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Assets or Commodities? Comparing Regulations of Placement and Protection of Migrant Workers in Indonesia and the Philippines

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In labor-abundant countries, migrant workers are considered state assets and the government often calls them the 'economic heroes' of the nation. Yet by maximizing economic benefits, the protection of labor migrants is often neglected by both origin and host countries. The state's assumed presence in protecting its nationals is tied to its capacity to 'control' migration flows and protect its nationals abroad. Within this framework, the regulations concerning migrant workers' protection in Indonesia and the Philippines, which comprise the two largest exporters of migrant labor in South-East Asia, are assessed. This paper compares the two key laws in both countries: Indonesian Law No. 39/2004 and the Philippine Republic Act (RA) No. 10022. In this context, it also aims to answer the following question: Are Filipinos better protected than Indonesians? Looking specifically into the state and the economy, the history of workers' protection, and key aspects of the law, this paper recognizes several weaknesses of the Indonesian government's migrant workers protection scheme, especially in the aspects of educating workers and defining the responsibilities of government agencies. Thus, strong commitment from the government, along with close monitoring by civil society, is needed to ensure better protection for citizens.

Keywords: *Indonesia; Labor Law; Labor Migration; Migrant Workers; Philippines*

In Ländern mit vielen Arbeitskräften werden ArbeitsmigrantInnen als staatliches Vermögen angesehen und die Regierung bezeichnet sie oft als „wirtschaftliche Helden" der Nation. Um den ökonomischen Nutzen zu maximieren, wird der Schutz von ArbeitsmigrantInnen allerdings oft vernachlässigt, sowohl von Herkunfts- als auch von Zielländern. Die vorausgesetzte Präsenz des Staates im Schutz seiner BürgerInnen steht in Verbindung mit der Kapazität, Migrationsströme zu „kontrollieren" und seine BürgerInnen im Ausland zu schützen. In diesem Rahmen werden die gesetzlichen Bestimmungen bezüglich des Schutzes von ArbeitsmigrantInnen in Indonesien und den Philippinen, die die zwei größten Exporteure von ArbeitsmigrantInnen in Südostasien darstellen, analysiert. Dieser Artikel vergleicht die beiden wichtigsten Gesetze in beiden Ländern, das Indonesian Law No. 39/2004 und den Philippine Republic Act (RA) No. 10022. In diesem Kontext soll folgende Frage beantwortet werden: Sind PhilippinerInnen besser geschützt als IndonesierInnen? Durch einen genauen Blick auf den Staat und die Ökonomie, auf die Geschichte des ArbeiterInnenschutzes sowie auf Schlüsselaspekte des Rechts, weist dieser Artikel auf zahlreiche Schwächen des staatlichen Regelwerks zum Schutz von ArbeitsmigrantInnen in Indonesien, insbesondere in der Ausbildung von ArbeiterInnen und in der Definition von Verantwortlichkeiten der staatlichen Behörden, hin. Verbindlichkeiten von Seiten der Regierung, zusammen mit engem Monito-

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ring von Seiten der Zivilgesellschaft, sind deshalb notwendig, um einen besseren Schutz der BürgerInnen zu gewährleisten.

Schlagworte: *ArbeitsmigrantInnen; Arbeitsmigration; Arbeitsrecht; Indonesien; Philippinen*

> *Our goal is to create jobs at home so that there will be no need to look for employment abroad. However, as we work towards that end, I am ordering the DFA, POEA, OWWA, and other relevant agencies to be even more responsive to the needs and welfare of our overseas Filipino workers. (Aquino III, 2010)*
>
> *My Government is intensifying cooperation with both domestic and foreign recruitment agencies, to ensure their safety of migration and also their protection in the host countries. (Yudhoyono, 2011)*[2]

