

MALAYSIAN MAID ONLINE SYSTEM (SMO): INDONESIAN MIGRANT DOMESTIC WORKERS' PROTECTION AT STAKE

Syifa Khairunnisa¹ and Monica Bening Maeria Anggani²

Abstract

While international labor migration is an important sector of the Indonesian economy, a significant number of migrant domestic workers are still facing issues such as exploitation and the lack of legal protection. However, another problem arose in early 2018 when Malaysia implemented the Direct Hiring Policy, namely the Maid Online System (SMO), which allows an employer to hire a migrant domestic worker without going through an agency. The Indonesian government expressed their opposition to the policy since it contradicted Indonesian laws and regulations that protect migrant domestic workers. This policy raises the vulnerability of Indonesian Migrant Domestic Workers towards the violation of their rights and wellbeing as there is no oversight by the partner agency. This article is based on normative legal research, done by reviewing laws and regulations that apply to this specific legal issue. In conducting this research, authors used secondary data obtained from official reports and news portals, legal journals, and related regulations to analyze Indonesian laws and regulations that do not correspond to the Direct Hiring Policy, Indonesian's stance regarding this, as well as the risks and impact of the policy for both countries.

Intisari

Meskipun tenaga kerja migran adalah sektor yang penting bagi perekonomian Indonesia, sejumlah pekerja migran masih mengalami permasalahan seperti eksploitasi dan kurangnya perlindungan hukum. Pada awal tahun 2018, permasalahan lain muncul ketika Malaysia menerapkan kebijakan Direct Hiring yang memungkinkan majikan untuk secara langsung memperkerjakan tenaga kerja migran tanpa melalui mitra usaha. Pemerintah Indonesia tidak menyetujui keputusan tersebut karena bertentangan dengan hukum dan peraturan Indonesia yang juga menyediakan perlindungan bagi para pekerja migran. Kebijakan tersebut dapat meningkatkan kerentanan Pekerja Migran Domestik Indonesia (PMI) terhadap pelanggaran hak-hak dan kesejahteraan mereka karena tidak ada peran mitra usaha sebagai pengawas. Penelitian ini dilakukan melalui penelitian hukum normatif, dengan meninjau peraturan perundang-undangan yang mencakup isu spesifik ini. Penelitian ini menggunakan data sekunder yang didapatkan dari laporan resmi, portal berita, jurnal hukum dan peraturan perundang-undangan terkait untuk menganalisis peraturan perundang-undangan Indonesia yang tidak sesuai dengan kebijakan Direct Hiring, sikap Indonesia dalam meresponnya, kemudian berlanjut pada analisis risiko dan dampak kebijakan terhadap kedua negara.

Keywords: *Indonesian Migrant Domestic Worker, Law on Protection of Indonesian Migrant Workers, Maid Online System, Indonesian government, Malaysian government*

Kata Kunci: *Pekerja Migran Domestik Indonesia, Hukum Perlindungan Tenaga Kerja Migran, Maid Online System, pemerintah Indonesia, pemerintah Malaysia*

* 16/395986/HK/20878, Universitas Gadjah Mada, International Undergraduate Program, Faculty of Law, syifa.khairunnisa.16@mail.ugm.ac.id

** 16/394562/SP/27168, Universitas Gadjah Mada, Department of International Relations, Faculty of Social Political Science, m.bening@mail.ugm.ac.id

A. Introduction

International labor migration is an important sector of the Indonesian economy in its own right, requiring commensurate efforts to improve its professionalism as a sector and instill modernization across various components to maximize its potential for the benefit of all stakeholders. In 2005, about 3 million documented Indonesians worked overseas, comprising about 3 percent of the country's total labor force. By 2016, over the course of a decade, the number of documented migrant domestic workers rose to almost 4.9 million and constituted about 3.8 percent of the national labor force at that time but the number is far higher if undocumented migrants are included. With the undocumented migrants included, the number reaches over 9 million Indonesians, equivalent to almost 7 percent of Indonesia's total labor force.¹ These rising numbers emphasize the significant amount of Indonesian people working overseas. In the East Asia region, only China and the Philippines have more migrants working overseas than Indonesia. Most of these Indonesian migrant domestic workers move to nearby Malaysia to find work, while the rest find work in other East Asian Countries and the Middle East.²

