

# Institutionalization Diplomatic Strategy on Protecting of Indonesian Migrant Workers

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**Abstract:** *The article will explain about the Indonesian diplomatic strategy in protecting Indonesia's migrant workers using social constructivist approaches.*

*To get a clear explanation, this article combines analysis of sociology in International Relations, namely social construction theory from Peter L Berger and legislation theory from William Zartman.*

*The techniques of data collection based on secondary data and interview. It collect information from recent journal articles, books, internet, film and news paper on migrant workers protection, international regime, rule, act, norm and policy, then analyzed with content analysis. It also uses in-depth interview to capture rich and descriptive data on migrant workers protection from many Indonesian stakeholder.*

*The article concluded that Indonesia needs to institutionalize a comprehensive advocacy strategy for protecting Indonesian migrant workers in three ways. First, it need to do in-depth assessment of problems faced by Indonesian migrant workers at every stage of the migration cycle. Second, it need to do externally advocacy based on Government to Government (G to G), Government to International Governmental Organization (G to IGO) and International Non Governmental Organization to Government (INGO to G). Third, Indonesia need to do internally advocacy based on Indonesian migrant workers empowerment, increasing their competence, and do amendments against Act No 39/2004.*

**Keywords:** *Migrant Workers, Diplomatic Strategy, Advocacy*

## BACKGROUNDS

The large population has contributed to the surplus of workforces in Indonesia. This large workforce, combined with unavailability of jobs at home, has led numbers of Indonesians search of better lives and employment opportunities elsewhere. They seek job abroad or become migrant workers.

According to Indonesian government data, out of a total of around 4.5 million Indonesian migrant workers in 2014. Most of them (around 70%) are women who mostly employed in domestic sector, and around 30% are men who mostly work in plantation, construction, transportation and service sector. Most of them aged in productive age margin, between 18 to 35 years old. However it is estimated some of them might be under aged through document falsification. At the beginning, the number of undocumented or illegal Indonesian migrants is estimated to be 2 times higher, but currently it has decreased. It was estimated around 10 % are illegal. The spread of Indonesian migrant workers appears in the following table.

Indonesian Migrant Destinations (Source : BNP2TKI to October 31, 2014)

	2011	2012	2013	2014
1 Malaysia	134120	134023	159236	107085
2 Taiwan	78865	81071	83544	68874
3 Saudi Ara	137835	40655	45394	38104
4 Hongkong	50301	45478	41769	30208
5 Singapore	47786	41556	34655	25601
6 United Ar.	39917	35571	44505	15276
7 Oman	7306	8836	10719	15035
8 South Kor	11392	13593	15374	9623
9 Brunei	10804	13146	11259	9298

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As the number of Indonesian migrant workers increased, the number of abuse and exploitation has also risen. Since most Indonesian migrants work at the bottom rung of the occupational hierarchy, they are extremely vulnerable. They confront the risk of exploitation and abuse at every stage of the migration cycle, including recruitment, transit, employment, and return. The vast majority of them work as housemaids, entertainers, nurses, and factory workers. Housemaids are especially vulnerable because they work in private homes where government authorities cannot conduct adequate inspection. The problems they encounter include sexual harassment, rape, nonpayment or underpayment of wages, verbal/physical abuse, and so on.

According National Agency for the Protection and Placement of Indonesian Migrant Workers (Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia - BNP2TKI), the incident numbers related to human rights violation from private and public subject is around 1% from the total population of Indonesian migrant workers. It means there are approximately 3.000 cases each year occurred involving Indonesian migrant workers as victim. As many as 279 Indonesia migrant workers overseas face the possibility of execution, 36 of whom are in Saudi Arabia. ([thejakartapost.com/news/2015/04/19/279](http://thejakartapost.com/news/2015/04/19/279)).

Despite death threats, torture and inhumane conditions, millions of Indonesian migrant workers remitted last year a record high of US\$8.55 billion back to their families from overseas, the World Bank said in a recent report. The amount, the World Bank said, was almost equivalent to 0.9 percent of Indonesia's total gross domestic product (GDP). The total value of remittances through official channels by around 6 million Indonesian workers in 2014 was much higher than the \$7.61 billion recorded in 2013. In

2005, they remitted \$5.42 billion, a huge jump from a mere of \$1.86 billion in 2004. ( The Jakarta Post, Jakarta | National | Mon, April 20 2015, 11:51 AM )

The willingness of a person to be a migrant workers also become an important alternatives to reduce underemployment in Indonesia which it is having tendency also to become higher, in line with the deceleration of global economic growth that impacts regional and national economic growth.

There are substantive and technical problems which still unwell organize, so the Indonesian migrant workers problem always recurring. Efforts to identificate substantive and technical problems all this time only done sectorally, whether from BNP2TKI, Ministry of Manpower and Transmigration, and Ministry of Foreign Affairs. This substantive problem is related to the problem of contracts and cooperation between sending countries and receiving of migrant workers.

Although government benefit from migrant domestic workers taxes, and remittances, it has failed to guarantee basic human rights protections. Doing maximal protection for Indonesian migrant workers, included for domestic workers at "destination countries" or "host countries" or "receiving countries" is very important. Therefore this article want to examine about "How to institutionalize a diplomatic strategy for protecting Indonesian migrant workers?"

