrument or subordinate regulations since there are many differences between the two laws. In the new law we need to establish strong and better coordination between village levels up to central government.
- Regarding the Migrant Workers Placement Company (P3MI), in the new law the local government must provide the skills training to the prospective migrant workers. Therefore we also concern about how the grand design of skills training standards quality that will be used across Indonesia. This is not only about the issues of access but also availability of fund and readiness of local government to fund and conduct skills training. Since the local government also has limited resources in term of human resources, infrastructure and fund.
- In the recruitment process the process will be carried out by the local government / LTSA / etc, there are still 2 different principles between the new and previous law. The previous system has been connected the process from recruitment up to pre-employment with various existing bodies, while the new Law 18/17 regulates differently start from migrant workers need to prepare their documents by themselves, services for skills training, and medical examination services. So this is our responsibility, to ensure the migrant



workers independently process their application and required administrative requirements. Previously migrant workers rely on the PRAs or middle man.

- All elements and current government officials in each level (village to central government) must be responsible from upstream to downstream in the cycle of migration process.
- Inspection and monitoring is very important and Ministry of Manpower need to have grand design on how to monitor all the process of migration in all cycle.

2. What is the challenges on developing a gender responsive regulation on labour migration governance, especially with the high number cases of modern slavery? Mr. Hariyanto, President of Indonesia Migrant Workers Union (SBMI)

- Migrant Workers issues is very diverse and problematic, even though we had issuance the new Law, but migrant workers still not benefited from this new law. It can be understood since, we are still at the transition phase. We urge government to speed up the process of developing the sub-ordinate regulations and involving all key stakeholders in the process of developing of those regulations.
- In this transition phase, the operationalization of Law 18/17 without any subordinate regulations create confusion to the migrant workers and key actor at subnational level, such as:
 - i) Previously the process of recruitment and departure was handle by PRAs and in the new law all process is under government responsibility. This creates confusions to the migration especially the access to the authoritative information on the new process of migration, new law, etc, how about the access to information on the new law and new mechanism? How government will ensure the dissemination information in all targeted villages?
 - ii) All the services and process of administrative documents for migrant workers is centralized in Integrated One Stop Services office (LTSA), but in this transition phase government still used Law No 39/2004, therefore government need to speed up the process sub-ordinate regulations.
 - iii) Especially in the new law also clearly stated a penalty and punishment for everyone or company: A maximum imprisonment of 5 (five) years and a fine of no more than Rp15,000,000,000.00 (fifteen billion rupiah), imposed on any Person who:a) charges, for the components of the placement fees borne by Employer, the Prospective Indonesian Migrant Workers as referred to in Article 72 letter a; b)places Prospective Indonesian Migrant Workers to a particular country that is declared closed as referred to in Article 72 letter b; c. places Indonesian Migrant Workers without SIP2MI as referred to in Article 72 letter c; ord. places Indonesian Migrant Workers in a destination country of placement as referred to in Article 72 letter d.



- iv) Access to information, database establishment, and data collection at the village level is more important than mapping out the authorities and responsibilities of village government. How to provide comprehensive information on safe migration to all men and women, in all sector, for instance there is also women that working in fisheries sector.
- v) Government and PRAs stop to seeing CSOs as enemies, they need to change their perspective and see CSOs as friends who have better understanding on the issues and challenges at the grass root level.

One thing need to be highlighted in the Law 18/17 is the involvement of CSOs. How about in the previous law? Is there any CSO involvement?

- The development of subordinate regulation Law 18/17 is very challenging. Recommendations that should include in the regulation not yet done. Government need to focus to ensure the quality of process and substance of subordinate regulations. Even though the deadline for the subordinate regulations is 2 years since the Law have issuance by parliament. Please do not only focus on the target deadline, but also focus on the quality of regulations.
- Harmonization and Coordination between inter-ministerial and key stakeholder is urgently important in the process of development subordinate regulations. We were questioning the process of issuance Minister of Manpower Regulation on Migrant Workers Social Protection without any higher regulations as umbrella (Government Regulation and Presidential Decree)

3. What do you think about the harmful practices on recruitment process by PRAs?

Mr. Filius Secretary General (ASPATAKI – Association of Indonesia Recruitment Agency Companies)