The International Labour Organization's Convention No. 189 and the International Organization for Migration define migrant domestic worker or foreign domestic helper as any person "moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family, working in or for a household." In countries that are predominantly countries of origin of migrant workers, there is an abundance of lower-skilled workers looking for employment resulting from high rates of unemployment, poverty and teenage school dropouts. These individuals are easily attracted to jobs overseas, which often pay more than they could earn for the same work in their home country.³

Improving their economic welfare is considered the main impetus which drives the majority of Indonesian labor migrants to migrate abroad. The high level of unemployment and underemployment in Indonesia pushed numerous people to search for employment outside of their countries of origin. Many grew increasingly incentivized in the wake of discovering the accessibility of occupations from recruitment agencies and social networks as well as the higher salaries abroad.⁴

The status of migrant domestic workers is unique in the field of labor, due to the site of their employment: the home. The domestic sphere, by definition, "is imagined as a place for private individuals, not political or indeed market actors".⁵ Since their work primarily takes place in private households, they are invisible from formal labor structures and hidden from the public. The informal nature of domestic work often results in exploitative and harsh forms of labor,

¹ To migrate through official channels and become a "documented migrant", one must comply with official procedures of recruitment and placement required by the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), and thus have official documents required to work overseas.

² The World Bank (2017), *Indonesia's Global Worker: Juggling Opportunities and Risks*, The World Bank, Washington DC: The World Bank, p. 11.

³ International Organization for Migration (2010), *Labour Migration From Indonesia: An Overview of Indonesian Migrant to Selected Destination in Asia and the Middle East*, International Organization for Migration (IOM), International Organization for Migration: Mission in Indonesia, Jakarta: International Organization for Migration, p. 7.

⁴ *Ibid*, p. 10.

⁵ Bridget Anderson (2010), *Mobilizing migrants, making citizens: migrant domestic workers as political agencies*, *Ethnic and Racial Studies*, 33 (1), p. 64.

exposing these workers to human rights abuses. Zero to none regulation migrant domestic workers face excessive hours, physical and sexual abuse, forced labor and confinement. In many countries, this also includes foregoing wages and paying debt bondage.⁶ In some countries, these migrant domestic workers work under slavery-like conditions, trapping them in their employment, and they can be susceptible to food deprivation and, in extreme cases, even death.⁷ Even when the workers are paid, it is not always sufficient to provide for themselves and their families. Since migrant domestic workers have little to no opportunity to demand better working conditions through unions and legal protection, they often receive few, if any, social benefits. This includes insufficient rest time and little to no opportunities to visit their relatives during medical emergencies, and no pension. Migrant domestic workers are also often subject to physical, psychological and sexual abuse and harassment, torture, arbitrary arrest and detention, and prohibition of family unity and reunification among many other human rights violations.

Unfortunately, migrant domestic workers who are victims of exploitation and abuse nonetheless have limited to no access to justice at the different stages of their migration.⁸ Including those who are from Indonesia, there are many cases in which they lack a steady bargaining position when faced with cases and issues abroad. Access to justice is a fundamental shield for migrant domestic workers in global migration. Therefore, an effort is required to make sure that workers who are about to go abroad receive sufficient training and knowledge on matters related not only to the conditions in the destination country but about their legal rights in the destination countries.⁹