Introduction

Working abroad has become a means of escaping poverty in Asia. A large number of migrants have seen better opportunities in other countries compared to those at home which were limited, stagnant, or declining. This perception is popular in Indonesia and the Philippines, the two largest exporters of migrant workers in South-East Asia. In Indonesia, the International Organization for Migration (IOM) documented that the registered remittances of Indonesian overseas workers accounted for more than USD 6 billion annually, contributing 1.4 percent to GDP in 2007 and 1.2 percent in 2009 (IOM, 2012). Equally, the Philippine workers recorded a rise in remittances of USD 10.7 billion in 2005 to USD 17.4 billion in 2009, contributing 10.8 percent to GDP in 2005 (Antique & Ahniar, 2010). These figures do not include money sent directly by workers via non-bank institutions or non-formal channels. According to the World Bank, however, only about 20 percent of the total remittances that arrive in Indonesia are registered (World Bank, 2008). Meanwhile, labor receiving countries such as Singapore, Hong Kong, and Malaysia continue to rely on labor supply from Indonesia and the Philippines to work as low-skilled and semi-skilled workers in the sectors of service, construction, and domestic work. The International Labor Organization (ILO) recorded some 700,000 to 1,000,000 workers leaving Indonesia and the Philippines

2 DFA – Department of Foreign Affairs, through its post abroad has the capacity to manage the protection of migrant workers; POEA – Philippine Overseas Employment Administration, has the capacity to monitor recruitment agencies and issue permits for the deployment of workers; OWWA – Overseas Workers Welfare Administration, has the capacity to ensure workers' welfare, including the organization of pre-departure briefings and trainings.

each year, while approximately twice as many remain undocumented (ILO, 2011). However, as ILO (2009) stated, "the contribution of labor migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries" (p. 5).

With regard to these facts, this paper attempts to compare and contrast the regulations for labor migration from Indonesia and the Philippines. To achieve its purposes, this paper uses qualitative research with the following primary methods: Discourse analysis of key labor laws from both countries and literature review of books, journals, independent publications, and online news articles. The discourse analysis approach is imperative to understand how the government protects and places their migrant workers. In addition, discourse analysis can identify the social context in which the text was written, while a literature review is useful to grasp the background knowledge of the topic discussed.

In order to situate the discussion, a brief overview of the economic indicators in Indonesia and the Philippines is given, followed by the history of policy development in the two countries. Subsequently, the key laws in both countries – Indonesian Law No. 39/2004[3] and the Philippine Republic Act (RA) No. 10022[4] or Amendment of 1995 Magna Carta – are compared. Following Ford's (2012) argument that the Indonesian government has poor consular assistance for its citizens working overseas compared to the government of the Philippines, which has established a number of structures to support overseas workers, this paper argues that the Philippines' Magna Carta has provided more state assistance and protection for migrant workers than the respective Indonesian law, which continues to be criticized by migrant activists for its weakness in protecting and promoting the workers' welfare.

The Corridors of Migration: Political and Socio-Economic Factors

Theories in migration studies rest upon the assumption that labor migration can in fact be influenced and controlled effectively and coherently through the use of legal

3 Republic of Indonesia (2004). Indonesian Law No. 39/2004 on the Placement and Protection of Indonesian Workers Overseas. 133 Statute Book of the Republic of Indonesia.

4 Republic of the Philippines (2010). Philippines Republic Act (RA) No. 10022, an Act Amending Republic Act No. 8042, Otherwise Known as the Migrant Workers and Overseas Filipinos Act of 1995. (2010). Retrieved from the LAWPHiL project website: http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html

instruments directed by the state (Guild & Mantu, 2011). The state's assumed presence is linked to its capacity to 'control' migration flows and protect its nationals abroad. As Day (2002) defines it, "the state regulates power and morality and organizes space, time, and identity in the face of resistance to its authority to do so" (p. 34). Bohning (1988) further emphasizes the argument that:

> *The state of which the migrant is a national owes him protection because of the membership which that person has acquired by virtue of birth or naturalisation. The constitutions of contemporary States proclaim, inter alia, the rights and freedom that nationals should enjoy; and some States' constitutions – such as Spain's – make it a special duty of the executive power to safeguard the rights and welfare of citizens abroad. (p. 133)*