### **Literature's Review**

The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. The term "recruitment agency" refers to private migrant workers recruitment companies, commonly described elsewhere as manpower agencies, placement agencies or private employment agencies, among other terms. The term "country of origin" refers to a migrant

worker's home country (described elsewhere as "sending country," a term regarded by some as reflecting the commodification of migrant workers). The terms "destination country" and "country of work" refer to the country in which a migrant worker is placed as a temporary migrant worker, instead of "receiving country." (Farbenblum, 2013)

The discourse about the protection towards Indonesian migrant workers all this time is more highlighted on the form of law advocacy, whether on private or public level related to criminal case that faced by migrant workers abroad. Protection towards Indonesian migrant workers to date is more focused to advocacy pattern from domestic level, on the form of legislation such as, Government Regulation Number 3 Year 2013, giving the option to the government to do moratorium if there are abuse of workers' right towards Indonesian migrant workers abroad.

Protection of the migrant workers through moratorium policy is understood as the most effective policy to suppress the foreign partner to be expected to subject the migrant workers fairly, transparently, and accountably. But the study from Jawahir Tantowi actually in contrary, showing that migrant workers protection through moratorium actually is ineffective problem-solving mechanism, moratorium is not more just a shock effect that need to sustain with more comprehensive mechanism.

This argument is supported by Jacobson study (Jacobson Joyce, 2004, Jesus Felipe, 2006). According Jacobson, the moratorium causes dilemma, both for the government and to the employee. For the government, the moratorium will increase the number of domestic underemployment and other social problem. For the employee, the moratorium will close their "golden" opportunities to get a job abroad, while looking for a job in Indonesia is very difficult. Therefore, the moratorium resulted on increasing

the number of undocumented (illegal) Indonesian migrant workers.

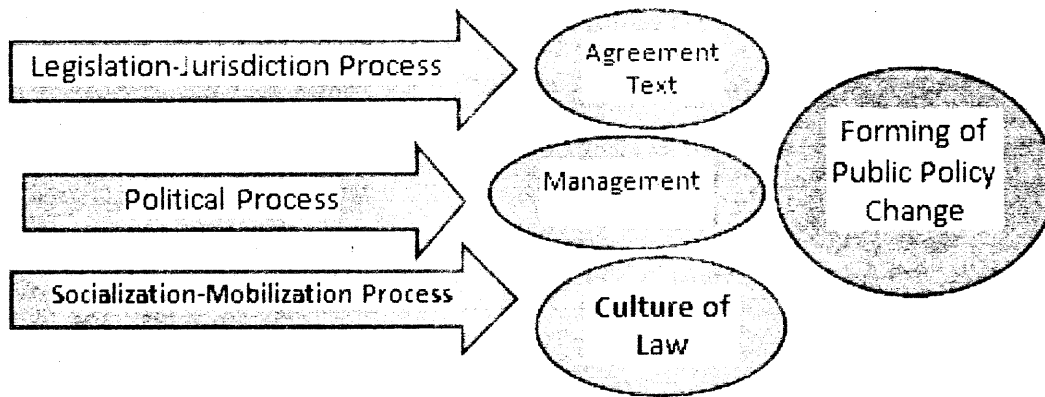
B Joyce Jacobson developed a very relevant approach to be used as protection mechanism towards migrant workers comprehensively. Protection towards migrant workers will be effective if it is done by bilateral and multilateral agreement. This agreement should be done intensively and continuously. The bilateral agreement will build a better understanding between sending countries and receiving countries, which then endorse the receiving countries to give rights towards migrant workers equally with the domestic workers. (Jacobson Joyce, 2004)

Referring to Jesus Filipe, multilateral agreement will construct an international workers management regime which is more favorable to the interest of migrant workers interest than to the interest of capital owners, or institution assembling the transaction of international workers. (Jesus Filipe, 2006). Multilateral agreement will press the receiving countries and other actors who treat migrant workers discriminatory, to adopt international norms on industrial relations. At the next stages they will posit and treat the migrant workers as industrial asset.

Our previous research on advocacy argue that the institutionalization of advocacy would produce management or policy which is adaptive and responsive to stand in to the subjects that articulate the issue. Logical description about the role of advocacy towards change of the policy regime is reflected on the following diagram: (Nur Azizah, 2010, Bohning, 1997)

Referring to the diagram, institutionalization of advocacy for Indonesia migrant workers should be done with 3 major element, i.e. legislation-jurisdiction process; political-birocratic process; and socialization-mobilization process. Legislation process needs serious effort from the Indonesian government to develop diplomatic strategy