Another recent issue that is faced is the enactment of the Direct Hiring Policy (hiring), or Maid Online System (SMO) by the Malaysian government on January 1, 2018. The policy serves as a new mechanism of recruitment of migrant domestic workers in Malaysia, enabling hiring them to be done directly from nine selected countries without going through an agency. This policy was lauded by many parties, especially the middle-class population who are struggling to juggle family and career. The exorbitant cost of hiring migrant domestic workers has been an obstacle for many households due to the agency cost, which can come up to RM12,000 to RM18,000 in total. However, through Direct Hiring, such recruitment of migrant domestic workers can be easily done through the Maid Online System (SMO), cutting the costs dramatically to only a fee from RM 1.600 to RM 2.500. Hiring migrant workers directly to the domestic sector is valid for the recruitment of manpower from nine countries, namely Indonesia, Thailand, Philippines, Cambodia, India, Laos, Nepal, Sri Lanka, and Viet Nam.¹⁰

On the one hand, the Direct Hiring Policy does reduce the cost of recruitment of migrant domestic workers. However, on the other hand, it causes greater vulnerability of the migrant domestic workers during their working period as there is no oversight role of the bureaucracy. Moreover, this new mechanism contradicts Indonesian law and regulations that are made to

⁶ International Labour Organization (2013), *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, International Labour Organization, Geneva: International Labour Office, 44.

⁷ Human Rights Watch (2010), *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East*, Human Rights Watch, New York: Human Rights Watch, 2.

⁸ International Organization for Migration (2010), *Labour Migration From Indonesia*, p. 38.

⁹ *Ibid*, p. 38-39.

¹⁰ Migrant Care (2018, January 29), *Tentang Program Perekrutan Langsung (Direct Hiring) Pekerja Migran di Malaysia*, Retrieved November 5, 2019, from Migrant Care: <http://www.migrantcare.net/2018/01/tentang-direct-hiring-di-malaysia/>.

ensure the protection of Indonesian migrant domestic workers by involving a third party in the hiring process. The Indonesian government remarked that Malaysia has never spoken to Indonesia on the implementation of the mechanism; therefore, the government has urged its neighbor to discuss the issue and renew the agreement on migrant domestic workers' recruitment, which had expired on May 31, 2016 in the form of a new bilateral agreement that will become a legal umbrella for placement and protection of Indonesian migrant domestic workers in Malaysia.¹¹

B. Malaysian Government's Direct Hiring Policy Mechanism

The new Direct Hiring Policy uses an online system, in which all things related to the direct hiring must be accessed through the SMO website (*Foreign Maid-Jabatan Imigresen Malaysia*). Such includes the necessary documents and requirements of the potential migrant domestic worker, and even potential employer's criteria. The new system requires the migrant domestic worker to already be residing in Malaysia on a social visit pass. Those who have overstayed and have their visas expired are also eligible to be hired and no longer need to look for an agency, however, an additional charge will be incurred to the employer. Once they are able to find an employer who would process their hiring or sponsor them, it will be processed easily. As the prospective migrant domestic workers are already in the country and all the documents and requirements have also been completed and fulfilled, the hiring process is estimated to be significantly reduced to about five to eight days.¹²

There are nine steps in hiring a migrant domestic worker through SMO. Firstly, the employers need to register for an account in SMO prior to registering their prospective migrant domestic workers and upload the Foreign Workers Medical Examination Monitoring Agency (FOMEMA) screening document. This process takes up to five days. *Jabatan Imigresen Malaysia* is involved in the remaining steps, which are; application and document upload process, document check, approval, result notification, payment online, and lastly, printing the Temporary Employment Visit Pass (PLKS) and i-Kad or identity card for migrant domestic workers. The last step requires both employers and migrant domestic workers to come to the office of *Jabatan Imigresen Malaysia* to have their biometric data recorded before issuing the PLKS.¹³ Since employers can now directly hire migrant domestic workers, it would also be their responsibility to create contracts and to apply for domestic workers' insurance for accidents, health, and death.¹⁴

Before the Direct Hiring Policy was established, private employers and homeowners have always needed to hire migrant domestic workers through agencies. The most credible place to recruit migrant domestic workers is a registered and licensed local private employment agency by the Ministry of Human Resources. Further, the relevant agency must be authorized by the Department of Immigration to bring in workers from abroad to be employed as

¹¹ *Indonesia Opposes Malaysia's Direct Hiring Scheme* (2018, January 11), Retrieved November 6, 2019, from Tempo: <https://en.tempo.co/read/914746/indonesia-opposes-malaysias-direct-hiring-scheme>.