- All the participants and actors in our discussions already on the same page, we want that the Government to speed up the process of subordinate regulations. And how the regulations is could have win win solutions. If we see the previous law all the technical process of placement under responsibility of PRAS. We need to see the historical aspects why PRAs is handle most of the migration process in all cycle, start from recruitment at village level up to pre-employment. In the past there were only PRAs that willing to taking all responsibility to facilitate the process of migration start from recruitment, facilitate the documents, skills training and placement.
- Why there are many of middle man or sponsor also become one of player and several of them also become obstacle in the process of safe migration, because Indonesia is very big country and we have geographical issues. PRAs have limitation to cover or outreach all the



village, and that is why they need to work through the middle man and sponsor.

- In the past there are several bad actor or PRAs that have extraordinary role as PRAs. This situation getting worst when other bad actors taking benefit from this situation, especially lack of monitoring and supervision.
- Many of cases happened because women migrant workers only graduate from primary or junior high school. Most of them also illiterate and all the access information is kept by the middle man or sponsor. Women migrant workers also need a loan to cover all the migration cost, and most of PRAs provide a loan to them and PRAS will cut their salary in each month to pay back their debt.
- In practice there are many of other cost which not include in the cost structure, such as transportation cost, and if they fail the medical examination process or other process. There is a huge gap between the policies and practices, and there are several bad actors take opportunity from this condition
- Law 18/17 is a good and positive sign, especially in this new law PRAs only have role as travel agent. It is expected the subordinate regulations, provide a clear division of task and role of PRAs. I learn that in the new Law, government allowed to provide facilitates to the PRAs.
- We also know that there are many procedural or illegal ways that is very challenging to control it, even there are many of police or official is not in the same page to control or prevent this illegal ways.
- I think the most challenging for Government is to provide the loan to the migrant workers to cover all the administrative cost, training cost, and changing their mind set. They have high dependency to the PRAs and know we want them to process all the documents by themselves.
- Government already have a soft loan targeted for migrant workers, but until now there are no private bank willing to provide this loan to the migrant workers. This happened because the bank did not want to take high risk, hopefully the government willing take all this risks.

4. Group Discussions:

Group 1 - Facilitator: Theresia Dyah Wirasti, S.H., M.A., Ph.D.

Participants:

1. Ministry of Health
2. Police Crime National Agency
3. KSPSI (Confederations of Labour Union)



4. Justice Without Borders
5. Migrant Care
6. Women Solidarity (Solidaritas Perempuan)
7. Center of South East Asian Studies
8. Employer Organization (APINDO)

Facilitator is explained on the objective of session and the group discussion is start with the role of each agencies in each phase of migration

i. Government (Ministry of Health and Criminal Investigation Body Police)

Role of Ministry of Health

- Pre-Employment
 - a. In partnership with Ministry of Manpower and through village productive programme (Desmigratif) to educate and raising awareness on health issues
 - b. To ensure prospective Migrant Workers is fit, physically and psychologically
- Departure
 - a. To ensure prospective migrant worker is fit
 - b. In Minister of Health Regulation No29/2013 especially migrant workers there are standard of medical examination based on requirement of destination country
 - c. There is a standard of healthy environment At the training centre and PRAs shelter. This is to ensure the prospective migrant workers is stay healthy and fit during the process.
- Placement or Employment
 - a. Ministry of Health need to have collaboration with Ministry of Foreign Affairs on providing socialization on health issues related with migrant workers, include a regular check-up and information on accessible hospital in country of destination.
 - b. In the country of destination if they need health services it will be cover by the insurance, but the problem is most of migrant workers is nonprocedural migrant workers
- Post Employment
 - a. In the context of deportation, many health cases happened because they stayed at the prison and there is no social security scheme covering this unprocedural migrant workers.
 - b. Need to establish an partnership with all hospitals to taking care emergency situation of migrant workers and the fee will be charge to government (central or local government)
 - c. Need to have prevention programme for the migrant workers that have an infectious diseases. How this could be integrated with Desmigratif Programme

Main issues:



1. Medical Check Up for Migrant workers mostly is higher than the standard rate of MCU
2. Location of Medical Check Up services is far away from their village. This is giving them high extra transportation cost.
3. Non-procedural Migrant Workers did not have insurance in the destination country (BPJS).

