

**The Indonesian National Commission on Violence against Women
Komnas Perempuan**

Independent NHRI Report

**Regarding the implementation of the International Convention on the Protection of the
Rights of All Migrant Workers and Members of Their Families in Indonesia.**

**Submitted to the
UN Committee on the Protection of the Rights of All Migrant Workers and
Members of Their Families in Indonesia**

**Prior to the review of Indonesia during the 27th Session of the Committee
(4th September –13 September 2017)**

2017

Introduction:

1. This report has been prepared by the Indonesian National Commission on Violence against Women (Komnas Perempuan), a specialized, national human rights mechanism, with the mandate to create a situation that is conducive to the elimination of all forms of violence against women.¹
2. The information presented in this report has been compiled from data obtained from direct monitoring carried out by Komnas Perempuan², complaints from victims of violence that have been received by Komnas Perempuan, data submitted by service provider organizations in Komnas Perempuan's operational network and consultations with networks at the local and national level regarding the implementation of the UN Convention on the Protection of the Rights of all Migrant workers and their Families, with a focus on women migrant workers.

Points of appreciation:

Komnas Perempuan notes a number of progressions made by the state regarding the protection of migrant workers human rights. Specifically, Komnas Perempuan appreciates:

- That the state has demonstrated its commitment to the protection of Indonesian migrant workers by ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families through Law No.6/ 2012 and furthermore submitted its initial report to the Committee in 2017.
- The creation of the 'citizen services' program which is implemented by the Ministry of Foreign Affairs to provide services to all Indonesian citizens including migrant workers abroad. A number of services are directly related to migrant workers such as consulate services, legal aid, shelters for migrant workers that are experiencing troubles and Indonesian education services that are provided at a number of destination countries.
- That the state has been prioritizing the protection of Indonesian citizens abroad through actions that include the evacuation of migrant workers in conflict areas, the efforts to rescue kidnapped Indonesian migrant workers abroad.
- That in 2015 and 2016 President Joko Widodo postponed the executions of two female domestic migrant workers; Mary Jane Veloso (Filipino citizen) & Merri Utami (Indonesian citizen), because of indications that these two women are victims of human trafficking.
- The decentralization of services for migrant workers which are no longer concentrated in the capital city, and a number of initiatives at the regional and village level designed to protect migrant workers. Also the data recording and registration systems for migrant workers that has been computerized and made online which acts to connect regional governments, the central government and representations of the state³.

¹Komnas Perempuan was established with a Presidential Regulation as its legal basis. The organization's mandates include a) public education, b) monitoring and fact finding, c) research, d) proposing changes to law and policies, and e) build national, regional and international networks.

²1)Monitoring Report of Migrant Workers Human Rights and Handling Mechanisms for Victims of Human Rights Violations, Komnas Perempuan, 2012. 2) Monitoring report of the Repatriation Program of Undocumented Migrant Workers in Saudi Arabia, 2011 and 2013. 3) Study on Sexual Violence against Women Migrant Workers, 2014. 4) Report on the impact of death penalty of migrant worker and their families 2016.

³Regulation from the Head of Placement and Protection of Indonesian Migrant Workers No.09 09 /KA/III/2012 regarding the Implementation of the Online Placement and Protections for Indonesian Migrant Workers.

The implementation of the Convention and national laws and policies for the protection of migrant workers human rights Section I (Points 1, 2 and 3)

3. Law 39 / 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad is the legal basis for the governance and protection of migrant workers. However, the weakness of this law is that it only regulates the placement of migrant workers without comprehensive protections of their rights. The process of revising this law –so that it contains protections for the rights of migrant workers and refers to the Convention on Migrant Workers- has not been completed, the draft law continues to be discussed by the Peoples Representative Council (DPR) and government.
4. Efforts for the harmonization of Convention on Migrant Workers into national law and regional regulations has not been carried out effectively and has not been made a priority. Regulations and policies regarding migrant workers at the central and regional levels still do not make reference to the convention.
5. After the ratification of the Convention, the government has not carried out socialization regarding the convention and its implications nor disseminated the contents of the convention in a planned, regular, wide-reaching way, this includes within the central and regional governments or to stakeholders including members of the legislature.
6. The government report regarding the implementation of the convention is gender neutral, it does not take into consideration the gender based violence which is experienced by Indonesian women migrant workers (of whom there are higher numbers than males) or respond to the issues of sexual exploitation that were asked by the committee.
7. The direction for the protection of migrant workers has seen ‘skilled labor’ prioritized whilst the migrant workers who are considered ‘low skilled’ such as domestic workers –the majority of whom are women- are sidelined.
8. The moratorium on the sending of migrant workers to a number of destination countries in the Middle East statistically is seen to have impacted on decreasing the number of cases of violence and exploitation experienced by women migrant workers however qualitatively speaking it has not addressed the roots of the problem. The moratorium policy from its beginning has not been planned or measured properly, the targets for policy reform and time frame have not been clear and there has been a minimum of consultations carried out with migrant workers themselves. This moratorium policy has resulted in increased irregular migration, human trafficking and has blocked employment opportunities and people’s rights to work.
9. The bureaucracy and management of the migration of Indonesian migrant workers involves a number of ministries and institutions where the authority and responsibility remains overlapping, especially regarding placement of migrant workers. This has an effect on the lack of clarity regarding who has the responsibility for protecting Indonesian migrant workers.