Diagram 1. Public Policy Change Management System



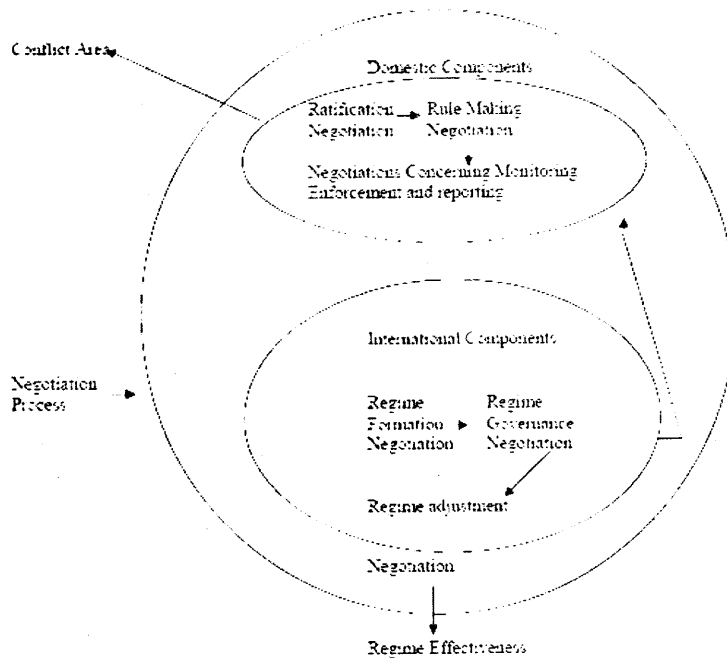
Source: Nur Azizah, Azizah, Nur, 2010, Pelembagaan Advokasi Sebagai Mekanisme Mengubah Kebijakan Publik, Research is nit published, IR Department UMY, 2010.

bilaterally and multilaterally to build migrant workers regime which is migrant workers friendly. Political process needs lobbies, negotiation, mediation, and colworkersation with multi-stakeholders of migrant workers. This political process is expected to affect the way of thinking from policy makers about migrant workers in several countries that to date is still discriminatively treating migrant workers. Socialization process needs campaign,

press broadcast, demonstration, strike, and boicot as instruments to persuade or to coerce the subjects that all this time were unresponsive to protect migrant workers.

To understand about the relation between international negotiation process that produce international regime or convention and influenced to national legal process, Bertram I. Spencer, I William Zartman studies is very important.

Figure Regime Dynamics in A Post Agreement Negotiation Framework



Source : Bertram I. Spencer, I William Zartman, Post Agreement Negotiation and International Regime: Getting It Done, Washington DC,USIP, 2003, hal. 63

## DISCUSSION

On this section we will discuss three things. **First**, to build institutionalization of advocacy for Indonesian migrant workers (later will be called by Tenaga Kerja Indonesia in abbreviation as "TKI") by using institutionalization model by Peter L. Berger, such as build the objectivity of problem encountered by TKI. **Second**, to build externalization as productive ways to be assorted to the advocacy. **Third**, is to do internalization. For getting brief analysis in international relation arena, analysis will combine legislation theory form William Zartman and institutionalization model from Peter L. Berger. By combining these two models, we expect to find the effective advocacy alternative on the conceptual level which could be implemented on the practical level.

### A. Problems Faced by Indonesian Migrant Workers

A depth study on migrant workers show us three major problems related to Indonesian migrant workers:

#### A.1. Problems Related with Indonesia's Regulation

The main discourse on this part will more focused on the choice of government's policy to do mobilization of Indonesian workers to work abroad as TKI, related to the lack of job vacancies also prosperity level could be created by the government with the domestic bureaucracy. The government even is interpreted to do mobilization of domestic workers to be migrant workers to reduce social, economy, and political problem which be caused by the inability of the government to create domestic prosperity. The mobilization policy to decrease underemployment and social problems, results in some government policies related to TKI that tend to be simplified on bureaucratic procedures which is

oftenly be utilized by migrant workers mafias to run extortion practice through distributor agent, and this problem touches the scope of human trafficking.

The problem that often occurred at the pre-dispatch of migrant workers such as:

The migrant workers get very interesting promise if they willing to be migrant workers, as with high salary, easy procedure, and light job. To convince that the job given later is a decorous job, the migrant workers are asked to do some payment. Agent that giving opportunity towards migrant workers without asking payment, for example the payment could be paid by the time working, is convinced to the migrant workers to be such opportunity of inhuman job, such as dirty, dangerous, and degrading job. (Ryszard Cholewinski, Paul De Guchteneire Antoine Pécoud, 2009) From this point the extortions become very common by distributor agents of migrant workers.

Hadi Subhan research on "The Protection of Indonesian Migran Worker" show us that Indonesia actually have had comprehensive regulations, starting from Act, Government Regulation, Ministerial Regulation, Ministerial Decree, to the Ministerial Circular, for the amount to 18 regulation products (Hadi Subhan, 2012). Nevertheless the problem on the context of the workers pre-dispatch can not be separated from the construction of Act No. 39/2004 about Placement and Protection of Indonesian Migrant Workers Abroad, as the single law that regulate recruitment; placement; also workers protection.