The state's responsibilities have been recognized by Philippine and Indonesian leaders who are committed to protecting their nationals abroad, as reflected in their statements in the first section of this paper. However, in practice, the placement and protection of migrant workers remain complex. For example, four days after delivering his fundamental speech at the ILO conference, President Yudhoyono received the news that an Indonesian worker, Ruyati Binti Sapubi, was being beheaded by the Saudi government for allegedly murdering her (allegedly abusive) employer ("Migrant Workers," 2011). In addition, in 2012, the Indonesian NGO *Migrant Care* found that out of the 417 migrant workers abroad who were facing charges, 32 were on death row ("Workers Send," 2012). Criticism was directed towards the government's inaction. Meanwhile, the Philippines' NGO *Migrante International* (2012) reported that in a span of less than two years in office, four Filipinos were executed in China because the Aquino administration did not provide enough legal assistance and support.

A closer look at some economic indicators of Indonesia and the Philippines leads to assumptions regarding the conditions that created corridors of migration. As shown in Table 1, in the period of ten years, mainly due to the Asian crisis in 1997/1998, both countries have failed to increase their GDP per capita significantly. In fact, Indonesia and the Philippines have experienced a steady rise in unemployment rates from the mid-1990s to 2006. The crisis resulted in the decline of the domestic market and the closing of factories, forcing workers to seek employment elsewhere. Moreover, political and economic constraints and lack of employment opportunities at home are maintained in order to uphold a steady flow of migrant workers to receiving countries. Ruhs and Martin (2010) support this argument by claiming the existence of a trade-off (i.e. an inverse relationship) between the number of migrants and some of

the socio-economic rights of low-skilled migrant workers admitted to high-income countries. Garces-Mascarenas (2011) points out that "the more rights low skilled migrants have, the less advantageous (or desirable they are)" (p. 65).

Table 1: Economic Indicators

		GDP PER CAPITA (CONSTANT 2000 US$)	POVERTY GAP AT $1.25 A DAY (PPP) (%)	UNEMPLOYMENT, TOTAL (% OF TOTAL LABOR FORCE)
INDONESIA	*1996*	848.2	11.4	4.4
	2006	953.9	6.5	10.3
PHILIPPINES	*1997*	1,045.4	5.2	7.9
	2006	1,225.0	5.4	8.0

Source: ESDS International, World Bank Data, 2011

Based on the argument above, overseas deployment is mainly in favor of the government rather than the workers. Gonzales (1998) provides the argument that overseas workers have not been sufficiently equipped to adapt to the conditions they are facing in pre-departure, during the placement period, or upon their return. As a result, most of these workers are at risk of illegal recruitment, criminal offenses, and family/marriage breakdown. Yet, working abroad remains popular as these workers are often framed as the 'economic heroes' of their nation by the government due to the high remittances and foreign currency reserves they send home. For example, Indonesian President Yudhoyono (2011) stated: "We in Indonesia call these migrant workers 'economic heroes' (*pahlawan devisa*), due to their hard work and selfless devotion to the welfare of their family back home."

Indonesian Overseas Workers: 'Economic Heroes' of the Nation

The Indonesian labor export policy began in the Suharto era from the late 1960s to the mid-1990s, with the intention of generating economic growth from workers' remittances. The implementation of this policy was given to the Department of Manpower, Transmigration and Cooperative Units (*Departemen Tenaga Kerja, Transmigrasi dan Koperasi*), which was established in 1970. This department issued Ministerial

Regulation No. 4/1970 which prohibits recruitment without a permit and imposes conditions upon recruitment (National Agency for the Placement and Protection of Indonesian Migrant *Workers* [BNP2TKI], 2011). The regulation explains general ways in managing domestic and international migration through the Intra-region Cooperation Program (AKAD) and the Intra-nation Cooperation Program (AKAN). It also paved the way for the involvement of the private sector in workers' recruitment and placement. As a ruling dictator, Suharto gave no room for civil society to criticize his handling of migrant workers. Consequently, the regulation of migrant workers was not monitored and mishandling of workers often occurred.