Komnas Perempuan’s Work Surrounding Migrant Workers (Section I Point 5)

10. Komnas Perempuan as an NHRI has made the issue of migrant workers a priority issue, this has been done through various efforts including: a) the formation of the Migrant Workers Task Force in 2008 to push for the ratification of the Convention on Migrant Workers and the harmonization of the convention with national law. B) Socialization of the convention after its ratification and the encouragement for the convention to be implemented in the regional and central governments⁴. C) monitoring and documentation of the issues surrounding the

⁴Report and Proceeding of Policy dialogues on the implementation of UN Convention on the Protection of the Rights of all migrants worker and their families, Surabaya 14 September 2012, Batam 11-12 September 2013, Makassar 2-4 October 2013, Jakarta 22-23 September 2015.

protection of migrant workers especially issues of gender based violence carried out through Komnas Perempuan's Complaints and Referrals Unit, a national inquiry carried out along with the Indonesian Human Rights Commission (Komnas HAM) and monitoring regarding the impact of the death penalty on migrant workers and their families. D) Reporting and contributing to regional and international human rights mechanisms and treaty bodies as well as being involved in the formulation of the ILO convention 189 concerning decent work for domestic workers.

Pre-Departure Training and Education for Migrant Worker (Section I Issue 9)

11. Each migrant worker who is going to work in a foreign country must join an education and training program to gain the competencies that are needed for the type of work that they are going to carry out in their destination country.⁵This education and training are provided by government training centers as well as private centers⁶. Komnas Perempuan has found a number of issues: A) Much of this education is carried out by large agencies which also recruit, accommodate as well as provide the training, these large agencies are profit orientated and not focused on the fulfilment of migrant workers' human rights. B) The pre-departure training is more oriented to skill building and contains minimal content regarding understanding the law and immigration process of the destination countries and the cultural practices that they must observe, their human rights, as well as the protection mechanisms in place.

The role of the Private Sector in the Recruitment and Management of Migrant Workers (Section I Point 9)

12. The role of the private sector in the management of migrant workers is very dominant; this includes the recruitment, health testing, education and training, transportation services and insurance. The domination of the role of the private sector can also be seen through the process of dispute resolution. If a dispute arises between migrant workers and their employers or cases such as loss of contact, repatriation of corpses, termination of a migrant workers contract and repatriation, meanwhile if a dispute occurs between a migrant worker and the employment agency, the government must act as a mediator. The resolution of disputes for migrant workers more often takes place through mediation channels without a criminal process; this causes the strengthening of impunity for private recruitment agencies and middlemen.

Section III (Articles 25-30)

13. Indonesian migrant workers are obliged to take part in the migrant worker insurance program⁷. This program covers risks faced at each stage of migration. Risks borne by the insurance program include; death, illness, work-related accidents, failure to depart (not the fault of the prospective migrant worker), physical violence and sexual abuse/rape, failure to be placed in a position (not the fault of the prospective migrant worker), dismissal, legal problems, unpaid wages, issues on

⁵Minister of Manpower and Transmigration Regulation Per.23/Men/IX/2009 regarding Education and Training for Indonesian Migrant Workers.

⁶Minister of Manpower and Transmigration Regulation No. 17/MEN/VI/2007 and the Registration and Approval Process for work training institutes

⁷Minister of Manpower and Transmigration Regulation Per.07/Men/V/2010 regarding Insurance for Indonesian Migrant Workers renewed by Ministerial regulation No.1/ 2012 regarding the change of Minister of Manpower and Transmigration Regulation nomor.07/Men/V/ 2010

repatriation, loss resulting from another party's action on the journey home, mental health issues, and the risk of being moved to another workplace against the wishes of the migrant worker.

