

Chapter 8

Living on the Borders: Social Protection for Indonesian Migrant Workers during COVID-19 Pandemic

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A. COVID-19 and Indonesian Migrant Workers

COVID-19 has challenged Indonesia's social protection mechanism for migrant workers overseas, whereby, left unaddressed, it would undermine its commitment to the international and regional frameworks on migration, subvert the legal bases it has established, and exacerbate the migrant workers' conditions. The living and working conditions of migrant workers during the pandemic have been further aggravated because many employers did not pay for the work that migrant workers had done and terminated the contract without compensation (HRWG, 2021c). In addition, many have had to stay without a job for the reasons mentioned above, as the authorities issued travel restrictions and discriminatory policies against migrant

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workers, requiring them to find exploitative work without proper documents.

COVID-19 also exposes different treatments toward migrant workers regarding health protection, between essential and non-essential workers who work in dangerous, dirty, and demanding jobs. Such a dichotomy, in effect, makes non-essential migrant workers disproportionately affected by the pandemic due to poor working conditions and inequitable protection (Reid et al., 2021). Consequently, they are deported from the country where they work due to lack of income and contract termination. In addition, many have had to stay without a job because the authorities issued travel restrictions, requiring them to find exploitative works without proper documents. Liem et al. (2020) argue that migrant workers, who have limited legal support in their host countries, could negatively affect their physical, financial, psychological, and social well-being.

Preexisting migration policies that already undermined migrant workers' rights further justify anti-immigration regimes amid the pandemic. Travel restrictions and bans for some countries with high domestic cases and a low vaccination rate have disrupted transportation networks and labor markets (Moroz et al., 2020). Besides, travel restrictions may lead to a labor shortage and inflict anti-immigration policies. Therefore, these conditions, coupled with marginalization, have resulted in insecurity, further implicating adverse socioeconomic impacts of COVID-19 on migrant workers in different stages of the migration cycle.

The detrimental impacts of the pandemic on Indonesian migrant workers then lead to a question: have Indonesian migrant workers received adequate social, economic, and health protection before, during, and after they migrated? The protection of migrant workers during the pandemic has attracted a plethora of studies. These studies focus on different subjects, levels, and units of analysis. Samad et al. (2021), for example, use normative qualitative research, building on several laws underpinning the protection of migrant workers in three stages: before, during, and after placement. Similarly, Witono (2021)

also analyzes the policy of migrant worker protection in the migration cycle. The government has launched a series of packages to relieve the adverse impacts affecting the working class and aspirant migrant workers through its available mechanisms. Besides, social movement, especially among migrant workers and non-state actors who engage in transnational networks, has yet to be analyzed and is overlooked.

However, the focus of this literature addresses state-centric analyses, which have provided insights into the role of regulatory actors in protecting migrant workers during the pandemic. The implication of this scholarship, as suggested above, is that migrant workers are situated as if they are helpless. These structural factors must also be revisited by considering the bottom-up approach as non-state actors are involved in the COVID-19 responses. A statist approach and securitizing migrant protection responses will only lead to deliberately disregarding the interest of migrant workers alliance and other humanitarian actors in the policymaking.

Bal and Gerard (2018) called for a new level of analysis by putting forward a compelling argument using social class and class-based analysis that theorized institutionalist and right-based approaches to explaining the underlying problem of migrant workers and that policymakers' 'migration paradigm' is flawed. However, this chapter is not interested in explaining the social class conflict, which may or may not describe the root problem migrant workers face during the COVID-19 pandemic. That those policymakers adopting migration as a development and livelihood strategy, Bal and Gerard (2018) argue, is based on 'free-market principles, public austerity and free trade' at the expense of the well-being of migrant workers is, however, not the focus of this chapter. Instead, this chapter focuses on the social movement analysis, whose function is to pressure the state to commit to the migrant worker protections while ratifying international and regional frameworks, instruments, and standards in the wake of better institutionalizing migrant workers' protection during the pandemic.

Against this backdrop, this chapter fills in the gap in Indonesian migrant protection scholarship by identifying the situations faced by

Indonesian migrant workers during the pandemic and unpacking the institutional arrangement of labor migration, including international and regional frameworks supporting migration governance. This chapter will also focus on the social movement and how the state—defined as a social relation that presides over a competing interest—can better institutionalize migrant workers’ protection during and after the pandemic through a rights-based approach.

B. Social Movement and Migration

The salience of highly politicized migration issues, especially in the host countries, has often sparked lengthy political debates. In the last couple of decades, the rise of radical right-wing populist parties bringing anti-immigrant agenda due to either social integration or economic issues has presided over social movements which promote inclusion. However, migrants are often absent from the scene. Instead, it is the institutional actors who dominate it. Although the world has seen an increase in the mobilization of social movements about migration, including in Indonesia—and both major destination countries and sending countries—factors that explain why such mobilizations occurred need to be closely examined. Classical social movement theory, through its class-based approach, especially in this context where migrant workers can be categorized into one, might explain why such a movement exists. On the other hand, collective action, often led by NGOs that may or may not necessarily share the same class, is also gaining importance.

