

THE PROBLEMS OF INDONESIAN MIGRANT WORKERS' RIGHTS PROTECTION IN MALAYSIA¹

By:
Sri Wahyono*

Abstrak

Artikel ini mendeskripsikan bagaimana buruknya perlindungan hak-hak Pekerja Migran Indonesia (Tenaga Kerja Indonesia atau TKI) di hampir semua sektor ekonomi baik formal maupun non-formal di Malaysia. Dalam penelitian ini mayoritas responden yang dipilih secara acak terdiri dari para TKI dan beberapa responden merupakan pekerja migran dari Philipina, India dan Vietnam yang bekerja di beberapa sector seperti Pembantu Rumah Tangga, Pekerja Pabrik, Pekerja Perkebunan, Pekerja Konstruksi dan Perdagangan Eceran (Toko dan Restoran). Banyak di antara TKI yang bekerja di Malaysia tidak sepenuhnya dan bahkan kehilangan hak-haknya. Hak yang paling mendasar sebagai pekerja seperti gaji yang terlalu rendah, gaji yang ditahan bahkan tidak dibayarkan oleh majikan, kekerasan fisik dan seksual, kondisi tempat kerja yang tidak layak huni dan perampasan paspor oleh majikan atau agen perekrut (*tekong*), bahkan menjadi korban perdagangan manusia atau dipaksa menjadi Pekerja Seks Komersial (PSK) oleh sponsor yang merekrut mereka. Di samping itu sebagai pekerja migran di Negara asing, mereka juga sangat rentan menjadi korban praktek-praktek korupsi seperti pungutan liar yang dilakukan oleh oknum Polisi dan Pegawai Imigrasi Kerajaan Malaysia. Terdapat beberapa faktor mengapa hak-hak TKI sebagai pekerja migran tersebut sangat rentan terhadap kesewenang-wenangan majikan dan sponsor yang merekrut mereka dan praktek-praktek korupsi oleh aparat Kepolisian dan Imigrasi Kerajaan Malaysia. Adapun faktor-faktor tersebut antara lain: a) kurangnya informasi tentang bagaimana memperoleh dokumen perjalanan, bagaimana cara melamar pekerjaan melalui Perusahaan Jasa Pengerah Tenaga Kerja Indonesia (PJTKI) dan berapa banyak sebenarnya biaya resmi yang harus mereka bayar; b) Kurangnya pengetahuan dan pemahaman terhadap Hukum Perburuhan dan Peraturan Keimigrasian yang berlaku di Malaysia sebagai Negara tujuan dan c) pemalsuan data pada dokumen perjalanan (paspor) dalam proses rekrutmen dan penempatan oleh para sponsor yang melibatkan oknum pegawai imigrasi.

¹ This paper was presented at the International Workshop of Asian Public Intellectuals (API Fellowship) at Phuket, Thailand, 25 – 30 November 2006. Since when some of been rewritten.

* BA in International Relations, Faculty of Social and Political Sciences, Gadjah Mada University. Bureau for Cooperation and Promotion of Science and Technology, Indonesian Institute of Sciences (LIPI).

Abstract

This paper describes the poor state of protection of Indonesian Migrant Workers Rights in almost all economic sectors, both formal and non-formal, in Malaysia. In this research, most of the randomly interviewed respondents were Indonesian Migrant Workers (TKI) with a few Philipinos, Indians and Vietnamese employed in various sectors such as domestic work, manufacturing, plantations, construction, or retail (stores and cafés). Many of the TKI living and working in Malaysia did not receive their full rights as workers and sometimes even lost their basic rights such as that to a minimum wage, not being not having their wages withheld or not paid at all their withholds, as well as a refusal to have their passports returned. Many of the Indonesian workers were physically and sexually abused by their employers. For example, some Indonesian workers employed in the plantation and construction sectors had to stay in very poor accommodation while many female workers were victimized into becoming forced prostitutes by their sponsors. In addition, some of the TKI had to face serious problems of protection; many as victims of corrupt practices such as the imposition of illegal levies by Malaysian olice and immigration staffs suffered by the TKI were demands for payments, extortion of money and confiscation of valuables factors contributing to the vulnerability of Indonesian migrant workers such as: a) Low formal education and lack of relevant training; b) Lack of information on how to obtain travel documents, how to apply for jobs or visas and how much to pay in fees; c) Lack of knowledge or understanding of the labour law and immigration regulations of Malaysia as the receiving country; d) Falsifying of ID Cards, data of passports and other travel documents in the recruitment and deployment process by recruiting agents and involving immigration officials.