14. This insurance program is often used to narrow the responsibility of the state in the fulfillment of economic and social rights down to a single insurance program. For example, migrant worker victims of rape are paid Rp 50,000,000⁸ in compensation from the insurance program and then the government's responsibility is deemed to be finished.

At the time that this report was submitted, Indonesia has just changed the Migrant Workers Assurance program with the social guarantee National social security system, especially for migrant works which provides insurance for work accidents, life insurance and old age insurance⁹, however BPJS is not considered to fulfil the needs and security of migrant workers.

Forms of Exploitation and Human Rights Violations Experienced by Women Migrant Workers

15. Results from Komnas Perempuan's monitoring¹⁰ found that women migrant workers experience a variety of problems, occurring in the time prior to their departure, during the departure process, right through to their return home. In the destination country, domestic workers have a higher vulnerability compared to other kinds of workers because of their systemic lack of protection, their position in the domestic sphere, lack of knowledge about the law and culture of the destination country, documents withheld by employers, and so on. The forms of violations experienced by migrant workers include; exploitation, discrimination, violence (physical, psychological, sexual), trafficking in Persons, deportation and criminalization. The forms of exploitation experienced by domestic migrant workers include; long working hours, absence of holiday and leave entitlements, heavy workload, inadequate and inhumane accommodation, overcharging and underpayment. Forms of discrimination experienced by migrant domestic workers include; lower wages in comparison with other types of work, passport/personal documents held by the employer/agent, limitations on mobility and socialization right. For those working in the Middle East they even face mandatory confinement within the employers' home.
16. Women migrant workers experience sexual violence at each stage of migration. At the time of their medical examinations sexual assault is suffered and whilst waiting to depart sexual exploitation and a minimum guarantee of safety in transit camps occurs, sexual violence and rape is perpetrated by employers or family members of employers with the result that women migrant workers are forcefully returned to Indonesia with children that are the result of sexual violence. Stigmatization of migrant workers who have experienced sexual violence occurs from both their husbands and their communities, and there is an impunity of perpetrators in destination countries and these countries themselves do not take responsibility in the resolution of cases.
17. Former migrants often suffer loss of civil and political rights, as well as economic rights due to their property being stolen when they are deported, and physical and mental disabilities that leave them dependent on their already poor families for the rest of their lives. A state of split cultural identity between the country of origin and the destination state is not uncommon. The integration and repatriation process does not touch on issues of cultural integration or the elimination of stigmatization for victims of sexual violence, pregnancy, and so on.

⁸*Ibid.*

⁹Peraturan Menteri Ketenagakerjaan No.7 tahun 2017 tentang Program Jaminan Sosial Tenaga Kerja Indonesia.

¹⁰Report on Monitoring of Migrant Workers Human Rights and Handling Mechanisms for Victims of Human Right Violations, Komnas Perempuan 2013

Rights to peaceful assembly and association

18. Migrant workers still face prohibitions on assembly and association as well as the forming of labor unions in certain destination countries such as Malaysia, Singapore and Saudi Arabia. Migrant worker organizations that appear in these countries are not recognized as part of labor unions representing the interests of migrant workers.

Cost Structure of Labor Migration (Article 31-33 &37)

19. Indonesian migrant workers are predominantly women and most are employed as domestic workers. As domestic workers, they are more vulnerable than other workers. Domestic work is classified as informal work undertaken by unskilled workers. It is considered synonymous with women's work, of no economic value, and is hidden within the private sphere.
20. Despite the risks, domestic workers receive lower wages and are forced to pay a higher placement fee compared with other kinds of employment. The monthly salary of Indonesian domestic migrant workers as stipulated in MoU's or policies created by the Indonesian government and destination countries are: In Hong Kong USD 502, Singapore USD 410 and Malaysia USD 180, this is compared to the wage of a factory worker in Korea who receives USD 1.063. Expenses (placement expenses) for domestic workers around on average 2-3 times the salary that they receive.
21. Migrant workers must bear the placement fee, except for those placed in the Middle East where the placement fees are borne by the employee. The placement fee includes costs incurred in fulfilling workplace requirements such as documentation, education and training, medical checkup, tickets and accommodation¹¹.
22. The burden of the placement fee on migrant workers manifests in wage cuts over a 6-12-month period. This practice occurs in Singapore, Malaysia, Hong Kong and Taiwan. In Hong Kong, migrant workers' wages are cut for seven months and an additional 10% salary cut is taken by agents and the migrant worker recruitment and placement agencies at every contract renewal. In Singapore and Malaysia, the salary cut is carried out for a period of between 4-6 months. Meanwhile in Taiwan the salary cut to pay for the placement costs can go for as long as 12 months. The practice of salary cuts is carried out not only by agents and PPTKIS but also involving sponsors and middlemen who recruit the migrant workers from their original regions.