Social movement theory demonstrates that the three variables include the extent to which the internal organization of movement can grow, how social and political actors frame migration issues, and the political opportunities that allow such collective challenges (Eggert & Giugni, 2015). The three factors, therefore, lay the foundation for migration issues that could be affected, although not directly dependent. Eggert and Giugni (2015) assert that the organization of the movement, which refers to the first factor, affects how migration issues can be directly applied to the policy context. Secondly, how

these movements present migration issues in the public domain could also determine whether or not the objective is achieved. Third, the political and institutional climate is perhaps the most decisive factor in how the state could generate an inclusive policy product for migrant workers.

However, it is also important to note that social movements represent non-state actors who, by definition, compete over interests to achieve their end goal, i.e., a policy change that is migrant inclusive. However, other actors are, including but are not limited to extreme-right groups, anti-racist and pro-migrant, and migrants themselves (Eggert & Giugni, 2015). Eggert and Giugni (2015) show that there is also a divisive view between right- and left-wing movements on migration issues. While the former tends to take in the form of political parties and electoral channels, the latter are more vocal through various channels and social movements, both on the field and in the electoral process.

As such, the intensification of social movement organization, coupled with the awareness building of migrants' unionization and a growing transnational network among migrants, often backed up by research institutes in favor of migrants, are gaining momentum to compete for their interest and bring the agenda nationally, bilaterally, and multilaterally. Further studies indicate that using migrant precarity as a lens to analyze the social mobilization for migrants led by civil society has helped identify the cause of such collective actions (Piper et al., 2017). This is due to the experience of migrant workers who are working in poor and unregulated work with insecure legal and residential status. Piper et al. (2017) put forward the concept of precarity to explain why inequality and injustice have become the driving force of many collective actions. In the next section, this chapter will explore Indonesian migrant workers' situation amid the pandemic.

C. Indonesian Migrant Workers and COVID-19

The National Board for the Protection of Indonesia Migrant Workers (*Badan Perlindungan Pekerja Migran Indonesia/BP2MI*) in 2020

reported that 113,173 Indonesian migrant workers comprise 32.5% of formal and 67.5% of informal workers (BP2MI, 2021a). BP2MIa alone shows that women migrant workers reached 90,500 individuals or almost 80%. Most Indonesian migrant workers travel to Hong Kong, Taiwan, Malaysia, Singapore, Brunei, and Saudi Arabia. The structure of migrant workers consists mainly of domestic workers, caregivers, general workers, plantation workers, and operators. However, migrant workers who travel abroad in 2020 decreased vis-à-vis 2018 and 2019, reaching 283 and 276 thousand, respectively. Nevertheless, it is essential to note that many undocumented migrant workers irregularly travel to other countries without proper documents. Data reported by civil society organizations (CSOs), on the other hand, far exceed that of the government. The lack of aggregate data shows discrepancies and flaws in data processing (Muhammad & Nour, 2021).

During the pandemic, it was recorded that more than 120,000 migrant workers returned to Indonesia after losing employment overseas (IOM, 2021c). The contribution of migrant workers, through remittances, has been significant to development back home (IOM, 2021b). However, COVID-19 has negatively affected these remittances, which dropped significantly. Remittances sent by Indonesian migrant workers to home in 2018–19 account for 1.05 and 1.02% of total Global Domestic Product, amounting to 10,000–12,000 million USD (IOM, 2021c). However, since the pandemic started, the percentage dropped below 0.9%. IOM's finding suggests that the decline in remittances is caused primarily by a weakened exchange rate and foreign worker bans in countries migrant workers travel to.

In December 2021, 11 migrant workers died in a shipwreck off the coast of Johor Baru, Malaysia, while 27 people were still missing. This accident is only a mere example of how undocumented labor migration, which illegal brokers facilitate, could have destroyed migrant workers' lives and their families. Many migrant workers, especially those in the fishing sector, engage in difficult, dirty, and dangerous jobs with poor working conditions and are prone to exploitation (Muhammad & Nour, 2021). However, it is essential to

note that undocumented migrants who travel overseas do not occur in a vacuum. The lack of domestic labor markets and the mismatch between skills and opportunities have contributed to labor migration. On the other hand, financial debts and lucrative careers abroad have also driven aspirant migrant workers to find jobs overseas.

Although Deputy Insp. Gen. Achmad Kartiko of BP2MI already recognized that crimes against Indonesian migrant workers are extraordinary crimes (Fadli, 2021); difficult situations—financial insecurity and debts back home, often arising from loss of job due to the pandemic—still forced aspirant migrant workers to find work abroad in the hope of getting a better income. However, because getting a job overseas may generate higher income, they encounter irresponsible and illegal brokers who lure false promises that working abroad could solve their financial problems.

A study conducted by Human Rights Working Group (HRWG), a key NGO in the region working on migration issues, shows that the impacts of COVID-19 on Indonesian migrant workers have been detrimental. For example, 95% of Indonesian migrant workers in Hong Kong and Singapore were experiencing increased workload resulting in exploitation without appropriate pay rise (HRWG, 2021c). This comprehensive study, focusing on major destination countries rather than the sending country, has provided an initial insight into what and how COVID-19 has impacted migrant workers. Furthermore, analyzing the preexisting migration policies and COVID-19-specific measures targeting migrant workers reveals how migrant workers in several countries in South and East Asia have been exploited.