Keywords: *Indonesian migrant workers, Malaysia*

INTRODUCTION

The economic boom in Malaysia in the 1970s caused a massive demand for migrant workers from neighbouring countries such as Indonesia, the Philippines, and Thailand. According to statistical data from the Malaysian Immigration Department, there were 1,581,755 migrant workers living and working in Malaysia in 2005. Among sending countries, Indonesian migrant workers ranked the highest in number (1,105,083).¹ Besides legal migrant workers, many Indonesian workers in Malaysia are illegal workers who came into the country without proper documentation (undocumented workers).

The migration of Indonesian workers to Malaysia was prompted by the higher profits that Malaysian companies could gain from using Indonesian migrant workers, particularly the illegal ones who were underpaid. In many cases also, illegal migrant

¹ Department of Immigration, Malaysia, 'Statistics on Migrant Workers by Country of Origin'. Data as of 1 May 2004–30 April 2005

workers could be deported easily if no longer needed. Due to their weak bargaining position vis-à-vis their employers their lack of information, as well as the way the legal system in Malaysia operates, both legal and (especially illegal) migrant workers rights are very vulnerable to exploitation by the with many problems of rights and law protection in labour affairs. Many Indonesian Migrant Workers have to endure mistreatment and various abuses both from their employers and recruitment agents. The most common include physical and sexual abuse, payment of less than the minimum wage, withholding and non-payment of wages, and withholding of passports, as well as bad housing conditions.

METHODOLOGY AND SCOPE OF THE STUDY

This study took less than 4 months (17 July–10 November 2005) and was conducted in Malaysia. Since the problems of migrant workers are very complicated, this study has the following limitations:

1. Limitation of time (especially since this issue is very sensitive and complicated in the receiving country; it needs more study and understanding);
2. Method and analysis limitations. Since most of the respondents are Indonesian workers, this study might have a weakness of analysis or bias of the researcher.

This is a qualitative research. Data collection was conducted through interviews, informal discussions and limited participant observations in the research sites, as well as analysis of quantitative and qualitative data.

In this study, most of the respondents were Indonesian workers (TKI) with a few Philipinos and Vietnamese employed in the various economic sectors, such as construction, plantation, manufacturing and retail (supermarkets, stores and cafes), as well as domestic work. The research was conducted at the Indonesian Embassy in Kuala Lumpur among Indonesian female workers who had run away from their employers to avoid various abuses and asked for protection. Most of them were domestic workers with a few working in retail. While in construction, manufacturing and retail the research was conducted in Kampung Segambut Kuala Lumpur and in Kajang City as well as in Kampung Sungai Tangkas in Kajang in the State of Selangor Darul Ehsan.

Research was also conducted in Pahang Darul Makmur, especially in Kampung Sungai Penjuring, Kampung Lurah Bilut, Kampung Lebu and Kampung Baru as well as at the Felde Estate, the biggest plantation company which belongs to the Malaysian Government, in Krau II Bentong, to investigate the labour conditions of plantation workers. All of the interviewed respondents were Indonesian migrant workers from Central Java, East Java, Lombok in West Nusa Tenggara and Riau.

Besides that at the Indonesian Embassy, research was also conducted at the Indonesian Consulates General in Johor Bahru and on Penang Island. In Johor Bahru, the interviews were conducted with domestic workers, manufacturing workers and

retail workers who had run away from their employers to avoid abuse and asked for protection. On Penang Island, interviews were conducted with manufacturing workers who were employed in a rubber products factory while at the Indonesian Consulate General on Penang Island, the interviews were conducted with domestic and construction workers who had run away from their employers. Apart from the above mentioned research sites, the research was also conducted at granite and marble factories to investigate the labour conditions of Indonesian migrant workers in Simpang Pulai in the State of Perak Darul Ridwan.

AIMS OF THE STUDY

The aims of the study were as follows:

- a. To identify various migrant workers rights and law protection problems in Malaysia;
- b. To analyze how the Malaysian Labour Laws are applied to migrant workers in practice;
- c. To analyze the efforts of migrant worker rights and dignity promotion and legal protection conducted by the Indonesian Representatives and Non-government Organizations (NGOs) in Malaysia.

THE PROBLEMS OF RIGHTS PROTECTION

This study found that there is no legal protection program for migrant workers provided by the Malaysian Government. In general, there is no discrimination in law in Malaysia, with in principle, labour laws applicable both to Malaysian and foreign workers (migrant workers). There are many existing acts and regulations in the labour scope which are relevant to migrant worker rights and protection in law. As of the receiving country, the Malaysian Government has no interest in ratifying '*The International Convention on the Protection of The Rights of All Migrant Workers and Members of Their Families 2003*'. This paper will look at common issues of migrant worker rights conditions and the application of labour laws to migrant workers in Malaysia as the receiving country.