¹² Chiahong Lim (2018, January 15), *Malaysians can now hire maids ONLINE. Here's how*, Retrieved November 5, 2019, from AskLegal: <https://asklegal.my/p/maid-online-malaysia-application-immigration-smo-2018>.

¹³ *Imigresyen Malaysia, Manual Pengguna System Maid Online*, p. 15.

¹⁴ Hashini Kavishtri Kannan (2017, December 29), *From Jan 1, it will take only eight days to hire a foreign maid*, Retrieved November 5, 2019, from New Straits Times: <https://www.nst.com.my/news/nation/2017/12/319544/jan-1-it-will-take-only-eight-days-hire-foreign-maid>.

migrant domestic workers.¹⁵ The process of recruitment is subject to the agreement between each country in accordance with the Malaysian laws, rules, regulations, national policies and directives regulated under The Employment Act 1955 and The Immigration Act 1959. Even though as of now the Direct Hiring Policy is not compulsory, all the hiring process of migrant domestic workers is gradually encouraged to use this mechanism.

C. The Protection of Migrant Domestic Workers Under Indonesian Law and Regulation

Considering the increasing number, Indonesian migrant domestic workers are an important component of the national workforce.¹⁶ However, domestic work is frequently undervalued, isolated, and deemed unimportant, exposing migrant domestic workers to a heightened risk of exploitation and abuse. The pressing need for comprehensive protection due to various issues faced by Indonesian migrant domestic workers poses sufficient reason for the government to ratify Law Number 18 Year 2017 concerning The Protection of Indonesian Migrant Workers. The regulation provides protection not only through the central government and regional government but also the village government. This regulation provides protection for migrant domestic workers and their families who are departing with them to the destination country, ranging from the pre-departure stage, during and after placement of work. The protection pre-departure, according to Article 8 includes document checking, working conditions drafting, skills training, and Social Security to name a few. Protection during the working period includes registering by Labor Attaché, employers' evaluations, and legal assistance as stated in Article 21. Meanwhile, Article 24 explains the protection after work, which includes facilitating their return, social rehabilitation, and the empowerment of the workers and their families.

This regulation also emphasizes the role of third parties other than the employers and the migrant domestic workers in the hiring process to provide better protection of rights for the migrant domestic workers, including "Mitra Usaha" or Business Partner, the government agents, and the government themselves. According to Article 1 paragraph 12, Business Partners are responsible for the placement and contract of migrant domestic workers along with the Private Indonesian Manpower Supplier Company (PPTKIS). Article 9 and 10 mentions the role of the Labor Attachés to verify the partner agencies and employers in destination countries and reports them if there is any problem. The following Article 11 explains the role of the Indonesia central government until village governments to distribute information and request of Indonesian migrant domestic workers. The central government is responsible for the distribution of information towards the regional government, while the regional government further notifies the village government about the information. Hereafter, the villages of migrant domestic workers provide protection through procedural administration, strengthening migrant domestic workers' rights, and empowering migrant domestic workers. The strengthening of the rights is done by conducting socialization, case training and studying the regulations of the destination country. By strengthening the rights of migrant domestic workers, it is expected that they understand the scope of their rights which provides guidance when encountering issues. It is expected that with a pre-procedural placement process and readiness to understand the rights of migrant domestic workers, issues can be mitigated when working

¹⁵ Ministry of Human Resources (2017), *GUIDELINES AND TIPS FOR EMPLOYERS OF FOREIGN DOMESTIC HELPERS*, Putrajaya: Ministry of Human Resources, Malaysia, 6.