These regulations have fundamendal weekness. Act No. 39/2004 about Placement and Protection of Indonesian Migrant Workers Abroad, is not clearly stated responsibility of each government bodies in each stage of migration processes. It leads a conflict of authority especially between Ministry of Manpower and Transmigration

(Depnakertrans) and the newly government body created by the government namely National Agency for the Protection and Placement of Indonesian Migrant Workers (BNP2TKI). At the beginning these regulations were intended to make a clear division of task and authority for each government bodies. However, this expectation has not achieved yet (Hadi Subhan, 2012). Refers to study of International Organization for Migration (IOM) also Hadi Subhan,

Critical study by International Organization for Migration (IOM) toward Act No. 39/2004 about Placement and Protection of Indonesian Migrant Workers Abroad also support Subhan's argument. According IOM, this Act not only limiting the government involvement in giving protection towards migrant workers abroad on the other hands, but also giving vast authority to the private sector for providing important service needed by TKI before works abroad. According this law, the private recruitment institutions responsible to recruit, to give skill and language training needed by TKI who work abroad, preparing documents and to facilitate a suitable work abroad. (Hadi Subhan, 2012)

This report also found that many TKIs still need services and helps from the government after they return home, especially those who want to claim insurance and for training business management. This problem often occurred since government involvement in receiving countries oftenly neglected by the TKI agents. They merely just register the workers at KJRI (General Consulate of Republic of Indonesia) or KBRI (Embassy of Republic of Indonesia) so the Indonesian government authority could not observe and protect the TKI. To adress these problems, Indonesian government should do many efforts for increasing the TKI's awareness about worker rights, human rights and also very open law-line for them to the violation of their rights.(Hadi Subhan, 2012)

Evaluation towards 22 regulations about the TKI show us the existing problem of conceptual level and operational level. On the conceptual level, these regulations had ruled about the protection aspect towards TKI in various line, whether on regulation towards recruits of migrant workers, private sector recruiting the workers, private sector doing business related to the TKI such as health check; transportation; and then regulation on minimum service standard of government birocarcy whether on Indonesian Embassy (KBRI) and Indonesian General Consulat (KJRI) where the migrant workers located.

The operational level, The National Agency for the Protection and Placement of Indonesian Migrant Workers (BNP2TKI), the new special agency who responsible for protecting TKI, is oftenly occurred conflict of authority with the other birocarcy bodies. On many cases BNP2TKI prefer to colworkersate with Ministry of Manpower and Transmigration than with Ministry of Foreign Affairs, although actually the Ministry of Foreign Affairs in receiving countries are more ready. The Indonesian Ministry of Foreign Affairs has a infra-structure and human resource who has capacity to organize these issues. Even though, when the private sector got any problem, they are is prefer to coordinate with BNP2TKI than with KJRI. In many cases the private sector neglect KJRI.

#### **A. 2. Problem on Unsynchronized Migrant Workers Protection Regulations at International, Regional and National Levels.**

There are problem about regime of migrant workers management at international and regional level. At the international level, the developmet of international regime on migrant workers is very progressive. The international workers regime protect workers very well. However, at the regional and national level it progress slower. Even, there

are many discriminative items.

There are many conflict of interest among social group at the regional and national level. Migrant workers are perceived as social group who potentially to disturb security; economy; and social stability. Migran workers tend to be percieved as liability factors. In consequence,

migran workers rights are not well respected. It is difficult for migran workers to articulate their interest in foreign countries.

There is a great tendency that receiving countries giving space for migrant workers to work with simple basic regulation. It could be described in table below.

**Tabel 1. Illegal Migrant Rights (No. 1-14) and Legal Migrant Rights (1-18)**

No	Rights	Article(s)
1	the right to life	9
2	the right not to be subjected to inhuman or degrading treatment such as torture	10
3	the right to freedom of thought, conscience and religion, as well as the right to freedom of opinion and expression	12-13
4	the right not to be deprived of property	15
5	the right to equality with nationals before the courts and tribunals, which implies that migrant workers are subject to correct judicial procedures, have access to interpreting services and to the assistance of their consulate, and are not sentenced to disproportionate penalties	16 - 29 , 23-24
6	the right not to have identity documents confiscated	21
7	the right not to be subject to collective expulsion and to condition individual expulsions to lawful and correct procedures	22
8	the right to equality with nationals with respect to remunerations, working conditions and sosial security	25, 27
9	the right to take part in trade unions	26
10	the right to emergency medical care	28
11	the right to emergency medical care	28
12	the right to respect for cultural identity	31
13	the right to transfer earnings	32
14	the right to have access to information on their rights	33
15	the right to be temporarily absent from the state of employment	38
16	the right to freedom of movement, residence and employment in the state of employment	39, 51, 53
17	the right to participate in public affairs in the state of origin, through voting notably	41
18	the right to family reunification	44

Source: Ryszard Cholewinski, Paul De Guchteneire (ed.al), Migration And Human Rights The United Nations Convention On Migrant Workers' Rights, Cambridge, Cambridge University, 2009

The other problem is there are many receving countries who do not agree to ratificate international convention on migran workers. It is mean that they do not want to be binded in an international convention for protecting migran workers rights. Study did

by BNP2TKI or also IOM shows that many receiving countries of migrant workers do not ratificate some convention about migrant workers, as listed on the following table:

**Table 2. Indonesian Migrant Workers Receiving Countries and Status in IOM**

No.	Country	Amount of Worker	IOM Membership
1	Malaysia	22.198	Non-Member
2	Singapore	37.496	Non-Member
3	Brunei Darusalam	5.852	Non-Member
4	Hong Kong	29.973	Non-Member
5	Korea	3.830	Non-Member
6	Jepan	96	Non-Member
7	Taiwan (China)	50.810	Non-Member
8	Saudi Arabia	257.217	Non-Member
9	Kuwait	25.756	Non-Member
10	United Arab Emirates	28.184	Non-Member
11	Bahrain	2.267	Non-Member
12	Qatar	10.449	Non-Member
13	Jordan	12.062	Non-Member
14	Oman	7.150	Non-Member

Source: processed from BNP2TKI, 2009

The next problem is about the low status job for migrant workers. The abundant number of migrant workers generate intense competition among workers. For example is Qatar with population of migrant workers is more than Qatar formal residents. The number of migrant workers in Qatar is around 65-75% and the Qatar formal residents only between 25-35%. Available or unemployed national workers in Qatar are unwilling to fill low-status jobs because of poor pay, dangerous conditions, and the existence of alternative welfare provisions.