We found some data and information from respondents in the field research concerning the legal protection problems of migrant worker rights in Malaysia. Although there is no discrimination in law in Malaysia and in principle, the labour laws are applied both to Malaysian and foreign workers (migrant workers), there are many examples of double standards, discrimination and inconsistency in practice and in policies. In practice, the rights of migrant workers, both legal and illegal, are not fully protected.

a. UNDOCUMENTED MIGRANT WORKERS, CORRUPT PRACTICES AND ABUSES OF POWER

Sometimes, the Royal Malaysian Police conduct raids on undocumented migrant workers and arrest and whip them, before deporting them to their home countries. At the same time, while many Malaysian Employers harbour and employ illegal migrant workers, most of them are untouchable. We found that many employers preferred to employ undocumented migrant workers in their plantations in Bentong and Kuala Lipis in the State of Pahang Darul Makmur. The same practices occurred in Kuala Lumpur where many employers employed illegal migrant workers in the construction sectors.

There are some reasons for why employers prefer to recruit and employ them. The first is that the employers do not need to spend money to apply for the required legal work permits and health insurance for their employees. Although payment for work permits as well as the levies have to be reimbursed by employees over several months, in many cases, if employees run away before the charges are paid off the employer will lose a great deal of money. In contrast, a job is an opportunity for many illegal migrant workers who want to realize their dreams. The second reason is that time is money for employers. Employers have to wait for more than one month to get foreign workers if they follow the Application Procedures for Recruitment of Foreign Workers of the Home Affairs Ministry.

In Kuala Lumpur and Kajang in the State of Selangor, Simpang Pulai in the State of Perak and Alor Setar as well as in Bentong in the State of Pahang, most of the respondents claimed that Malaysian policemen usually demanded some collateral money from migrant workers if they failed to show a legal travel document. Moreover, the policemen confiscate all valuable goods such as cell phones, watches and gold jewelry brought by migrant workers instead of money in cash. Collecting the money is usually by intimidation: *'Give us some money or you will be arrested, detained and finally deported to your home country!'*

Money extortion from illegal migrant workers is also done by Recruitment Agencies in Malaysia and Immigration officials at entry ports. Illegal migrant workers who return to their countries of origin, usually contact the recruitment agencies which provide services to process immigration documentation for leaving Malaysia. A person must pay RM 1,000 for the service. It is presumed that there is syndication between agencies and Immigration in issuing exit permits. After obtaining an exit permit (known as *paspor tendang*) from the agency, illegal migrant workers must spend extra money when they go through the immigration check area at air or seaports. Both immigration officials in Malaysia and Indonesia ask for money from each migrant worker convicted of failing to show original travel documents. They can pass immigration checkpoints if they pay RM 1,000 or more but they will be arrested and detained at an immigration depot if they refuse to pay.

According to the data from the Indonesian Embassy in Kuala Lumpur, It is estimated that there are approximately 1.5 million illegal Indonesian workers (TKI) who work and live in Malaysia.² In the field, we found three categories of illegal or undocumented migrant workers as follows:

1. *Non Work Permit migrant workers*, who enter Malaysia on tourist visas or social visit passes and keep living and working in the country although their visas have expired. A Foreign worker is allowed to be employed in Malaysia with a social visit pass;
2. *Escapee migrant workers*, who run away from their employers and are then employed by new employers. This is due to very bad working conditions, such as unpaid wages and very low wage rates, very long working hours, physical or sexual abuse or rape. In September 2005, there were 190 Indonesian Female Workers (TKW) who stayed in the shelter of the Indonesian Embassy to await the legal process for their repatriation. Most of them were domestic workers who escaped from their employers to seek help. All of them suffered very bad treatment from their employers such as unpaid wages, intimidation, physical abuse, sexual abuse and rape up to pregnancy and giving birth to a baby. Some of them were victims of human trafficking; sold by their recruiters into forced prostitution in Malaysia. When migrant workers run away, automatically, they will become undocumented or illegal. This is due to their original passport being held by their employers. In addition, according to regulations, foreign workers must work for the employers whose names are shown on their work permits (visas) and are not permitted to move to other employers until the termination of their employment contracts;
3. *Over-Stay migrant workers*, who continue to work and stay in Malaysia although their employment contracts as well as temporary employment visas have expired. Many employers like to employ undocumented migrant workers for reasons of profit while many migrant workers want to get jobs quickly and easily without going home to their countries of origin. A number of Indonesian migrant workers said that they had to pay at least Rp.9 million (US \$ 900.00) or more, to the recruitment agencies in Indonesia and had to wait for several months before departure for Malaysia.