¹⁶ Nabiyla Risfa Izzati (2019), Indonesian Migrant Workers Protection through the Law Number 18 of 2017: New Direction and its Implementation Challenges, *PADJADJARAN Journal of Law*, 6 (1), p. 191.

abroad. The specific articles of Law Number 18 Year 2017 that are not in line with the Direct Hiring Policy will be discussed below.

D. The Direct Hiring Policy's Contradiction to Indonesian Law and Regulation

The Government of Indonesia opposes Malaysia's direct hiring mechanism for migrant workers in the domestic sector since it contradicts Law Number 18 Year 2017 on the Protection of Indonesian Migrant Workers and Government Regulation Number 5 Year 2013 on Partner Agency or Procedures for Assessing and Determining Personal Business Partners and Users. The government has also warned PPTKIS to avoid sending migrant domestic workers under such a mechanism and instructed the Labor Attaché in Kuala Lumpur, Malaysia to ignore the demand for Direct Hiring Policy.¹⁷

It can be pointed out that the Direct Hiring policy contradicts the Government Regulation Number 5 Year 2013 on Partner Agency or Procedures for Assessing and Determining Personal Business Partners and Users, which requires PPTKIS to send migrant domestic workers through a partner agency in the destination country. Especially it is clearly stated and regulated under Article 2 of Government Regulation Number 5 Year 2013 on Partner Agency:

“Private Indonesian Manpower Supplier Company (PPTKIS) who carries out the placement of Indonesian migrant workers abroad for Individual Users, must go through a Business Partner/ Agency Partner in the country of destination.”

The article regulates that PPTKIS or Partner Agency, which carries out placements of migrant domestic workers for individual users, must go through business partners or partner agencies in the destination country. The procedure requires prospective users of migrant domestic workers to submit requests to partner agencies in Malaysia. Hereafter, the agencies deliver the requests of those employers to the Indonesian Embassy in Malaysia for them to record the documents.

The Direct Hiring Policy mechanisms also contradicts another Indonesian regulation, Indonesian Law Number 18 of Year 2017. Article 1 paragraph 10 mentions that “*Mitra Usaha*” or Business Partner is an institution and / or business entity in the form of a legal entity in the country of destination that is responsible for placing Indonesian Migrant Workers at the employer. Referring to this regulation, the Indonesian government, therefore, could not process the placement of migrant domestic workers who did not go through Business Partners. The Indonesian government is concerned that the establishment of the Direct Hiring Policy will encourage prospective migrant domestic workers to directly visit Malaysia without going through established procedures. This is unfavorable because when the migrant domestic workers are not hired through the proper channels (agencies), no one can protect them when their rights are violated.

While containing the same regulation as Government Regulation Number 5 Year 2013 about the role of Business Partners in the hiring process of migrant domestic workers, Indonesian Law Number 18 of Year 2017 took one step further towards defining the drafting of the contract. Article 1 paragraph 12 addressed that the Business Partners mentioned above should be involved in the formulation of a cooperation agreement. A cooperation agreement is a written

¹⁷ Indonesia Opposes Malaysia's Direct Hiring Scheme (2018).

agreement created between PPTKIS, Migrant Domestic Workers Agencies in the hosting country, and Employers (households) that contains the rights and obligations of each party in the placement and protection of Indonesian domestic migrant workers in the destination country. Therefore, Malaysian employers (households) are not allowed by this regulation to create contracts solely by themselves and to apply those contracts for migrant domestic workers' insurance. Once again, the direct hiring mechanism is commendable as it allows Malaysians to save cost but the employers may take the law into their own hand, which can be dangerous for both the employers and the prospective migrant domestic workers. Because migrant workers in the domestic sector are vulnerable, it is better for the Indonesian government to send their migrant workers through the agencies so that there is a third actor to guarantee the workers' fulfillment of rights in the contract.