Given the absence of a willing domestic workforce, Qatar is increasingly looking outside their borders for low-skilled workers in food-processing, construction, manufacturing, and low-wage services such as domestic work, home health care, and the sex sector. Migrant workers and irregular migrants from sending countries have stepped in to fill the demand. In addition, receiving countries concerned with deregulating the workers market and making it more flexible have made it easier for employers to exploit migrant workers.

The next other problem is about receiving countries's policy on workers which

discriminative toward migran workers. In many receiving countries , the migrant workers got lower salary than the citizen although they have a same job. Obviously, this kind of situation would unbeneficial for the formal residents. The Qatar case is occurred also on Singapore and Malaysia, even in Europe and American countries.

Once abroad, migrant domestic workers are often subject to highly restrictive and discriminatory immigration regulations. Many countries have employment-based visa structures that tie a migrant domestic worker to an individual employer. In such situations, domestic workers who leave their employers, even for reasons of abuse, are typically considered immigration offenders and may be imprisoned, fined and deported. Employers in Singapore, Malaysia, Saudi Arabia, and Kuwait, for example, may repatriate their domestic workers at will, and can deny the transfer to another employer. In some countries, employers and workers agencies routinely confiscate workers' passports and work permits, heightening even further the precarious legal status of migrant domestic workers.

Migrant workers receiving countries have



calculated some workers sector risks could be occurred by allowing migrant workers in, such as social; economy; politics; and law. There is unhealthy tendency that the receiving countries do not ratify the convention on migrant workers rights. If the countries do not implement and ratify the rights, they do not obligate to implement it. *Pacta sun servanda*, the agreement only tied to the subject made the agreement.

## **B. Externally advocacy on protection towards Indonesian migrant workers**

The discussion about Indonesian externally advocacy on protection towards Indonesian migrant workers would be divided in two areas. First is Indonesian advocacy on the form of regulation operationalization towards TKI effectively. Second, Indonesian advocacy abroad through suppression towards TKI receiving countries to do ratification on some conventions about migrant workers.

### **B.1. Advocacy on Operationalization of Protection Regulation towards TKI Effectively**

To analyze the advocacy on operationalization of protection regulation towards TKI effectively, it will be using analysis about governance design from some existed regulation to ensure the pattern of obedience towards that regulation. Refers to compliance theory by Tallberg, obediency could be built using two grand approach. (Christer J. Onsson, Jonas Tallberg, 1998)

**First**, management school approach. This approach assumed that obediency towards regulation could be achieved by constructing and detailing the task, basic, function, and activity which then would lead to effectivity of program regulated. In this context is how to regulate protection towards TKI abroad to be maximal. The better the regulation have target design clearly, the probability the traget achieved would be higher.

**Second**, enforcement school approach. This approach assumed that the effectivity of regulation is very determined by governance engaging with the third party. This third party serves to supervise and to give punishment on the form of dis-incentive or reward on the form of incentive to the subject who doesn't obey the regulation. In this context is how BNP2TKI as a subject created to give protection towards TKI is better to get supervise intensively to assure the occurrence of target success of Act No. 39/2004.

From the research on Indonesia Government Regulation towards TKI did by Hadi Subhan (Hadi Subhan, 2012), from 24 product of regulations as from level Act, Ministerial Regulation, Ministerial Decree and the Ministerial Circular there existed some point that contribute to the uneffectiveness of the regulation, namely the bias of the aim of TKI protection effort, and the authority given power to run the function. It leads to miscoordination and sectoral egoism, as happened with Ministry of Manpower and Transmigration; Ministry of Foreign Affairs' and BNP2TKI. The impact of this bias of TKI protection contribute to the unmaximal the target is, this both the ministry plus one government agency placed the performance rating score as CC (good enough, with less fundamental remedy). (<<http://skalanews.com/berita/detail/186438/DPR-Keluhkan-Kinerja-Kemenakertrans-dan-BNP2TKI> downloaded in 30 October 2014, or in <<http://www.republika.co.id/berita/nasional/umum/14/06/04/n6n28c-muhaimin-bantah-kinerja-kemenakertrans-buruk>> downloaded in 30 October 2014)

But BNP2TKI as new government agency created to adress the TKI protection problems is having critical view by KPK (Corruption Eradication Commission), and is proposed to be liquidated.( <http://news.liputan6.com/read/2103163/kpk-sebut-bnp2tki-dan-kemenakertrans-lambat-soal->

tki> downloaded in 30 October 2014).