Migrant workers are also excluded from economic stimulus packages, such as wage subsidies, unemployment benefits, and other social protection measures—most of which are only enjoyed by citizens and long-term residents. Most migrant workers are not eligible to receive any financial support and economic stimulus package because there are strict requirements as to who can apply for such schemes (HRWG, 2021c). Typically, aside from the national citizens, it is those who have gained permanent and long-term residency permits that are eligible.

Meanwhile, migrant workers are excluded because migrant workers are situated in precarious working conditions—i.e., unregulated and exploitative working environments. Therefore, migration and legal status—including visa and, in some cases, the residency permit—had affected migrant workers who found their hands tied in a protracted precarity.

Some discriminatory instances demonstrated by major destination countries, whose economy is structurally dependent on migrant workers, include one-sided contract termination because the government forced employers to prohibit hiring migrant workers to reduce dependence on them. This leads to unemployment of migrants and labor shortages. It poses another risk to migrant workers who might have lost their jobs and increases the possibility of detention.

As Indonesian migrant workers have been disproportionately affected by the pandemic and the socioeconomic complications it has brought, the protracted precarity which exhibits forced labor and modern slavery, in this sense, needs state intervention for two reasons. However, the deepening neoliberal economy searching for cheap labor, culminated by COVID-19, has also resulted in unethical recruitment and indecent work, against which social movements have repeatedly advocated. Therefore, to mitigate those predicaments, the state is first encouraged to adopt international labor and migration standards that, in turn, can supervise the practices undermining migrant workers' rights. Second, because of such pervasive malpractices, it is necessary to enforce legal standards based on the available mechanisms.

D. Legal and Institutional Arrangement for Labor Migration Governance

Labor migration governance has been mainly regulated through neoliberal logic by which the interaction between state and market is designed so that the former could provide training for and send migrant workers to the latter. In the recruitment process, states are incentivized to prepare and guarantee the migration workers' rights for the private sectors—such as the recruitment agencies and brokers

(Karim, 2017). In this sense, Bal and Gerard (2018) also show how the livelihood and well-being of migrant workers are based on free markets and public austerity. This perspective, however, confoundedly perceives migrant workers as mere commodities ready to be sent to other countries.

Until the 1960s, there was no formal institutional arrangement for labor migration in Indonesia, despite Indonesia's deep-rooted history of labor migration during the colonial period in which the Dutch brought about 32,986 individuals between 1890 and 1939 (BP2MI, 2021c). It was only until 1970 that the Soeharto's New Order regime issued Government Regulation 4/1970, which laid out the schemes of Inter-regional Works (*Antarkerja Antardaerah/AKAD*) and Inter-national Works (*Antarkerja Antarnegara/ AKAN*). Although the regulation during Soeharto's era centrally administered migrant workers' affairs, Karim (2017) argues that the government had a more significant role in the recruitment process in the post-authoritarian period—while activists blamed the private sectors.

The fundamental change to the protection of migrant workers resulted from multiple demands by CSOs after democratization, which led to the enactment of Migration Workers Protection Law 39/2004, legislated under President Megawati (2002–2004), during which many Indonesian migrant workers were deported. This law was the first national legislation to provide a legal basis for migrant worker protection, which previously only existed under governmental and ministerial regulations. This law also allowed the government to intervene in the recruitment process, which the previous administration overlooked and often violated.

This law also led to the establishment of the National Agency for the Placement and Protection of Indonesia Workforces (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia/ BNP2TKI*), which was directly responsible to the president through Presidential Regulation No 81/2006 under Yudhoyono's administration. This agency was the institutionalization of an ad hoc body established by Habibie during his administration (1998–1999). However,

Karim (2017) and Palmer (2016) argue that BNP2TKI's institutional design was flawed due to political compromise and accommodation and was a symbolic politics. This is because the ambiguity of the system in place has set out a way for BNP2TKI to pursue aims that are contrary to that of the Ministry of Manpower. Palmer (2016) argues that the institution's capacity to act beyond its legal constraint has characterized Indonesia's migration governance due to political structure and actors in multi-level government.

The dissection between BNP2TKI and the Ministry of Manpower, although the logic follows a textbook division of labor, has resulted in overlapping responsibilities between operator and regulator (Palmer, 2016). Before 2007, the Ministry of Manpower was the main institution with which migrants and recruiters engaged. After BNP2TKI was set up, the Ministry of Manpower authorized personnel to offer a duplicated service and rival service to issue recruitment services. The Ministry of Manpower, which previously had the ultimate role in issuing permits and license for private recruitment agencies, had indeed opposed and were forced to accept BNP2TKI, preferring to reform its internal bureaucracy through a controversial ministry regulation by creating a new directorate, the directorate for placement and protection of overseas workers (Karim, 2017; Palmer, 2016). This conflict also arose from the patron-client relationship characterizing Indonesia's lousy governance, given that former high-ranking bureaucrats had private recruitment agencies (Karim, 2017). This horizontal institutional rivalry between the Ministry of Manpower and BNP2TKI affected labor migration governance dynamics while confusing private recruitment agencies and aspirant migrant workers.