Furthermore, the direct hiring mechanisms are also in contradiction with Article 9, Article 10, and Article 11 of Law Number 18 of Year 2017, concerning the complete mechanisms to request migrant domestic workers from Indonesia. These regulations emphasize the central role of bureaucracy in ensuring the credibility of employers and keeping the prospective migrant domestic worker informed about their jobs so that their safety is guaranteed. However, the Direct Hiring Policy allows the employer to be in contact with the migrant domestic workers without the overseeing role of Labor Attachés, partner agencies or Indonesian government.

Considering those contradictions, a more appropriate approach should be taken where the Malaysian government first consults with Indonesia in a bilateral forum before issuing regulations relating to migrant domestic workers. Such decision-making must involve both the sender and destination country in order to ensure that it is in line with the policy of both sides.

E. Possible Risks and Impacts of the Direct Hiring Policy

a. *Indonesia*

Recruitment and placement agencies play an important role in protecting the rights of migrant domestic workers because if they run into any problem with their employers, the agencies can offer assistance. Regarding legal assistance, Article 21(1)(f) of Law Number 18 of Year 2017 mentions "During-Work" Protection, which regulates the provision of legal assistance in the form of advocacy services by the Central Government and/or Representative of the Republic of Indonesia. It regulates in general about the Settlement of Disputes by means of deliberation, through local partner agencies in the receiving country, until the lawsuit is filed against the court. The process is under the supervision of Labor Attaché and PPTKIS. The implementation of "During-Work" Protection is different from other types of protection because it can only be carried out in accordance with the legislation and the law of the destination country, as well as international laws and customs. If the migrant domestic workers are hired directly, there is a big possibility for them to not be able to seek protection or counseling without these parties. Moreover, when their employment contract is decided only between them and the employer, no third party or an agency can ensure that they are properly treated and their rights are protected.

For migrant workers in Malaysia, there are several mechanisms to seek justice including labor claims for unpaid wages, filing a claim in the civil courts, or going to the police, especially if they have strong claims and sufficient evidence. Unfortunately, numerous factors cause the

difficulty of those migrant workers to access justice, including delays in the court system, high costs of retaining a lawyer, or lack of familiarity with laws and legal processes.¹⁸ In these conditions, they are able to look for intermediaries to improve their access to justice, for example, NGOs, legal aid organizations, community groups, trade unions, and labor attachés at embassies. However, migrant domestic workers are facing the greatest barrier, because they are the most isolated, are often confined to the employer's home, rarely hold their personal documents, have no guarantee of private space and no demarcation between work and personal time.¹⁹ Therefore, if they have to seek justice for themselves, it might require them to escape from the employer and be able to locate assistance. Some workers sometimes do not have any community to support them during the process of seeking justice, causing them to stop pursuing the redress and instead only seek to return home. Hence, having an agency is a better option for them because they have a certain place to contact and who might provide them support in the process.

The concern of this policy's risk is not only coming from the Indonesian Government but also coming from PAPA (Malaysian Association of Foreign Maid Agencies). The agency raised concerns after the death of an Indonesian migrant domestic worker allegedly abused by her employer in Penang.²⁰ PAPA stated that they are not in favor of direct hiring because the employers may take the law into their own hand. In preventing this particular issue, agencies usually have a list of bad employers and that they would normally intervene to curb problems between the employee and the worker. Therefore, the migrant domestic worker has a place to contact, the agency, if she needs help so the agency can help her by sending her to a better home or back to her country. On the other hand, *Jabatan Imigresen Malaysia* also has a list of blacklisted employers but there will still be many loopholes. For instance, without the watch of agencies, another family member of a blacklisted employer could apply for a previous migrant domestic worker to work in their home.

b. *Malaysia*

There are potential drawbacks of the Direct Hiring Policy that Malaysia government needs to take into account. Although there are also risks involved when the employers hire through an agency, such as that several agencies do not give refunds when the migrant domestic worker has absconded. If the employers are hiring directly as directed by the Direct Hiring Policy, here are some problems the employers may face:

1. **Difficulty in finding a migrant domestic worker**

Unless the employers have the contact of a potential migrant domestic worker in the country with a social visit pass in the country, it will be quite difficult for an employer to find a potential employee without an agency's data. Moreover, the risk of employing a migrant domestic worker with a dubious background is higher without an agency to vet the applicants.