Taking into account the above issues, we could implement two grand approaches on policy advocacy for protecting TKI, namely Advocacy to Revise Act on TKI Protection by Using Management-Based Obediency Approach, and Advocacy to Revise Act on TKI Protection by Using Enforcement-Based Obediency Approach

### **B.1.1. Advocacy to Revise Act on TKI Protection by Using Management-Based Obediency Approach**

Advocacy to revise Act on TKI Protection is by make regulation which is clear, measured, and planned to overcome the problem of authority bias on the context of TKI protection. BNP2TKI as government agency responsible towards TKI should be audited to found why its role is unoptimal, whether it is because of pressure from some related ministry office to gain authority over others, or because the institution design still not yet mature, or the authority is lacking so could not maximal to protect the TKI, or instead having pressure from TKI distributor agents.

Discourse about BNPTKI's institution capacity must be ready before Act on TKI Protection proposed. Academic journal must be urgently ready by comprehensive discourse from factors such as legal-normative, sociologic, economic, politics, and not less important is factor of international context. Proper academic texts on TKI protection, is expected to enlivening the Act proposed later that would enabling achievement of TKI protection conceptually and operationally.

These input could be used as endorsement, so the revision of Act on TKI Protection could be done massively and measurably. Until now the revision of Act on TKI Protection have not included in Prolegnas agenda (National Legislation Program) in DPR (Lower House Assembly). There are no

insiative and government to amandement Act No 39/2004. Hence the academics groups and civil society organizations could launch a comprehensive discourse, and to make an academic review (draft) that could be proposed to the government or also DPR so then it could be included in Silaknas (National Work-Program Gathering).

One of the critical issues related to the idea of revision to the Act on TKI Protection is the creation of government assistance institution just like KPK, to potentially could be a role model to strengthening BNP2TKI capacity to beat some "mafia" inside the TKI problem that have been systematically taking benefit from abusement bussiness related to TKI. Giving authority "above the line" to BNP2TKI is expected to make this institution capacitive enough to do some bargaining business with stakeholder on TKI, whether it is inside government birocracy or outside it.

Indonesia is the second biggest workers sending country in the world, while Phillipine is the biggest one. Indonesia can make Phillipine as a reference in migrant workers management. Realize as the biggest workers sending country, Phillipine established a specific ministry which responsible to protect Phillipine's migrant workers, namely Phillipine Migrant Worker Ministry. The eatablishment of Migrat Worker Ministry in can be used as a good example for Indonesia. The establishment of Migrant Worker Ministry in Indonesia could become as a breakthrough for protecting Indonesian workers migrant. Nowadays Indonesia has Workers Ministry and Transmigration.

### **B.1.2. Advocacy to Revise Act 39/2004 on Placement and Protection of Indonesian Migrant Worker by Using Enforcement-Based Obediency Approach**

Advocacy to Revise Act 39/2004 on Placement and Protection of Indonesian

Migrant Worker could be done by proposing an amendment to revise some articles related with the authority of National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI), namely articles 94-99. This agency have a great authority for placement and protection of Indonesian Migrant Worker, but there are no rules to ensure that the authority is not abused. In fact there are a lot of abused of power. For example, there are a lot of extortion againts migrant workers such as the illustration below.

First, all of Indonesian Migrant Workers must have Card Overseas Workers (Kartu Tenaga Kerja LuarNegeri – KTKLN) before their departure. Without this card they can not pass the immigration gate in the airport. Second, all of Indonesian sailor must joint The Basic Safety Training (BST) and pay Rp 1.800.000 for that trainig. They have to pay Manual Book for Sailor also. Third, many Indonesian migrant workers were forced to sign a loan agreement letter by requirment agency. It was done to legalize the high fee charged by requirment agency.

In many cases this requirement cause many problems and etortion for Indonesian Migrant Worker. This extortion take place in a long term period. Since it always happen, it is mean that the government (BNP2TKI, Workers Ministry, Foreign Affairs Ministry especially Indonesian Consulat General in receiving countries) official do serious omission. They know that the extortion exist, but they hesitate or doing nothing to prevent that extortion.

Currently, the House of Representatives (Dewan Perwakilan Rakyat – DPR) through Commission IX initiated amendment on Law No.39/2004 on Placement and Protection of Migrant Workers Abroad. However, this law has been more favorable for recruitment agencies than for migrant workers. It is expected that the amendment process can

be synchronized with Law No.6/2012 on Ratification of the United Nations Convention 1990 on Protection of Migrant Workers and Their Family which has been ratified by the Indonesian government.

## **B.2. Advocacy to Suppress TKI Receiving Countries to Ratify International Convention on Migrant Workers**

Advocacy towards TKI problems actually also should take domain in international level. Because practically the workers problems of TKI are many existed in this domain, the place where the TKI works. As discussed in objectivication of TKI problem before, exists acute problem that there are tendency the migrant workers receiving countries instead not do some ratifcation to convention on civil or migrant workers rights, also they do not have membership on IOM.

Related to the ratification of a convention, or mostly known as international regulation (international regime), actually is merely domestic problem within a country. The other countries do not have authority to intervene with the ratification process of a convention. Intervention on this case is understands as misbehave on sovereignty of the country.

So how the strategy should Indonesia do to suppress migrant workers receiving countries, which are subject to TKI been working to gradually ratify civil rights convention for Indonesia's migrant workers sake?