Due to ineffective enforcement of and flawed institutional design stemming from Law 39/2004, coupled with poor performance over migrant workers protection, a series of protests demanded the law reforms. After a long process, Law 18/2017 on the Protection of Indonesian Migrant Workers (hereinafter: Migrant Workers Protection Law) was, in many ways, an achievement for many activists, human rights advocates, and most importantly, the migrant workers, whose

living conditions, human and labor rights, and legal protection have been deteriorated due to multidimensional issues.

Migrant Workers Protection Law also replaces BNP2TKI, through the Presidential Instruction No 90/2019, with the National Board for the Placement and Protection of Indonesia Migrant Workers (*Badan Perlindungan Pekerja Migran Indonesia/BP2MI*). The use of 'migrant worker' for its institutional name symbolizes a different lexicon, indicating its awareness of the pejorative term '*tenaga kerja*,' which commodified migrant workers. It also changed its paradigm by putting together its new mission: War against Syndicates of Unprocedural Indonesian Migrant Workers Placement (BP2MI, 2021c).

This institutional dynamic and rivalry reflect the current labor migration governance in Indonesia. The fact that migrant workers are still suffering from the pandemic begs the question of whether the migrant protection law could be enforced and applicable in the context of crises such as the pandemic? As many Indonesian migrant workers' rights have been violated because of layoffs, unpaid wages, working extra hours without incentives, fear of being arrested by authorities due to irregular status, and food and financial insecurity (Samad et al., 2021), closer reading on specific articles of Law 18/2017 is thus required.

Migrant workers, as stipulated in Article 6(1), are entitled to the protection of their safety until they return. Article 8(1) specifies technical protection, including social safety nets. Article 29 also states that the social safety net is intended to improve the lives of Indonesian migrant workers and their families. As stated in Article 21, during the placement, migrant workers are also entitled to the protection mechanism during the placement, which includes fulfillment of rights, facilitation of dispute, advocacy and mediation, and repatriation. Further, the mechanism by which the government could protect migrant workers' rights is regulated based on government regulation.

Article 22 provides the basis of the labor attaché, which is regulated by Presidential Instruction and has diplomatic status in the countries with which Indonesia has diplomatic relations. Migrant workers'

protection is the responsibility of the central and local government by providing legal, economic, and social protections. Legally speaking, the Migrant Workers Protection Law offers adequate mechanisms to guarantee the rights of migrant workers. However, in practice, migrant workers' protection is far from ideal. In carrying out this function, the government, through a one-stop service aimed at integrating the government's responses, has been criticized by migrant worker alliances and CSOs for their ineffectiveness and poor coordination.

E. The Nexus between Frameworks on Migration and COVID-19

Both international and regional frameworks have underpinned the guidance on labor migration, building on different standards and rights-based approaches. However, the context of the pandemic forced policymakers to focus beyond the scope of the existing frameworks on migration (HRWG, 2021c). Thus, the question arising from the ongoing pandemic presents itself: how can the frameworks on migration, both international and regional, be of assistance to Indonesian migrant workers? Rights-based approaches to address the precarious experience that Indonesian migrant workers face during the pandemic, as advocated by many social movements, are also being undertaken through the frameworks on migration, which both regional and international mechanisms favor. Therefore, it is necessary to briefly account for these frameworks and why CSOs are for and against them.

The 2016 UN General Assembly marks an essential milestone on the importance of global governance of migration and refugee issues, signaling the political message that migration and refugees are now an international agenda (IOM, 2021a). The New York Declaration for Refugees and Migrants, which came into being on September 19, 2016, was followed by the adoption of the Global Compact for Safe, Orderly, and Regular Migration (GCM), which Indonesia is a champion country. Decades earlier, the International Convention on the Protection of the Rights of All Migrant Workers and Members

of Their Families (ICPRAWMTF) was the international framework providing a basis for migrant workers' protection law.

The policy brief presented by the United Nations Network on Migration argued that well-governed migration, inclusive societies, and stimulus for strong socioeconomic recovery are the preconditions of an effective COVID-19 response (UNNM, 2021). GCM also provides a practical framework for international cooperation, which member states can leverage in responding to COVID-19. For example, Multi-Partner Trust Fund, provided under the GCM scheme, is a critical component in the capacity-building mechanism as a start-up fund for migrant workers hit by the pandemic the most.

Aside from the international frameworks for the global migration governance and protection, it is worth taking into account the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers in 2017 (hereinafter: ASEAN Consensus), given the pervasiveness of intra-labor migration in Southeast Asia, in which Indonesian migrant workers mostly migrate. However, since the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers of 2007 (Cebu Declaration), the establishment of the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights Migrant Workers (ACMW) in 2007 and ASEAN Forum on Migrant Labour (AFML), up until the ASEAN Consensus in 2017, no substantial progress has been made (HRWG, 2018).

As has been widely studied, the impasse over the negotiation underlies a different and more profound understanding that requires a country-specific context as to why the adoption is slow. On the one hand, realist and normative approaches, arguing that there is a clash of national interests and that the non-interference and consensus decision-making hinder the agreement, could not fully account for this impasse (HRWG, 2018). Besides, the institutionalist approach also contends that the sending country lacks the institutional capacity to administer labor migration governance. On the other hand, using a critical political economy lens, Bal and Gerard (2018) argue that

there is a class conflict between those who advocate for and oppose migrant worker rights.