b. THREE D JOBS AND OCCUPATIONAL HEALTH AND SAFETY

At present there are more than two million migrant workers in Malaysia. Although the formal data issued by the Malaysian Department of Immigration only records 1,581,755 migrant workers who mostly come from Indonesia (1,105,083)³

² <http://www.kbrikl.org/tki/html>. Kuala Lumpur, 5 August 2005

³ Department of Immigration, Malaysia, loc. cit.

but it is estimated that there are more than 1.5 million illegal migrant workers in the country. Most of them are engaged in the 3-D jobs (*Dirty, Demanding and Dangerous*) shunned by Malaysians. The Malaysian Government has recognized that its efforts to generate and energize economic growth can only be achieved through a hardworking labour force that is cheap and controlled. This has been a proven factor during the last 15 years where over three million migrant workers have contributed immensely to the economic boom enjoyed by Malaysians. The national pride in the Petronas Twin Towers as the tallest building in the world at that time and the highly modernized Kuala Lumpur International Airport, as well as the Putrajaya Federal Government Administrative Centre were all constructed by migrant workers. Ironically, this included a significant number, more than a million, of undocumented migrant workers.

The Malaysian Parliament passed an Occupational Health and Safety Act in 1994. Based on the Act, some Regulations, Orders and Guidelines in connection with occupational health and safety matters were issued and applied but the health and safety of migrant workers continue to be serious concerns. Many migrant workers are employed in plantation and construction sectors where the basic safety procedures are often ignored.

It has been found that many migrant workers are employed in plantations without sufficient health and safety equipment in Bentong in the State of Pahang. They work as sprayers of pesticides without masks or safety glasses. In the Krau II Felda Plantation Sdn. Bhd., no migrant workers working as cutters of palm oil fruit stems with a high risk of a falling down of the heavy cut stems, wear helmets. Moreover, in Kampung Lebu, those who work in padi edible mushroom gardens, where the working place is very damp, wear safety masks. When an employee asked for a mask, his employer laughed at him. None of the employees in the edible mushroom garden have health insurance. Unhealthy working conditions are also experienced by many migrant workers in the rubber plantations in Kampung Sungai Penjuring and Kampung Lurah Bilut. The employees, employed as rubber tappers, live in dirty non-permanent shelters (*kongsi*) without any electricity or clean water. They bathe and wash their clothes in the river and use the same water for drinking and cooking. Some of them are illegal migrant workers who have no health insurance.

Construction work, however, may be the most hazardous job migrants can do in Malaysia. As contractors employing illegal migrants rarely require their workers to wear hardhats or safety goggles and scaffolding often has no netting. (The official death toll from construction site accidents in Peninsular Malaysia between January and September 1995 was 26, but the real number was almost certainly far higher, as both employers and contractors, who hire illegal workers, try to conceal worksite accidents so they will not be charged with violations of Malaysian labour laws).

Referring to the data issued by the Department of Occupational Health and Safety, the Human Resources Ministry, Malaysia, in 2004, the death toll in Malaysia caused by industrial accidents between 1999 - 2004 was 869 people while from all

types of accidents it was 497,172. Between 2001 and 2004, permanent physical defects resulting from industrial accidents numbered 614.⁴

c. UNPAID WAGES

Wages are a most basic worker right. Taking home their wages after the completion of a job is the hope of all workers. Ironically, they must fight for this right in Malaysia, a country which has good and comprehensive labour laws. Moreover, the Malaysian Government has already enacted the Wages Council Act 1947 (Act 195). At the present time, The National Labour Advisory Council (NLAC) has agreed on the need to draw up a set of Guidelines on a Wage Reform System which would be in the immediate and long term interests of employees in the unionized and non-unionized sectors, employers and the nation. Such guidelines would facilitate it for employers and employees to formulate the types of reform systems that would best suit the interests and environments of their companies.

Many migrant workers employed in the plantation sector in Kampung Sungai Penjuring, Kuala Lipis, and the Krau II Felda Plantation Sdn. Bhd. in Bentong, complained that their wages had not yet been paid by their employers. The amount of unpaid wages was around RM 300 to RM 1.000 in Krau II and RM 2.500 in Kampung Sungai Penjuring.