¹⁸ Eleanor Taylor Nicholson, R. Balasubramaniam & N. Mahendran (2019), *Migrant Workers' Access to Justice: Malaysia*, Bar Council Malaysia, Kuala Lumpur: Bar Council Malaysia, p. 203.

¹⁹ *Ibid*, p. 212.

²⁰ Minderjeet Kaur (2018, February 18), *Direct hiring exposes maids to abuse, says maid hiring body*, Retrieved November 4, 2019, from FMT News: <https://www.freemalaysiatoday.com/category/nation/2018/02/18/direct-hiring-exposes-maids-to-abuse-says-maid-hiring-body/>.

2. **The risk of getting scammed**

Many employers will likely contact their previous live-in migrant domestic worker who is now back in their home country. The cost of the migrant domestic worker to fly into Malaysia will be borne by the employer. However, there have been cases where the potential migrant domestic worker disappears after receiving the money to travel from their village to the city or after getting the plane ticket.

3. **Lack of training**

Without an agency as a middle person, all training of the migrant domestic worker will fall on the employer. This does not just include training on the work but also the introduction to a difficult culture, especially for a new worker.

According to Datuk Raja Zulkepley, President of Malaysian National Association of Employment Agency (PIKAP), the scheme of Direct Hiring Policy was made without any engagement toward relevant stakeholders including PIKAP. He mentions that there will be more negative outcomes with the implementation of Direct Hiring Policy, considering the fact that the Government of Malaysia has not yet confirmed to the relevant stakeholders whether the particular policy has been endorsed by the source nations especially from nine source countries listed at SMO (Koris, 2017). Most of the source countries would never allow their citizens to work abroad as a maid without assurance of their welfare especially in such a mechanism where legitimate partner agencies are not available anymore to take care of such matters.

F. **Conclusion**

The Indonesian government's response to opposing and banning the Direct Hiring Policy carried out by the Malaysian government is worthy of appreciation. The Indonesian government considers that the aim of cutting placement costs should not violate the policies of the two countries (Indonesia and Malaysia). Therefore, the Indonesian Government expresses its opinion that if the employer is not able to use the services of migrant domestic workers from Indonesia, the Malaysian government should not impose such regulation that will harm the parties involved, as can be seen in the mechanism and objectives of Malaysian Direct Hiring Policy. In order to maintain harmonious relations between the two countries (Indonesia and Malaysia) and to protect migrant domestic workers who have helped the condition of Malaysia in the domestic sector, the Malaysian government should limit its citizens to obtain services for Indonesian laborers at low wages.

While there are continuing efforts from both sending and receiving countries to protect migrant domestic workers, improved systems and interventions are urgently required. Indonesian and Malaysian government need to discuss a regulation that corresponds to both existing laws while prioritizing the protection of the migrant domestic workers. There should be a comprehensive policy development in terms of direct hiring and it better be presented in the form of a bilateral agreement (with the foreign governments) instead of a Memorandum of Understanding (MoU). At least two things need to be discussed further. First, it must pay attention to aspects of protection for migrant domestic workers. The international community is already aware that the position of migrant workers in the domestic sector is vulnerable. Therefore, such bilateral agreement should protect the rights, interests, and welfare of both

employers and migrant domestic workers. Second, the policy must be in line with national law in Indonesia and Malaysia. For the Indonesian government, it should be aligned with the Law Number 18 Year 2017 and Government Regulation Number 5 Year 2013. An example of a direct hiring policy that might be emulated is the practice in Singapore, in which the employers can recruit the migrant domestic workers directly, but the signing of the employment contract must be witnessed by the Indonesian Embassy.