The disagreement over three issues—whether the instrument is legally binding; it would cover irregular migration, and the families of migrant workers and migrants not from ASEAN countries—has halted further convergence. ASEAN Forum on Migrant Labor, intended to facilitate dialogue between government officials and CSOs, has also become a forum that only involves CSOs who are policy supporters instead of contesting the negotiation (Bal & Gerard, 2018). HRWG (2018) states that ASEAN member states do not have firm commitments toward protecting the rights of migrant workers.

The non-legally binding nature of the ASEAN Consensus is also one aspect that many CSOs have criticized. HRWG, Migrant Workers Alliance (*Jaringan Buruh Migran*/JBM), and other CSOs believe that a legally binding instrument is key to fully protecting migrant workers' rights (HRWG, 2018). They also deem the ASEAN Consensus flawed because it allows ASEAN member states to tailor their national laws and regulations, which do not comply with international human rights standards.

It is imperative in the context of the pandemic because the human rights-based approach used in this chapter bridges the academic research to practical recommendations. Moreover, these frameworks reinforce the political commitments of sending and receiving countries to respect the labor and human rights of migrant workers, which are not fully appreciated during the pandemic. Besides the government's intervention, civil society, business sector, youth, academia, humanitarian, and other non-state actors can play in promoting labor and human rights of migrant workers is vital as part of the check and balance mechanism and monitoring mechanism. Non-state actors can also pressure the government actors to immediately comply with the

existing standards and the agreed frameworks for better migration governance.

F. Indonesian Migrant Workers Movement during COVID-19

Social movements are considered critical intermediaries between citizens and policymakers. Social movement analysis is often configured based on a rights-based approach. However, this chapter contends that a rights-based approach is still indispensable as many migrant workers face difficulties in settings where their human rights are not fully respected, including work environment, living conditions, and legal status. Bal and Gerard (2018) argue that policymakers' migration paradigm is inherently flawed. Nevertheless, their account suggests that the state per se is homogenous and does not willingly respect human rights. In contrast, this chapter argues that the state is a complex social relation with competing interests. While many government officials—including key institutions and officials such as the labor attaché, BP2MI, and Ministry of Manpower—have been promoting and protecting the interest of migrant workers, there is an institutional fracture among ministries and authorities over overlapping responsibility working on migration issues (Karim, 2017). It, therefore, may lead to disagreement among government actors over which migrant workers' alliances might exert influence.

The Migrant Workers Alliance (*Jaringan Buruh Migran/JBM*), consisting of 28 organizations, both in and out-country, emerged from the same concern on the lack of protection for migrant workers from the policy perspective. Since 2010, JBM has devoted its advocacy to national legislation. Civil society engagement in democratizing the legislation concerning migrant workers' protection and rights is instrumental because the experience shared by the migrant workers, complemented by other components such as labor unions, migrant alliances, academics, and CSOs, provides insightful input to the policymaking. Through this network, social movements led by migrant workers can bring fruitful outcomes.

Despite internal divisions and cleavages, CSOs can play an instrumental role in strengthening social protection mechanisms. CSOs and the transnational network can contribute to protecting migrant workers by providing the latest data to the government, which can then respond to the first-hand experience of Indonesian migrant workers amidst the pandemic. Madeline Berma, Commissioner of the Human Rights Commission Malaysia, stated that CSOs could play a role in educating grassroots movements, especially aspirant migrant workers and their families, about social protection policy and mechanisms. This effort led to the public discourse on populist politics practiced by the elites who did not commit to migrant workers' protection and strengthened the international cooperation in the labor market and migrant workers system.¹

One of the key NGOs working on migration issues and advocating migrant workers' rights is the Human Rights Working Group (HRWG). On the International Migrant's Day (IMD), HRWG emphasizes that human trafficking is still a protracted issue, noting that the number of complaints received by the Indonesian government in 2020 was the highest in the decade. The number of human trafficking cases, especially among women, increased by 255, according to the National Commission on Human Rights (HRWG, 2021a). To commemorate the IMD, the migrant workers' alliance demands the government to:

- Ratify four implementing regulations of the migrant workers' protection law, including Presidential Instruction on Labor Attaché; Government Regulation Bill on Ship Crew; Head of Agency Regulation on Pre-employment Requirements; and Ministerial Regulation on One-stop Integrated Service because of the expiry date.
- Establish a supervisory mechanism at villages, district/city, province, central, and destination countries levels.
- Establish an integrated information system from the village to the central government levels.

¹ Personal interview with dr. Madeline Berma, Commissioner of Human Rights Commission Malaysia, in 2020.

- Provide access to the participation of migrant workers organizations concerned with migrant issues in every policymaking and its implementation at villages, regional and national levels.

The account of social movement theory asserts that the organization of social movement, the framing of migration issues, and the politico-institutional context have put together the necessity to provide a comprehensive protection mechanism for Indonesian migrant workers, who are experiencing precarious working conditions amid the pandemic. It is a truism that the poor conditions experienced by Indonesian migrant workers overseas, which are heightened during the pandemic, cannot be denied. Through the ‘precarity’ lens, the organization of social movement has driven collective social actions to advocate for migrant workers.