In Kuala Lumpur, we also found that many migrant workers employed in the construction sectors had not received their wages for 5 months. In fact, many Indonesian domestic workers (TKW) had not received their wages for 12 months or more, since when they had escaped from employer abuse. According to the statistical data issued by the Indonesian Embassy in Kuala Lumpur, over the 3 years (January 2003 – June 2005) there were 1,213 Indonesian workers (TKI) who reported that their wages had not been paid by their employers.

d. UNFAIR EMPLOYMENT CONTRACTS AND THEIR PRACTICES

Both in the plantation and construction sectors, most of the big projects contain complicated jobs and responsibilities with job tender systems. Under these systems, the employer has no direct industrial relations with his/her employees (migrant contract workers). Conversely, contractors or sub-contractors who win job tenders from the employers have direct relations with the workers. The contractors or sub-contractors (known as *tauke*) are the real employers of migrant workers and are responsible for their wages, working conditions, occupational health and safety and other matters concerned with the work place. Many of them are illegal contractors without a license. In fact, some individuals can receive a closed tender and hire 5 to 12 migrant workers.

⁴ <http://www.ksm.gov/oshdata>. Kuala Lumpur 5 August 2005

Hierarchy of Contract Employment (Plantation & Construction Sectors)

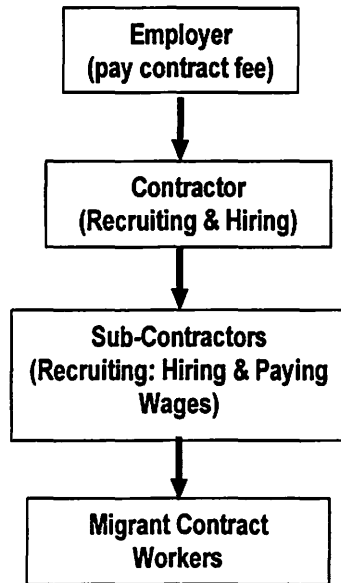


Figure 1. Flow Chart of Hierarchy of Migrant Contract Labour in the Plantation and Construction sectors

Many Indonesian migrant workers were employed with no written employment contracts. However, this is allowed under the Employment Act 1955.⁵

The Indonesian migrant workers employed in the plantation and construction sectors in Malaysia faced particular exploitation because of the system of contract labour, whereby an employer hires a control actor and devolves all responsibility onto him (we found no women contractors) for recruiting and paying workers. The employer is often uninterested in how much of the money he/she gives the contractor actually reaches those working under him and it is the contractor, not the employer, who is legally responsible for the workers under Malaysian law. Workers receive few benefits and work below the conditions of international labour standards. Many of them are also illegal migrants and without valid travel documents. They depend on the mercy of contractors who can turn them in to the police to be arrested and

⁵ Legal Research Board.2005. '*Employment Act 1955 (Act 265)and Regulation and Order*', International Law Book Series, Kuala Lumpur, p. 10.

deported to their home countries if they do not accept the wages and working conditions offered.

In Kuala Lipis and Bentong in the State of Pahang Darul Makmur, many Indonesian migrant workers (TKI) ran away from their employers due to very bad working conditions and underpayment. Some of those who failed to escape were bound and received physical abuse by the employers' bodyguards. Employment contracts in practice are like a modern bondage. Hanif and Luminto, Indonesian migrant workers who succeeded in escaping from their employer, said that they had only received RM 20.00 a day. This started as soon as they began working for this employer. When they asked for their five - month wages which had been suspended and unpaid, they were beaten by three bodyguards under the employer's strict orders. Finally, Hanif and Luminto escaped without receiving their five - month wages of RM 3,000.

Ahmad and his TKI colleagues, mostly from Lombok Island, West Nusa Tenggara, who worked as oil palm fruit stem cutters in Kampung Sungai Penjuring, Bentong in Pahang, complained that their working conditions were very hard and strict. Their monthly earnings depended on how many tons they cut down, collected and dropped off at the factory in a month. Their average monthly earning was RM 470.00. If they did something wrong, such as cutting down unripe oil palm fruit stems, they had to pay a fine of RM 10.00 for each stem but the fine could be increased up to RM 50.00 if the unripe oil palm fruit stems had been dropped off at the factory.

In the Krau II Felda (Federal Land Development Authority) Plantations Sdn. Bhd., all original Indonesian workers' passports were withheld by Felda officials. All workers only receive a photocopy of them. This means that worker mobility is controlled by his/her employer. Under these conditions, the workers are very afraid to go away on holiday or even, in case of emergency, to see a doctor. In public places, migrant workers are very afraid on seeing a policeman, although in fact, they have proper travel documents. This is due to Malaysian policemen's usually demanding some money from Indonesian migrant workers. The similarity of language between Bahasa Indonesia and Bahasa Malaysia allows for smooth money extortion. Without any language barriers, the Malaysian policemen can easily demand money and confiscate other valuables such as cell phones or gold jewelry from their OLD KIN BROTHERS.