Human Trafficking (Section III Point 38)

23. Migrant workers, especially women migrant workers are vulnerable to human trafficking, they are trafficked for sexual exploitation and financial gain by transnational gangs. In Komnas Perempuan's Annual Notes publication 403 cases of trafficking were recorded in 2012, 614 cases in 2013, 310 cases in 2014, and 378 cases in 2015.
24. In 2016 two Indonesian migrant workers; DolfinaAbuk (30) and YulfridaSelan (19) died in Malaysia, Dolfina was reportedly found dead in her room by her employer whilst the body of

¹¹Regulation which regulates the standard and technicalities of education and training for migrant workers exiting Indonesia include:

Minister of Manpower and Transmigration Regulation Per.23/Men/IX/2009 regarding Education and Training for Indonesian Migrant Workers.

Minister of Manpower and Transmigration Regulation No. 17/MEN/VI/2007 and the Registration and Approval Process for work training institutes

Yulfrida was found hanging after a reported suicide. When the families opened the coffins they found that both bodies were stitched closed and the position of the internal organs had been shifted. Both victims were from poor families, and both had had the identities of their corpses falsified, the departure of both to work in Malaysia was not in accordance with the regulations. Yulfrida was reported to have gone missing by her family. The family of the victims directly reported this case to Komnas Perempuan in 2016.

25. Aside from these cases have been a number of other deaths of migrant workers in Malaysia that originate from NTT. Within a short period of time, additional female Indonesian migrant workers were reported dead: one was reported to have drowned, one reported to have committed suicide by hanging and one with an unknown cause of death. Breaking down the people trafficking mafia in NTT and eliminating human trafficking in this province and across Indonesia must become a serious concern of the central government and NTT provincial government. Generally speaking, safe and effective management of the migration process and accurate systems and services surrounding the documentation of Indonesian migrant workers the is the important factor for timely detecting and countering risks of human trafficking in migrant workers.
26. Female migrant workers have unique vulnerabilities that are a culmination of factors (including background of education, weak financial position, high mobility and separation from support networks) and means they are often targeted and exploited by drug trafficking gangs and coerced into facilitating the transportation of illegal drugs abroad as drug mules. These women are victims of human trafficking but a considerable number end up being sentenced to death as the result of judicial processes that overlook their status as victims of human trafficking and do not allow a fair trial.
27. Mary Jane Veloso (Filipino citizen) & Merri Utami (Indonesian citizen) are two former migrant workers who were entrapped in drug smuggling rings and are currently on death row in Indonesia after being sentenced to be executed for smuggling drugs. These two impoverished female migrant workers represent the outermost layers of trafficking syndicates. Komnas Perempuan appreciates the steps taken by the President (through the Attorney General) on the 29th April 2015 to suspend the execution of Mary Jane Veloso (and Merry Utami on 29th July 2016). Komnas Perempuan calls on the state to grant clemency to both women in recognition of their status as victims of human trafficking and abolish the death penalty as a punishment that contravenes principles of human rights.

Indonesian Migrant Workers Abroad and the Death Penalty (Section III Point 38)

28. Data from the Ministry of Foreign Affairs notes that as of December 2016 there are more than 177 migrant workers currently on death row abroad, 77 of these are women. The state carries out efforts to free Indonesian migrant workers from being executed through a number of approaches including diplomacy, provision of legal aid, and bi-lateral negotiations however its own practice of sentencing foreign migrant workers to death undermines these efforts. Recent cases of female Indonesian migrant workers being executed abroad include the beheadings of Siti Zaenab and Karni Binti Medi Taslim that took place in Saudi Arabia in April 2015. Siti Zaenab was executed after 16 years imprisonment whilst Karni Binti Medi Taslim was executed after being sentenced to death in 2013, Karni left behind three children, one of whom

- was still only 8 years old at the time of her execution. The execution of Siti Zainab was carried out without diplomatic notification even though Indonesia had been engaging in diplomatic negotiations, officially asking for clemency the condemned. Neither woman was provided with legal representation at any stages of their trial, both were also suspected to have mental illnesses.
29. There are number of migrant workers that are facing the death penalty because they have defended themselves from sexual violence carried out by their employers. Komnas Perempuan has carried out monitoring regarding the impact of the death penalty on the families of migrant workers who are awaiting execution, the families of migrant workers who have been executed and the families of migrant workers who have been granted clemency. The effects of the death penalty on families amongst others includes: physical illnesses caused by stress, mental disturbances (such as depression and anxiety), impoverishment because of costs associated with legal proceedings, children dropping out of school and becoming disillusioned, and social isolation and stigmatization.