The growing transnational network of migrant workers—for example, JBM comprising 26 organizations—has achieved many accomplishments, including ones that advocate for the rights of Indonesian migrant workers. The advocacy of the rights of migrant workers is also taking place through different mediums, including policy recommendations, research projects, and protests in the field. One should note that the direct involvement of social actors from diverse backgrounds—researchers, policy analysts, NGOs, lawyers, and of course, migrant themselves—through this network demonstrates how influential this network has been. One of the examples of JBM’s achievement was overseeing the amendment of the Migrant Workers Protection Law while conducting lobbying and hearings with the parliament members, government officials, and religious organizations.

The precarity lens through which the alliance has utilized has also become the foundation to frame migration issues. This allows a broader network to empathize with the migrant workers in hopes that the government will respond immediately. Director for the Protection of Citizens, the first person under the Foreign Minister responsible for protecting Indonesian citizens abroad, has often been invited to dialogues organized by the alliance. While the government agrees with

and sees the conditions experienced by Indonesian migrant workers abroad through the conceptual lens of precarity, the government is also facing a challenge in mapping out migrant workers' needs due to its inability to collect comprehensive data, partly because of many undocumented migrations.

However, there is another challenge facing the network. Aside from the non-legally binding consensus adopted by ASEAN, the international frameworks on migration, such as the GCM, which has yet fully been implemented, the challenge comes from the state actor per se from the political will and the enforcement of the Migrant Workers Protection Law. Therefore, these social movements must call for an inclusive and accommodating social protection mechanism for Indonesian migrant workers. Because political and institutional contexts are essential, state actors, regulators and operators, need to consider a few alternative options to provide social protection for migrant workers.

G. Social Protection for Indonesian Migrant Workers

As suggested earlier, while the existing studies on Indonesian migrant workers' protection focus on the role of the state and regulatory actors and the positive law of migrant workers' protection, this chapter aims to expand the scope by which the roles of non-state actors can be of importance. First, meaningful participation and engagement are the only effective ways to protect not only migrant workers but society as a whole (HRWG, 2021b). It means that any concerns and recommendations that emerge from the bottom must be comprehensively addressed by the states, which have the ultimate authority and the resources, budget, and power to protect migrant workers.

Second, based on the human rights approach, the importance of proactive protection mechanisms proposed by the grassroots movements to the states is paramount. Therefore, building on the proposed guideline derived from the study by HRWG (2021b) that used a rights-based approach, we situate Indonesian migrant workers

as active actors and beneficiaries for which the government should assist. It also lays out the working mechanism for migrant workers who are still residing overseas, already repatriated, and whose families and dependents rely on remittance.

The social protection mechanism laid out here is also a product of social movement in the form of research whereby collective actions forged by many non-state actors can accommodate the interest of Indonesian migrant workers. However, the variable of the politico-institutional context of Indonesia in accommodating the interest of migrant workers still needs to be revisited because the state's role is requisite to creating conducive and migrant-inclusive policies, practices, and laws.

Although the Migrant Workers Protection Law (No 18/2017) is a milestone that provides a legal basis, its enforcement in the context of the pandemic has not been effective if not administered (HRWG, 2021a). HRWG asserts that not all implementing regulations are enforced, and their implementation lacks supervision. Secretary-General of JBM, Savitri Wisnu, stated that the problems facing Indonesian migrant workers are primarily rooted in the upstream, which is the pre-departure phase.

In this scenario, the Indonesian government is responsible for formulating migrant-focused policies to mitigate the adverse impacts COVID-19 has caused on Indonesian migrant workers. As indicated in the Migrant Workers Protection Law, it includes all stages of labor migration journeys—from pre-departure, working, to reintegration. Some concerns and mechanisms presented below stemmed from migrant workers' first-hand experience.

1. Protection for aspirant migrant workers

The nature of Indonesia as a migrant workers' sending country is fundamental as it implies that the state's role in permitting licenses for private recruitment agencies and giving training and administrative support for aspirant migrant workers is crucial. Besides, most prob-

lems occurred in this stage, as hinted by Savitri Wisnu, the National Secretary of JBM (HRWG, 2021a).

In responding to the pandemic, the Ministry of Manpower issued a ministerial regulation No 151/2020 on Temporary Halt to the Placement of Indonesian Migrant Workers on 20 March 2020. This regulation temporarily stopped sending migrant workers overseas. However, it did not outlaw aspirant migrant workers who already have working visas and transportation tickets to the destination country, so long as the country did not close its border (Witono, 2021).

The government's chief aim of this ministerial regulation is for 'security' reasons (Witono, 2021). Such a paradigm, although it seems justifiable, is problematic. First, it implies that migrant workers are a threat to security. Although many countries had closed their borders in the early stage of the pandemic, partly due to uncontrollable infection rates when the border was open, a migration ban could signal law enforcement to securitize their responses, further delegitimizing migrant workers and migration in general. Secondly, the legality that the ministerial regulation administers would perpetuate the precarious migration workers situation in which the dichotomy between legal and illegal labor migration is prolonged—even though international communities, such as the UN system, have repeatedly advocated for labor migration regardless of their legal status.