Most employers who hire migrant workers, withhold the workers' original passports until their employment contracts end or at least the levy reimbursements have been paid off. Only a few employers let the migrant workers hold on to their own original passports, with the employers usually only giving the migrant workers a photocopy of their passports, the Foreign Workers' Identity Cards (Kad Pengenalan Pekerja) issued by the Immigration Office and Insurance Cards if they are insured. In fact, most Indonesian domestic workers (TKW), only touch their original passports when they are requested by the recruitment agencies to sign it. After this, the passports

are kept by the recruitment agent and finally submitted to the employer by whom the TKW is employed.

Both in the plantation and the construction sectors, the most common complaints from migrant workers are being underpaid, heavy working conditions and instruction to work on public holidays with no penalty payments. The labour conditions in the manufacturing sector are no better than in the above-mentioned sectors. On 26 September 2005, Priyono and his colleagues, 12 people in all, came to the Labour Department at the Indonesian Embassy in Kuala Lumpur to make a report. They complained that they were underpaid. Their wage was only RM 18.00 per day plus RM 1.00 daily allowance and they lived in a very bad container house. They worked as granite cutters at a granite and marble tile factory in Kampung Taman Muda, District Simpang Pulai in the State of Perak Darul Ridwan. Their recruitment agencies in Jakarta promised that they would be employed at a plastic goods factory but they were shocked to find this was not to be so when they read and signed the employment contracts only one hour before their departure for Malaysia. If they cancelled the contracts, they would lose Rp 7 million (US \$ 700,00) which they had paid to the recruitment agencies for travel documents, work permits, medical clearances and transportation fees. Most of them had borrowed the money from their families or sold their valuables such as gold jewelry or motorcycles.

The four most common complaints from Indonesian female workers are not being allowed to conduct the five daily prayers, withholding of wages, unreasonable working conditions and having to handle and eat pork when preparing meals for Chinese employers. Most respondents who worked as domestic workers claimed that they were not allowed to call or contact anyone and their original passports were kept by their employers. Such phrases, however, give little sense of what these women actually experience. All the above-mentioned complaints directly contravene the employment contracts.

When a migrant worker seeks redress for unpaid wages or raises other forms of labour disputes or abuses, the employer often retaliates by canceling the work permit. As a result the migrant worker loses his or her status in the country and his or her right to stay. Without a visa, the worker is unable to continue his or her case through the courts. To enable him or her to pursue his or her case, the Immigration Department only gives the worker a 3 month special pass at RM 100.00 per month. The worker is not allowed to work under this pass.

e. INDONESIAN DOMESTIC WORKERS AND HUMAN TRAFFICKING ISSUES

If the plantation and construction sectors pose risks for migrants, one would have to think that domestic migrant workers are very vulnerable to abuse. The fact that they live in their employers' homes, means that they are separated from other workers and have neither witnesses nor protection from others if they face inhumane working conditions and physical or sexual assaults. Indonesian women workers

(TKW) mostly work as domestic workers in Malaysia, but the exact number is still unknown if we include both legal and illegal female workers. There seems to be an endless demand for their services. Many of these women are treated well and paid regularly but abuse is both common and frustratingly difficult to prosecute. According to the data issued by the Malaysian Department of Immigration, the number of Indonesian domestic workers in Malaysia was nearly 233,285 while foreign domestic workers from other neighbouring countries such as the Philippines, Cambodia, Ceylon, and Thailand as well as India totaled 9,390 workers.⁶

The domestic worker is nowhere recognized as a worker. In the Malaysian Employment Act 1955, the worker is defined as a servant, but not as a worker. The work is undefined since there is no clear job description. It is even seen as unproductive labour as it does not produce surplus cash or profit and the protection given is unclear.

From the information from respondents in Kuala Lumpur, Johor Bahru and Penang, many Indonesian domestic workers (TKW) received some kind of abuse in their work place from their employers or recruitment agents. The most common abuses are being unpaid, wages being withheld, heavy workloads and very long hours of work, physical and psychological abuse, sexual abuse, withholding and falsifying of passports, forced confinement and restricted communication, lack of access to health

Table 1. Types Of Abuses And Mistreatment Of Indonesian Domestic Workers Inflicted By Employers And Recruitment Agents