In the post-Suharto period starting from 1998, the government increased its efforts to protect Indonesian migrant workers through the introduction of several regulations and policies. The Ministry of Manpower and Transmigration passed the Ministerial Decree No. 104A/2002 which set the platform for the early recognition of 'vulnerable workers', which refers to those who work in the domestic sector without contracts (IOM, 2012, p. 13). In addition, the government established a national agency for workers, the BNP2TKI and enacted Law No. 39/2004 that regulates the placement and protection of migrant workers. Yudhoyono's administration further elevated the regulation framework by issuing a Presidential Instruction No. 6/2006 on Reforming the System and Placement and Protection of Indonesian Migrant Workers. This instruction sets up guidelines, i.e. for the advocacy of workers, service at embarkations under the 'one roof' system (a system where immigration at airports provides special counters for overseas workers, which includes many dangers for them, i.e. exposure to corrupt officials), the improvement of the quality and quantity of workers, and eradication of illegal recruiters, which are mainly responsible for recruitment that leads to physical and psychological damages. In response, the Ministry of Foreign Affairs issued Regulation No. 4/2008 which was designed to assist Indonesian nationals abroad through close cooperation between consulate offices in host countries and the BNP2TKI.

Although these policy decisions illustrate the increasing intention of the government to effectively manage and protect overseas labor, its implementations are weak and they fail to address the issues surrounding domestic workers (IOM, 2012, p. xi). Anies Hidayah, Migrant Care's Director, criticized the government for not taking a step towards reforming the placement and protection of migrant workers in accor-

dance with human rights standards. For instance, insurance problems are still left unsolved, and the forgery of identity documents is common ("Benahi Serius Nasib," 2011). National migrant NGOs such as Care for Workers *(LSM Peduli Buruh Migran*) and Association for Indonesian Migrant Workers (*Serikat Buruh Migran Indonesia*) also expressed their frustration with the government's response in handling migrant workers' cases. They claim that most of the violent cases surrounding migrant workers are left unresolved (Ruslan, 2012). Domestic workers currently do not benefit from many of the legal protections granted to other workers under Indonesian law. In this sense, Sam Zarifi, Amnesty International's Asia-Pacific Director, points out the 2003 Manpower Act (UU No. 13/2003, *Hukum Ketenagakerjaan*), which discriminates against domestic workers by not providing the same protection it gives to other workers, such as a reasonable limitation on working hours and provisions for rest and holidays (Amnesty International, 2011). The draft and passage of the Domestic Workers Protection Bill was included in the National Legislation Program 2012, however, progress has been slowed. It seems that the government's commitment is mainly rhetoric and bound to 'lip service'.

Philippine Labor Policies: Stepping up Workers' Protection

Sending workers abroad became popular in the Philippines during the first five decades after independence in 1946 as a political response to worsening economic problems: Setbacks in the growth of industry and low labor absorption. During the Marcos era from 1966 to 1986, the Philippine overseas labor migration program was regulated in the Labor Code (Presidential Decree No. 442 of 1974). The Labor Code stipulated the establishment of the Overseas Employment Development Board and the National Seamen Board as well as operational guidelines for placement, dispute resolution, and documentation (Gonzales, 1998, p. 121). After the fall of Marcos, President Aquino vowed in 1987 to continue labor migration protection as part of her priorities. Indeed, under her presidency from 1986 until 1992, three Executive Orders (EOs) dealing directly with labor migration were issued. These were EO 126 which renamed the Welfare Fund as Overseas Workers Welfare Administration (OWWA); EO 247, which subsumed the deployment of Overseas Filipino Workers (OFWs) under

one agency, the Philippine Overseas Employment Administration (POEA); and EO 450, which lifted the ban on the issuance of licenses to new recruiting agencies (Gonzales, 1998). There seems to be a shift from labor export to migration management and the privatization of migration during this period. At this phase, 'labor friendly' provisions were incorporated in the 1987 Constitution. For instance, Section 3, Article XIII of the Constitution[5] stated that "the State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all".