However, there was an exception to the ministerial regulation. The Directorate-General for Work Placement and Employment Opportunity Expansion implemented a regulation that exempted 12 countries (later updated to 23 countries) where Indonesian migrant workers are allowed to work.² As a result, 34,644 aspirant migrant workers failed to travel abroad. The government, in turn, allocated

² The Directorate General implemented decision No. 3/20888/PK.02.02/VIII/2020 initially included 12 countries where Indonesian migrant workers can travel. The 12 countries are Algeria, Hong Kong, South Korea, Maldives, Nigeria, Uni Arab Emirates, Poland, Qatar, Taiwan, Turkey, Zambia, and Zimbabwe. However, the decision was updated in the following months under decision No. 3/33236/PK.02.02/X/2020 added Saudi Arabia, Ghana, Hungary, Iraq, Japan, Russia, New Zealand, Serbia, Singapore, Sweden, and Swiss to the list—23 countries in total.

IDR 110 trillion from the state budget as a safety net, which is directed to seven main programs. These include Family Hope Program (*Program Keluarga Harapan*/PKH), Cash for Work (*Padat Karya Tunai*/PKT), Direct Cash Aid (*Bantuan Langsung Tunai*/BLT), Non-cash Food Assistance, Pre-employment Program, conditional electricity subsidies, and special assistance to those residing in Jakarta, Bogor, Tangerang, and Bekasi. Although all programs are not explicitly addressed for aspirant migrant workers, they could taper down the COVID-19 impacts.

Of seven, two of which—the Pre-employment Card and PKT—could provide a temporary solution for aspirant migrant workers who could not travel. In a collaboration between the implementing management and BP2MI, the former program offers a training program, both hard and soft skills, intended to increase the competency of pandemic-hit aspirant migrant workers (VOA Indonesia, 2021). Aside from temporarily providing the tools and equipment to run a small business, they also receive incentive funds by participating in the program.

In this stage, migrant workers and their communities can also play an important role by collectively creating better information dissemination. Former migrant workers who have already returned can also train aspirant migrant workers. Better informed aspirant migrants can make better decisions before traveling abroad, especially in COVID-19, which unprecedentedly affected working visa approval, host countries' policies, job contracts, etc.

A lesson can be taken from the Philippines migrant worker community, which successfully empowered their community before and after returning to the Philippines. Based on Rother (2022) research, migrant workers CSOs in the Philippines have consistently contributed to the 'gold standard' of Philippines migration policies despite internal divisions and cleavages. Another finding from Opiniano (2021) suggests the Philippines' bureaucracy and migrant policies have mastered managing overseas migrant workers because of the support from civil society. Finally, international communities have praised the Philip-

pin government for how well it manages labor migration (Eder, 2016). Moreover, they claim that the country has one of the most sophisticated systems in the Asian region. In addition to increasing the economic empowerment of Filipinos and their families abroad, the new Philippine future depends on capturing a ‘diasporic dividend’ by pushing for additional investments from overseas migrants’ savings via active collaboration with civil society (Opiniano, 2021). During the pandemic, based on our interview with a representative of the Association of Overseas Filipino Workers in Malaysia (AMMPO), the Philippines migrant community plays a vital role in combating narratives that continuously portray the Filipino migrant workers as a potential threat to national security and being detrimental to the country’s long-term social and economic development.

2. Protection for migrant workers and their working conditions

The importance of establishing a professional labor attaché whose paradigm is not administrative but promotes human rights is instrumental to migrant worker protection. Labor attaché is a mandate based on the Migrant Workers Protection Law that has yet fully been regulated. JBM highlights that there are three underlying problems concerning the labor attaché. The first problem concerns structural factors and governance which regulate low-wage laborers. Second, it relates to administrative documents. Notably, a study conducted by HRWG in Hong Kong, Malaysia, and Singapore in 2017-18 revealed the third problem, showing that a good governance perspective binds labor attaché instead of a rights-based approach (JBM, 2021). Good governance here refers to institutionalism; the positivist approach used to deal with migration issues, such as the establishment of complaints and crisis centers. Therefore, the institutionalist approach to protecting mechanisms in lieu of human rights promotion is problematic.

JBM argued that the labor attaché does not have sensitivity toward the victims. The approach chosen by the government seems to be detached from the experience facing Indonesian migrant workers

during the pandemic. Moreover, the limited labor attaché and budget due to non-existent institutional support and regulation prevent ideal protection mechanisms (Ministry of Manpower, 2019).

Although the embassies worldwide have assisted and monitored Indonesian migrant workers, the state's role is principally limited to assisting, if not facilitating, repatriation indicates its negligence to prevent migrant workers from being exploited and suffering from the pandemic. For example, since the beginning of the pandemic in 2020, Indonesia repatriated 12,019 individuals from Malaysia and 145 vulnerable Indonesian migrant workers in the following year; 172 Indonesian ship crews stranded in Fiji, two of whom died on board; 60 Indonesians from Suriname and Guyana; and 19 fishers who were treated in Perth, Australia (BP2MI, 2021b; MOFA Indonesia, 2021a, 2021b, 2021c, 2021d, 2021e).

These examples show that the government is reactionary, if not late, in responding to the needs of migrant workers. Although repatriation is regulated under Article 27(1)f, where migrant workers can be repatriated if the pandemic occurs, COVID-19 specific measures that exclude migrant workers have already had damaging impacts, including on their psychological experience. The state must also ensure that policies, regulations, and public discourse do not contribute to stigmatization, discrimination, and xenophobia. Gathering bans were erected in some major destination countries, and strict control and securitized measures targeted migrant workers who were deemed virus carriers (HRWG, 2021c).