### **B.2.1. Advocacy by International Governmental Organization (IGO) Track**

One of the alternatives that can be done for protecting migrant workers is advocacy through diplomatic instrument by using government-based organization media, as Indonesia enforcement to ratificate some convention on workers. Indonesian governments can do further in partnership with civil society and international organizations to implement legal and social

protections for migrant domestic workers.

To discourse issues about migrant workers there is a forum namely "Global Forum on Migration and Development (GFMD)". The Global Forum on Migration and Development (GFMD) is a recent initiative of the United Nations Member States to address the migration and development interconnections in practical and action-oriented ways. The objectives of the GFMD is to provide a venue for policy-makers and high-level policy practitioners to informally discuss relevant policies and practical challenges and opportunities of the migration-development nexus, and engage with other stakeholders, including non-governmental organizations, experts and migrant organizations to foster practical and action-oriented outcomes at national, bilateral and international level;

This forum is a room to build global dialogues about migration issues and development. This forum created by United Nations high level dialogues in 2006 discussed about International Migration and Development, related to the massive reoccurring of migrant workers problems whether it is in Asia, Europe, Middle-East, and Africa.

Take an example is the "12-by-12" campaign for ratification and implementation of Convention No. 189, led by the International Trade Union Confederation (ITUC) in partnership with International Domestic Workers Network (IDWN), other global unions and NGOs has campaign teams working in over 80 countries. A pioneering capacity building program to promote the rights of migrant workers in the Middle East and Asia that took place in May 2012 brought for the first time, workers' organizations and NGOs supporting migrant domestic workers from countries of origin together with their NGO and trade union counterparts in Middle Eastern countries. (d'Cumba, 2012) GMFD would be an effective forum to suppress the migrant workers receiving

countries to gradually do some ratifications on civil and migrant workers protection rights, that enable our national regulation towards migrant workers protection become more optimal. Some concerted advocacy could be done when migrant workers receiving countries hesitant or not willing to formulate new friendly regulations towards the workers, for example is by doing joint communique to do sending moratorium of migrant workers synchronously.

Moratorium indeed becoming potentially developable further option to suppress migrant workers receiving countries, without violating any obedience on international interaction norms related to non-interference principle. All this time moratorium tend to be did partially, where there was a country disappointed to the performance of migrant workers protection in receiving countries. For example is Indonesia that did a moratorium on migrant workers sending to Saudi Arabia in 2012. This moratorium not too much affected to Saudi Arabia's migrant workers policy globally, what happened later instead impacted to legislation processes of some Indonesia's illegal migrant workers long reside in Saudi Arabia by Indonesia's government.

The other option that could also be did is diplomatic actions on the form of threat on severance of diplomatic relations. This option really did by Gloria Macapagal Arroyo to urge Qatar government to change regulation related to the case of death sentence to Philippine's migrant workers there. To some extent this option could be interpreted as very serious option to be taken, to show how critical the government attention to do migrant workers protection in international level. But diplomatic option did partially, also could not much affected decision making process in migrant workers receiving countries. If the mobilization of diplomatic relations severance is doing by synchronously, the probability to suppress

the migrant workers receiving countries would be more effective compared to the one-sided effort. Indeed we should understand, this option is a difficult option with some dilemma encountered by migrant workers sender countries while they are experiencing acute unemployment problem domestically.

Consultation forum of Asian ministries in 2003, attended by Asian migrant workers sender countries such as Bangladesh, China, India, Indonesia, Nepal, Pakistan, Philippines, Ceylon, Thailand, and Vietnam then later is famously called by Colombo Process could also appropriate to be considered. This consultation room more or less would build understanding together to determine effective measure to do some protection policies towards migrant workers.

This Colombo consultation forum to some extent shows effectivity, where workers receiving countries were willing to attend this kind of forum also in Bali, September 2005. Bahrain, Italy, Kuwait, Malaysia, Qatar, South Korea, Saudi Arabia, and United Arab Emirates attended that room of consultation. Instead in 2008, the same forum were organized in Abu Dhabi (Qatar) with focus of discussion is to create new ideas on building practical and comprehensive framework to promote workers prosperity and strengthening bigger colworkersation between governments. (IOM, 2010)

Besides using international forum, advocacy could be used to suppress migrant workers receiving countries to do some ratification to protect migrant workers is also could be done with instrument of ASEAN Declaration on Protection and Promotion of Workers Rights in ASEAN countries. Indonesia and Philippine as 2 biggest migrant workers exporter, could intensify bilateral cooperation to make colworkersation networks about migrant workers protection.

### **B.2.2. Advocacy by International Non Governmental Organization (INGO) Network**

Advocacy through INGO on its context actually is more dynamic compared to IGO track, related to too many option available to suppress countries not yet ratified migrant workers protection. Indonesia has some organization concerning with migrant workers issues, such as Migrant CARE, and Solidaritas Perempuan (Woman Solidarity). Study did by Sylvia Yazid (Silvia Yazid, 2010) on her analysis said that Migrant CARE and Solidaritas Perempuan have strong international networks, whether on financial support to operationalize the organization, or to build network to do advocacy towards migrant workers. And then reasonable network to be the basis to do workers advocacy is Human Right Watch (HRW). This organization is highly reputable, so distribution of aspiration and advocacy through HRW would be considered by UN, countries have problem with human rights issues, and also some government-based international organization.