Recommendation:

- Conduct regular socialization and promotion on health issues (generally or specific issues sexual reproduction). Include information on where to go if they are sick and need health assistance.
- Standardization on how to conduct medical examination to prevent sexually harassment to the women migrant workers. Many of women migrant workers got harassment from men doctor or medical staff.
- Partnership with BPJS and hospital in country of destination with migrant workers insurance scheme
- In the new law migrant workers covered by BPJS Kesehatan in all hospitals in Indonesia but not in destination countries, therefore BPJS Kesehatan need a scheme that covers health services in destination countries.

ii. **CSOs**

Role and responsibility

- Dissemination of information needed by migrant workers
- Pre-departure education or training before placement
- Policy advocacy
- Cases Handling
- Monitoring or Supervision starts from pre-departure and post-employment
- Reintegration specifically for the post-employment
- Capacity building for migrant workers
- Women Empowerment
- Development of action research as guidance for paralegal
- Village Programme by Migrant Care: Advocacy, dissemination of information, data collection in 36 villages
- Documenting the process from pre-departure until post-employment
- Campaign
- In the fisheries sector migrant workers are working to monitor workers in the fisheries sector.

Issues at village level

1. Lack of information on procedural and non-procedural migration. There is no access for authoritative information
2. Lack of role of village government, this is also why migrant workers prefer to trust PRAs, middle men, sponsors, than NGOs/CSOs
3. There is no standard for cost structure and many cases of overcharging
4. Misuse of Permit Letter from Family. This requirement is used by husbands as a weapon to force their wives to send all their salary to their husbands



5. Lack of monitoring this is why many of village head always support the use of this permit letter
6. Many of Head of Village is become middle man or sponsor
7. Manipulation for document (age, background education) Lack of administrative documents for migrant workers such as ID, birth certificate, passport, etc

Issues at District Level: Employment Card is used by bad actor to charge migrant workers. Even this is online system, but again it is also because of lack of access information, and also low education.

Issues at Placement Company:

1. High cost of medical check up
2. Standardization of medical check up
3. Forgery for Health Certification
4. Shelter is dehumanization like a prison

Post-Employment

1. Negative stigma and perspective if former migrant workers always bring cases or problems
2. Advocacy on unpaid salaries
3. There is no gender responsiveness policy on handling the cases of human trafficking, include the monitoring of reintegration migrant workers

Input from Employer Organization

- In our organization certification and regional standard of competency is a must and we focus on high skilled migrant workers
- Inspection and monitoring is through regional cooperation
- High cases in fisheries sector.
- CSOs capture only the negative side

Recommendation

1. Guideline on how to handling cases of sexual abuse or trafficking with gender sensitive and responsiveness
2. Financial literacy training to prospective migrant workers for economic empowerment
3. Strengthening role of village authorities especially on village registration and database of migrant workers
4. Activate TVET to train migrant workers
5. Involvement of companies in socialization
6. Knowledge on contract and rights
7. Recovery and services of mental health and psychological issues
8. Socialization on legal remedies
9. One of rights is to organize, strengthening the facilitation from labour union in country of origin or destination. Therefore we also need to held renegotiation on MOU in each of country destination



10. Forum multistakeholders to discuss gender mainstreaming issues, especially for the monitoring and provide technical assistance to implementing the gender guideline on the implementation Law 18/17 . This is could be integrate with Gender Committee APINDO. Need further follow up to discuss ways of working, form of this forum, whether it will be working group, advisory board or online platform for consultation.

Group 2 Facilitator: Tirtawening Parikesit SH. MSI

Participants:

1. KSPI (Labour Union Confederations)
2. REcuritment Agencies (ASPTAKI)
3. BNP2TKI
4. Migrant Workers Alliance
5. KSBSI (Indonesia Welfare Labour Union Confederations)
6. Migrant Workers Alliance (JBM)
7. KSPSI

Pre-registration Issues

- Lack of information, especially related with the risks that will face to women migrant workers, how to interaction with other people with the new culture, procedure, rights, etc
- Prospective migrant workers not join the labour union
- Debt bondage for women migrant workers
- Set up socialization system for authoritative information on safe migration up to village level
- There is no guideline for village authorities or local government on labour migration. It is important for the prospective migrant workers to know their rights or information procedure on migration
- There is no integrated system related with the data of prospective migrant workers. When migrant workers registered themselves at village level, village authorities need to ensure what is their motivation. They need to have profile each of migrant workers
- Raising awareness on pre employment on culture and impact or risks
- There is no monitoring system up to village level with community involvement
- Village government is not ready to implement Law 18/17. Most of them lack of knowledge on Law 18/17 and lack of attention on the issues.