A government-published journal also indicates that migrant workers should protect themselves (Witono, 2021). It is very problematic. For example, migrant workers have minimal rights and access to appropriate healthcare. Their employers often do not give proper healthcare protection, let alone insurance. HRWG (2021c) study indicates that the pandemic has heightened the number of domestic migrant workers who suffer from abuses and exploitation.

The phrase 'the devil is in the details' is quite relevant to the problems migrant workers may face daily. Whereas certain media

headlines involving smuggling and human trafficking can grab many's attention, social protection for migrant workers is not only related to preventing or mitigating human trafficking. Moreover, multifaceted problems that occurred during the pandemic thus required migrant workers to proactively unionize to bridge their concerns to the states.

The complaint mechanism provided by BP2MI is an important step in governing labor migration better. It also provides a grievance mechanism if any crisis occurs, which migrant workers can seek help from the government, which is also regulated in the Migrant Workers Protection Law. However, it is inadequate without the firm commitments of the states to address migrant workers' situation during the pandemic.

3. Protection for migrant workers returnees and their families

The government's interventions to remedy the impacts of COVID-19 on returned migrant workers and their families who relied on remittance are imperative. Economic aid and the stimulus package, such as the Pre-employment Card that has benefitted 110 thousand retired Indonesian migrant workers who, according to a survey which reveals that the 92.6% of the beneficiaries gained knowledge, can use the skills they acquired in the workplace or business—such as customer service, domestic workers, and other entrepreneurial sectors (VOA Indonesia, 2021).

The government's policies in responding to returning migrant workers were to quarantine migrant workers without any fees charged, including accommodation, food, and transportation. It is crucial as many migrant workers lose their jobs and sometimes lack financial resources. On the other hand, those who work as ship crews—including in the fisheries and cargo sectors—are under the responsibility of their principal or their companies. The government would also bear the cost charged to migrants who were deported and not registered in the recruitment agencies and the BP2MI.

A report produced by the International Organization for Migration (IOM), the United Nations Development Programme (UNDP),

and the Indonesian Migrant Workers Union (Serikat Buruh Migran Indonesia/SBMI) that returning Indonesian migrant workers could play a significant role in the development of villages so long as they are protected (IOM, 2021b). Louis Hoffmann, IOM Indonesia Chief of Mission, also suggests that strengthening village-level capacities is necessary—both returning and departing migrants—to ensure end-to-end protection and an effective remedy to the impacts of the pandemic.

H. Conclusion

Does Migrant Workers Protection Law provide enough basis for migrant workers' protection during the pandemic? One could argue that the lesson learned for the government is to create flexible policies as the pandemic is still ongoing (See, for example, Witono, 2021). Activists and migrant worker alliances, on the contrary, would argue that the government is negligent in its COVID-19 measures targeting Indonesian migrant workers. As we have suggested earlier, the government's policies have been reactionary rather than preventive, resulting in many vulnerable migrant workers who suffered from the pandemic, such as modern slavery, wage cut, anti-immigration policies, and detention are heightened during the pandemic (HRWG, 2021c).

It is also argued that the pandemic opened a new paradigm that the government must transform itself: from good governance to a rights-based approach. While the government of host countries and Indonesia have realized the urgency of implementing rights-based measures for migrant workers, exemplified by the adoption of the ASEAN consensus though not legally-binding as well as the international framework such as the GCM, the implementation of rights-based policy is far from sufficient. Since the adoption of the GCM in 2018 is relatively new, the governments have pledged their initiatives to transform themselves, not to contribute to discriminative policies against migrant workers.

Nonetheless, the ultimate role still belongs to the state actors who can enforce the regulations and implement the rights-based

approaches at all levels. On the other hand, the capacity of non-state actors who constantly oversee and advocate for the rights of migrants, especially during the pandemic, is in line with recommendations advocated by many CSOs and migrant workers alliance who shared first-hand experience during the pandemic. It also aligns with the social movement theory that the transnational network surrounding migrant workers can help migrant workers achieve their interests through various mediums. The concept lens of precarity also encourages these social movements to promote justice and fairness through various products, mainly research projects.

The role of non-state actors who collectively acted and formed social movements, including CSOs, is vital, especially in the context of humanitarian assistance, in responding to the growing needs of migrant workers. Civil society's work is also critical in preventing discriminatory and restrictive policies against migrants by advocating various recommendations. For example, some progress such as the complaints toward the national human rights institution in both host and home countries, coordination and hearings with the overseas protection directorate under the Ministry of Foreign Affairs, and the demand to revise and add additional provisions in the Migrant Workers Protect Law, have been made. However, some challenges still loom the movements, i.e., the politico-institutional settings and many actors involved domestically and internationally. Another challenge lies in the nature of employers who need to comply with the regulations. However, undocumented and unlicensed recruitment agencies are still pervasive.

Analyzing the social movement pressing the government through a bottom-up approach offers new insight into how the government could respond to these demands. Many activists argue that the institutional reform and the legal basis the state already has set up are insufficient. Political commitments with concrete actions to protect migrant workers' rights and their families in all stages of the migration cycle, based on the available international frameworks and standards, and the proposed guideline must be reinforced.

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