No.	Employer	Recruitment Agent
1.	Sexual Harassment and Rape	Falsifying Data of Passports
2.	Physical Abuse	Human Trafficking
3.	Work Overload	Forced Signing of Contracts
4.	Withholding of Passports and Travel Documents	Withholding of Passports and Travel Documents
5.	Forced Confinement	Forced Confinement
6.	Restricted Communication	Restricted Communication
7.	No Freedom to Practice Their Religion (No Praying; No. Fasting and Forced Eating of Pork)	No Freedom to Practice Their Religion (No Praying)
8.	Lack of Access to Health Services (No Health Insurance)	Lack of Access to Health Services (No Health Insurance)
9.	Inadequate Food	-
10.	Multiple-Hiring Out	-
11.	Discrimination in Salary Rates	-
13.	No Off Day Once a Week	-
14.	Unpaid and Withheld Wages	-
15.	Long Hours of Work (more than 18 hours)	-

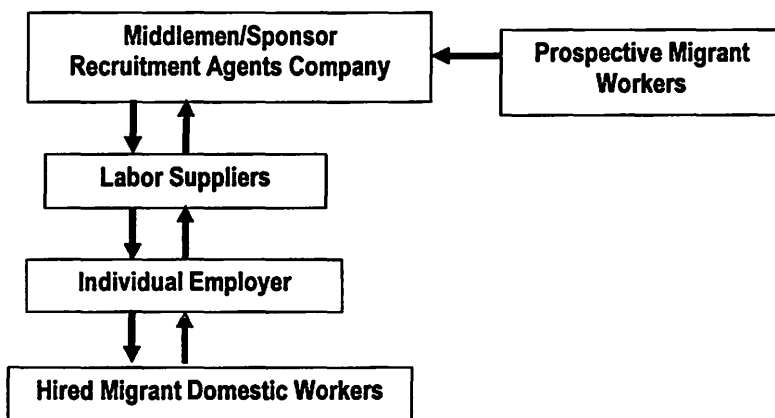
⁶ Legal Research Board.2005. *'Employment Act 1955 (Act 265)and Regulation and Order'*, International Law Book Series, Kuala Lumpur, p. 10.

services, discrimination in salary rates among migrant workers from other sending countries, multiple hire by up to three employers, no off days, no freedom to practice their religion (no praying and no fasting as well as handling and forced eating of pork).

The following Table shows the types of abuses and mistreatment inflicted by employers and recruitment agents

Most of the respondents said that they were recruited and sent to Malaysia by recruitment agencies in Indonesia without any cash payment but they had to reimburse all costs borne by the recruitment agencies with their first five-month salaries. Each prospective employer who takes a Foreign Domestic Worker (FDW) must pay around RM 5,000.00 – RM 6,000.00 to a Malaysian Supplier Agency. The Malaysian Supplier Agency, in turn, has to pay a recruitment fee to the Indonesian Recruitment agencies which has borne the recruitment costs. It means that *debt bondage* is applied on Indonesian Domestic Workers who are recruited by the Indonesian Recruitment Agencies. These recruitment and employment practices in domestic service can be equated to *modern slavery*.

Human Trafficking of Indonesian young women workers recruited by illegal agencies is a common issue today. Between August and the end of September 2005, there were more than 18 young Indonesian girls employed as commercial forced prostitutes who ran away from their work places. In the last three years, there were more than 6,425 young Indonesian females who had been victims of human trafficking. All trafficking victims were sold to Malaysian syndicates (known as *Bapa Ayam*) by Indonesian Recruitment Agencies and employed as commercial forced sex workers in Kuala Lumpur. The flow chart of the Migrant Domestic Workers recruitment process from sending country (Indonesia) to receiving country (Malaysia) is shown in Figure 2.



MDW: Migrant Domestic Workers Hired By Individual Employer

Figure 2. Flow Chart of Recruitment of Indonesian Domestic Workers

f. LIMITATION OF TRADE UNION MEMBERSHIP

Administrative practices and unscrupulous employers often discourage migrant workers from joining trade unions. Many Malaysian employers, individually, have intimidated migrant workers in order for them to focus on their jobs only. Sometimes, the employer even designs the employment contract with terms and conditions under which the migrant worker has no chance to join a union. Withholding of migrant workers' original passports is a common practice of most employers to restrict workers' physical mobility and automatically their rights of association.

THE ROLE OF NGOS AND INDONESIAN REPRESENTATIVES

There are two NGOs that are very concerned to promote the migrant workers' rights and dignity, namely the MTUC (Malaysian Trade Union Congress) and Tenaganita. The MTUC's commitment to promoting migrant workers' rights was shown in their press release in response to new foreign worker levy rates on 31 July 2005:

... We urge the Government to impose a minimum wage rate for all sectors. Applicable to all employees including foreign workers. The Immigration Department announcement on new levy rates on Friday, surprisingly says nothing about the countless complaints published in recent weeks, regarding the non-payment of salaries, arbitrary reduction of agreed wage rates, beatings, withholding of travel documents which resulted in the imprisonment of legal workers....