Registration

- Lack of trust to the village government. Prospective migrant workers is more trust to their middle man, sponsor or PRAS than to the government.
- Many of middle man is targeting Vocational High School and attract them with apprenticeship programme in overseas



Trainings

- Training will under government responsibility
- Mandatory training for 200 hours need to be discuss what is the lesson plan and need to be consulted to the key stakeholders
- Lack of TVET and what is the role of TVET
- Lack of coordination between each of ministries and stakeholders, need to have a coordination forum
- There is no gender sensitive guideline, knowledge programme and services

Integrated One Stop Services (LTSA)

- Need to develop a gender sensitive SOP for services and programme, include how to communicate
- Women medical doctor to conduct MCU for women migrant workers

Placement

- Women Migrant Workers mostly not allowed to use communication tools and isolated especially for migrant domestic workers
- Ensure they received decent life , treatment, work life and rights is challenging especially for the domestic workers
- Employer take their passport
- Shelter run by government need to be more gender sensitive
- Counselling at shelter
- Not allowed to organized

Post Employment

- There is no registration at village level even for reintegration. Companies need to report back to village authorities if there is former migrant workers
- All remittance send to their families and there is no left for them.

5. Recommendations from the Workshop

Some recommendations generated from the focus group discussions held on December 19, 2018 are as follows:

1. Need to develop a comprehensive strategy and methodology or knowledge management system to disseminate the authoritative information on safe migration or related with labour migration start at village level.
2. Promotion or socialization team needs to be established in each region.



3. Prepare training material that has a gender perspective and sensitive, with guideline and visual materials
5. Develop a registration from that need to profiling the prospective migrant workers, their needs, locations or job placement, background education and sector of work
6. Promotion and socialization of health issues include sexual reproductions. Provision of information can also be done through making pocket books or something that is easily disseminated, both general and practical knowledge (such as regarding medical check-up (MCU) referrals, where to get sick in the placement country, referral system, etc. .)
7. Develop a standardization to improve the supervision system or monitoring of the MCU for Migrant Workers to prevent sexual harassment.
8. Establish partnership between BPJS with hospital through insurance or social security scheme at destination countries to ensure migrant workers will received health services.
9. Develop a comprehensive and systematic cases handling for VAW and human trafficking victims.
10. Financial literacy and entrepreneurship training with gender mainstreaming approach.
11. Guideline to strengthening the role and function of village to implement their duties and provide services or developing programme
12. Strengthening the role of the Job Training Center (TVET)
13. Improve the meaningful and inclusive multi stakeholders dialogue and participation, especially related to business actors
14. Training on rights of women migrant workers work agreement and placement agreement. Develop a system to assist they could be able to understand what they have signed, since most of migrant workers is illiterate.
15. Develop a join MOU on labour migration coordination between the Ministry of Manpower, Ministry of Home Affairs, Ministry of Law and Human Rights, and Coordinating Minister for Law and Human Rights, and the Ministry of Foreign Affairs The MoU can be in the form of PP.
16. Recognition of women migrant workers as the main breadwinners, and their / husbands are expected to share or taking care of women's roles at home, such as taking care of children etc.
17. Conducted socialization on human trafficking to the public especially to high school / vocational high school students, to prevent modern slavery and trafficking through apprenticeship in overseas
18. It is necessary to renegotiate the MOU with several countries, such as Malaysia for the freedom of association and rights to organize



**Spotlight
Initiative**



19. Speed up the process of developing the subordinate regulations of Law No. 18 of 2017.

20. Establish a multistakeholders forum or working group to discuss issues and ensure gender mainstreaming in services, policy and programme each of actors or agencies, include monitoring and providing technical assistance.