Recommendations:

Komnas Perempuan urges the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families to submit the following recommendations to the State of Indonesia:

- 1.) Komnas Perempuan recommends that the Indonesian Peoples Representative Council (DPR) along with the government work to increase protections for migrants and their families by improving the migration systems for migrants and their families. This should be done by revising Law No.39/2004 and ensuring it includes policies about what countries are appropriate destinations for migrant workers.
- 2.) Komnas Perempuan recommends that Indonesia speedily ratify the ILO 189 convention regarding decent work for domestic workers and create national legislation for its implementation and the protection of domestic workers.
- 3.) Komnas Perempuan recommends that the state remove the death penalty from all legislation including the Indonesian Criminal Code, the Terrorist Act, and Anti-Drug laws and enact a temporary moratorium on the death penalty. Komnas Perempuan further recommends that the state provides support to all migrant workers and their families' currently on death row and seeks to secure clemency for them.
- 4.) Komnas Perempuan recommends: the further development of Memorandum of Understandings with countries that receive Indonesian migrant workers, these MoU's should include: clauses related to the protection of migrant workers, complaint mechanisms in the event of problems occurring between the employer and migrant worker, data management systems regarding migrant workers, where they work, who their employers are, and mechanisms for the relocation and repatriation of migrant workers.
- 5.) Komnas Perempuan recommends that the police, the National Narcotics Body, Attorney General and the Supreme Court of Indonesia: 1) create mechanisms to comprehensively handle law enforcement related to migrant workers, drug smuggling and human trafficking and 2) formulate joint standard operating procedures to protect women migrant workers that are trapped in drug trafficking syndicates, human trafficking and other criminal actions.

- 6.) Komnas Perempuan recommends the state pay careful attention to advice from civil society organizations and involves women migrant workers in all stages of decision making regarding issues that affect migrant. The government needs to provide comprehensive services at every stage of migration for women migrant work (including providing competent lawyer through legal aid services should legal matters arise).
- 7.) Komnas Perempuan recommends that the state optimize the role and increases the capacity of Indonesian missions and consulates abroad in providing protection, legal aid and support to migrant workers in order to end impunity and stop criminalization of victims, also create programs for prevention from arbitrary trial and detention.
- 8.) Komnas Perempuan further recommends the state increase the monitoring and control over the health service providers that carry out the medical examinations of migrant workers.
- 9.) Komnas Perempuan recommends The state work disseminates and socializes the results of the 27th Session of the Committee on Migrant Workers in Geneva to all ministries and governmental departments as well as to all migrant workers (both within Indonesia and abroad), their families and the wider communities they belong to.
- 10.) Komnas Perempuan recommends that the state uses all regional and international forums to push for universal ratification of the CMW convention and engage in bilateral discussions to encourage countries who receive Indonesian migrant workers have all ratified the convention.
- 11.) Komnas Perempuan recommends that the state ensures that the revision of the Migrant Workers Law refers to the Convention on Migrant Workers and other relevant international human rights instruments.
- 12.) Komnas Perempuan recommends ensuring that there is a policy for the prevention and handling of gender based violence that is experienced by women migrant workers, especially domestic workers at every stage of migration.
- 13.) Komnas Perempuan recommends the state creates a mechanism that makes destination countries responsible for cases of sexual violence that befalls women migrant workers, including migrant workers who become victims of rape and return to Indonesia with children that are the result of rape that has occurred whilst working abroad.
- 14.) Komnas Perempuan recommends the state prepares a rehabilitation scheme regarding the recovery of ex-migrant workers human rights, especially migrant workers who have become disabled, become victims of exploitation, lost wealth or have lost their lives as a result of the work they have undertaken.
- 15.) Komnas Perempuan recommends the state carries out a systematic evaluation of the moratorium policy and creates concrete targets regarding the creation of more measured policies.
- 16.) Komnas Perempuan recommends the state increases and optimizes the involvement of migrant workers in consultations and formulation of policies that surround migration policies.
- 17.) Komnas Perempuan recommends the state corrects the direction of migrant worker policy which is increasingly elitist and works to marginalize Indonesian women migrant workers, especially domestic workers.