BIBLIOGRAPHY

Books and Journals Articles

Anderson, B. (2010). *Mobilizing Migrants, Making Citizens: Migrant Domestic Workers as Political Agencies*. *Ethnic and Racial Studies*, 33 (1), 60-74.

Izzati, N. R. (2019). *Indonesian Migrant Workers Protection through the Law Number 18 of 2017: New Direction and its Implementation Challenges*. *PADJADJARAN Journal of Law*, 6 (1), 190-210.

Legislations

Law Number 18 Year 2017 concerning the Placement and Protection of Indonesian Workers Overseas.

Government Regulation Number 5 Year 2013 on Partner Agency or Procedures for Assessing and Determining Personal Business Partners and Users.

International Labour Organization (ILO) Convention on Domestic Workers, 2011 (No. 189).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families.

Miscellaneous

Human Rights Watch. (2010). Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East. Human Rights Watch. New York: Human Rights Watch.

Indonesia Opposes Malaysia's Direct Hiring Scheme (2018, January 11). Retrieved November 6, 2019, from Tempo: <https://en.tempo.co/read/914746/indonesia-opposes-malysias-direct-hiring-scheme>

Imigresyen Malaysia. Manual Pengguna System Maid Online.

International Labour Organization. (2013). Domestic workers across the world: Global and regional statistics and the extent of legal protection. International Labour Organization. Geneva: International Labour Office.

International Organization for Migration. (2010). Labour Migration From Indonesia: An Overview of Indonesian Migrant to Selected Destination in Asia and the Middle East. International Organization for Migration (IOM), International Organization for Migration: Mission in Indonesia. Jakarta: International Organization for Migration.

Kannan, H. K. (2017, December 29). From Jan 1, it will take only eight days to hire a foreign maid. Retrieved November 5, 2019, from New Straits Times: <https://www.nst.com.my/news/nation/2017/12/319544/jan-1-it-will-take-only-eight-days-hire-foreign-maid>

Kaur, M. (2018, February 18). Direct hiring exposes maids to abuse, says maid hiring body. Retrieved November 4, 2019, from FMT News:

<https://www.freemalaysiatoday.com/category/nation/2018/02/18/direct-hiring-exposes-maids-to-abuse-says-maid-hiring-body/>

- Koris, S. N. (2017, October 31). *Employment agencies call for gov't to clarify maid recruiting policy, processes*. Retrieved January 10, 2020, from *New Straits Times*: <https://www.nst.com.my/news/nation/2017/10/297435/employment-agencies-call-govt-clarify-maid-recruiting-policy-processes>
- Lim, C. (2018, January 15). *Malaysians can now hire maids ONLINE. Here's how*. Retrieved November 5, 2019, from *AskLegal*: <https://asklegal.my/p/maid-online-malaysia-application-immigration-smo-2018>
- Migrant Care. (2018, January 2d9). *Tentang Program Perekrutan Langsung (Direct Hiring) Pekerja Migran di Malaysia*. Retrieved November 5, 2019, from *Migrant Care*: <http://www.migrantcare.net/2018/01/tentang-direct-hiring-di-malaysia/>
- Ministry of Human Resources. (2017). *GUIDELINES AND TIPS FOR EMPLOYERS OF FOREIGN DOMESTIC HELPERS*. Putrajaya: Ministry of Human Resources, Malaysia.
- Nicholson, E. T., Balasubramaniam, R., & Mahendran, N. (2019). *Migrant Workers' Access to Justice: Malaysia*. Bar Council of Malaysia. Kuala Lumpur: Bar Council of Malaysia.
- The World Bank. (2017). *Indonesia's Global Worker: Juggling Opportunities and Risks*. The World Bank. Washington DC: The World Bank.
- Patinio, F. (2018, February 26). *No direct-hire scheme for HSWs in Malaysia: POEA*. Retrieved November 4, 2019, from *Philippine News Agency*: <https://www.pna.gov.ph/articles/1026546>