The MTUC recognizes the positive contributions of migrant workers to the development of the country and its economy and the principle that all workers should be treated with fairness, dignity and equality without distinction whether they are migrants or local workers. The commitment of the NGO was reflected in the Resolution of the MTUC Conference on Migrant Workers

We recognize that migrant workers are workers with equal rights and dignity. These rights must be protected in law and policies. Such laws and policies must be effectively and justly enforced by the various agencies. Key principles for migration policy should include non-discrimination and equal treatment of workers –nationals and migrants alike, respect for basic human rights and labour rights of migrant workers, protection of migrant workers' human rights in both regular and in irregular situations and regular consultations among government, employers, workers, NGOs and other representatives of civil society.⁷

⁷ Resolution of the MTUC Conference on Migrant Workers, 18-19 April 2005 Petaling Jaya, Selangor, Malaysia

The MTUC also encourages all migrant workers to join a trade union in order to get protection of their rights as legal workers.

Tenaganita is another Malaysian NGO which has high commitment to promote the migrant workers' rights and dignity. Besides conducting participatory action research to find out what were the factors that brought about an increase in the vulnerability of migrant workers in Malaysia to being infected with the HIV virus, the organization also has established a migrant desk in 1993 and developed various programs to address the problems, issues and concerns of migrant workers.

As for the biggest sending country, Indonesian Representatives have some programs to protect Indonesian migrant workers in Malaysia. The legal protection programs provided consist of: a) Shelter services for redress for Indonesian Migrant Workers (TKI); b) Legal assistance for TKI who have cases of labour disputes or abuses; c) Negotiation with employers regarding unpaid and withheld TKI wages; d) Negotiation of Levy payment that should be borne by employers and TKIs; e) Repatriation of TKIs to their home country.

All Indonesian Representative Offices in Kuala Lumpur, Johor Bahru and Penang provide a shelter for Indonesian migrant workers who run away to seek redress. The shelter at the Indonesian Embassy has capacity for seventy people only but sometimes this is overstretched. In November 2004, the shelter was occupied by 260 people and in October 2005 it was occupied by 190 Indonesian workers who came to seek redress. The overstretched capacity of the shelter and lack of food gave rise to serious problems of health for the occupants such as stress and sex deviation. The Indonesian workers occupying the shelter have to wait until the legal processes in the Malaysian Court or negotiations with former employers are completed. This usually takes a long time so that they have to stay at the shelter for some time before repatriation to the home country. The shelter conditions are better at the Indonesian Consulates General in Johor Bahru and Penang due to the process of checking by the Malaysian Immigration Department being smooth enough.

The Labour Departments of the Indonesian Embassy in Kuala Lumpur as well as of the Indonesian Consulates General in Johor Bahru and Penang are tasked with giving legal assistance to migrant workers who come seeking redress. The most important program conducted by the Labour Department of the Indonesian Consulate General in Johor Bahru is negotiation to make a deal for TKI wage rates and levy payments to be borne both by the TKI and the employer. The Consulate General also conducted close collaboration with local Police to negotiate with employers who withheld TKI wages.

IMPLICATIONS AND RECOMMENDATIONS

1. Migrant workers are very vulnerable to exploitation by their employers, recruitment agents and government officials (policemen and immigration officials)

both in sending countries and receiving countries. Factors that contribute to the exploitation are as follows:

- a) Low levels of achievement in formal education and lack of relevant training;
 - b) Lack of information on how to get travel documents, how to apply for jobs and visas and how much to pay in fees;
 - c) Lack of knowledge and understanding of labour laws and immigration regulations in the receiving country;
 - d) Falsifying of ID Cards, data of passports and other travel documents in the recruitment and deployment processes by recruitment agents involving immigration officials.
2. Some effort must be made by the Indonesian Government, as of the sending country, to eliminate corrupt practices and abuses of power and to promote migrant worker rights and dignity. It is very important to arrange and review the Memorandum of Understanding (MOU) between the sending country and the receiving country based on the highest appreciation of human rights and dignity and mutual benefits. Professional management must be applied by the related government agencies in the recruitment process, the deployment process and returning process by using *One Gate and One Roof System*. Governments and NGOs should take the lead to strengthen political and social control of government agencies performance in connection with labour migration.
 3. Encourage the Malaysian Government as the receiving country to ratify the International Convention on ' *The Protection of The Rights of All Migrant Workers and Members of Their Families 2003* ' since the Government recognizes the positive contributions of migrant workers in the development of the country and its economy.

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