This choice is very relevant, because Migrant CARE and Solidaritas Perempuan is national-based organization, not having any representative in several countries having serious problem with woman and migrant workers issues, whether because of regulation obstacle or very severe financial problem. Beside build continuous communication with HRW, it is also important to build networking with NGOs in other countries. For example is Migrant CARE and Solidaritas Perempuan which are have coordination network with NGOs such as CARAM (Coordination Action Research on AIDS and Mobility) in Malaysia, Global Alliance Against Traffick in Women (GAATW), Asia Pacific Forum on Women, Law and Development (APWLD), and Women's Empowerment in Muslim Contexts (WEMC).

### C. Internally Advocacy on Protection towards Indonesian Migrant Workers.

Discussion about advocacy through internalization of TKIs protection as migrant workers is more focused on raising the capacity of migrant workers recruit, involving some institution such as PJTKI (Indonesia's Migrant Workers Sending Companies); Ministry of Manpower and Transmigration; BNP2TKI; Ministry of Foreign Affairs; to the law-enforcement authorities such as police and judiciary.

#### C.1. TKI Recruitment

Advocacy internalization to protection towards TKI could be done with socialization to the migrant workers recruit to consider things related to their skills and competencies which should above average. With high competency level, the migrant workers recruit would have bargaining position to choose and potentially to get more humane job vacancy.

Besides that, the migrant workers also should prepare themselves to master some international language where they work. For example if the TKI wants to work in Middle-East, so the mastering of daily Arabian language (*ammiyah*) becoming special need. In very simple example, the capability of such language would help TKI to understand some contracts created by workers distributor agent, so if there is interpretation problem on the contract which is could be absurd and doubtful, so the TKI could be decide a preventive measure from the beginning. Better language capability also enables communication process between the employer and the migrant worker could be well taken place, so miscommunication issues could be avoided.

This is very important so that the migrant workers know some of the rights and

struggle for it with effective measure. It is including the capacity to do consultation and communication towards some migrant workers protection institution, such as General Consulate of Republic of Indonesia in some countries; lawyer; police; and NGO, so the problem encountered could be deciphered from the beginning.

#### C.2. Stakeholders on TKI

Internalization of advocacy also should be done in some stakeholders that having main task and function to serve administration, training, also do some protection of workers in national or international level. Based on Act No. 39/2004 and regulation stated before, now the stakeholders is including 13 government institutions namely, Ministry of Manpower and Transmigration, BNP2TKI, Ministry of Foreign Affairs, Ministry of Social Service, Coordinating Minister on the Economy, Coordinating Minister on the People Welfare, Ministry of Health, Ministry of Communication and Information, Ministry of Home Affairs, Directorate General of Immigration, Indonesian National Police, National Agency on Professional Certification, and Institute of Professional Certificate.

The measure could be done as following:

**First**, Improving for Institution Capacity. This is related to inter-linear relationship problem to give workers protection which is to date ran unsinergically. There is a competition tendency among the institutions, contributes to interest clash inter-institution, so it becoming so contra-productive. As study did by Mahendra Handoko (Mahendra Handoko, 2012) that stated to date, many regulation existed instead pygmified each others. This institutional capacity raise could be done by revise TKI protection regulation that placing the institution which were selected to give protection and communication horizontally and also vertically.

**Second**, Improving Human Resource. This is also very urgent to whether raise the personnel number, technological device operationalized, and also qualification of resource could be placed in workers protection sector. Indeed it is become distinctive problem that by now Jokowi is still evaluating all the departments through moratorium of new civil servant appointment. But above all the most important thing is to change the birocracy's mindset to totally giving maximum performance to protect the TKIs. Protecting single soul of the TKI with all the means of efforts is equally comparable to protect the TKIs for whole. (Muhammad Iqbal Songell, 2014)

## CONCLUSION

Indonesian migrant worker face very complex problems which exist at grass root level, community level, national level, regional level and global or international level. Workers regime and migrant workers regime at global level are very progressif, but not at the other levels. At the global level, human right regime, workers regime and migrant worker regime give enough protection toward workers and migrant workers. Eventhough many receiving countries do not ratify and do not adopt these convention, since there are many conflict of interest between employers and migrant workers.

Indonesia should do advocacy on protection towards Indonesian migrant workers institutionally in three ways. First, it need to do in-depth assessment of problems faced by Indonesian migrant workers, at every stage of the migration cycle, including recruitment, transit, employment, and return. Second, it need to do externally advocacy on protection towards Indonesian migrant workers. These advocacies based on Government to Government (G to G); International Governmental Organization to Government, (INGO to G); International

Non Governmental Organization to Government (INGO to G), Third, Indonesia need to do internally advocacy on protection towards Indonesian migrant workers. These advocacies based on Indonesian migrant workers empowerment, increasing their competence, and do amandements against Act No 39/2004. The amandment should make a clear division of task between Ministry of Manpower and Transmigration (Depnakertrans) and the National Agency for the Protection and Placement of Indonesian Migrant Workers (BNP2TKI).

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