An important phase in the development of the Philippine labor policy started after the execution of Flor Contemplacion, a Philippine worker, in 1995. After her execution, protesters took to the streets of the city, demanding from the government to reorganize its state migratory apparatus (Tyner, 2000). In response, Ramos endorsed the completion of the Magna Carta of Overseas Filipino Workers (RA No. 8042) by the Congress in the same year. This law marked a significant policy shift from the previous laws since it de-emphasized the economic aspects of the diaspora and created a higher standard for the protection and welfare of overseas workers (Gonzales, 1998). In 2010, President Noynoy Aquino addressed some of the issues pending from his predecessor, including a commitment to not pursue overseas employment as a developmental strategy and a priority in the protection of workers ("OFWs Score," 2012). In line with these action plans, the President successfully pushed the Parliament to pass the Republic Act No. 10022 in 2010, an amended version of the Migrant Worker and Overseas Filipino Act of 1995, which was signed during the term of former President Gloria Macapagal-Arroyo. Furthermore, Congress also approved HB 5804 or the Magna Carta for Domestic Workers or Batas Kasambahay, which put in place a better legal protection for domestic workers or those who work within the employer's household.

In the course of these changes, NGOs in the Philippines played an important role in ensuring workers' protection. They not only provide support and services for workers but, most importantly, advocate for the protection of their families back in the Philippines. Although the government helps to protect migrants abroad through various agencies, migrants' families are often forgotten. The lack in protecting mi-

5 The 1987 Constitution of the Repulic of the Philippines. (1987, February 11). Retrieved from the government website: http://www.gov.ph/the-philippine-constitutions/the-1987-constitution-of-the-republic-of-the-philippines/the-1987-constitution-of-the-republic-of-the-philippines-article-xiii/

grant workers' families often becomes the source for criticism of existing government regulations. NGOs thus focus on strengthening supportive systems for family members and caregivers left behind through programs rooted in the private sector.[6]

Comparison of Indonesia and the Philippines

This section compares the placement and protection of migrant workers within the regulatory framework of Indonesia's Law No. 39/2004 and the Philippine RA. Indonesian Law No. 39/2004 was passed by the Megawati administration in 2004 with little consultation with civil society members or organizations (IOM, 2012, p. 13). Since its adaptation, the law has attracted much criticism from migrant worker activists. Wahyu Susilo, a policy analyst from Migrant Care, expressed his concern that the law has a limited scope of protection and a tendency to accommodate the placement process of migrant labor rather than creating a protection mechanism for migrants (Susilo, 2010). In contrast, RA No. 10022 sought to improve the standard of state assistance and promotion of overseas workers' welfare. By amending the articles, the law improved the rescue and assistance mechanism, expanded the scope of illegal recruitment definitions, set heavier penalties for violators, and included penalties for overseas employment administration members who did not follow the law. In its analysis, this section will briefly cast a look into the ILO conventions ratified by both governments.

By comparison, the Philippines have ratified a total of 35 ILO conventions, while Indonesia has ratified 18 ILO conventions.[7] Both countries have ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Despite both governments' commitment to protect their nationals abroad, there are several differences in the provisions of the law that result in Filipinos being better protected than Indonesians.

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6 For example, the Philippine NGO *Women's Feature Services* (WFS) has programs with the private sectors, including "Justice and Healing for Survivors of Gender-Based Violence" and "The Impact of Female Migration on the Filipino Families and Strengthening Support Systems in the Community", retrieved from WFS website: http://wfstest.weebly.com/justice-and-healing-for-survivors-of-gender-based-violence.html/ and http://wfstest.weebly.com/the-impact-of-female-migration-on-the-family.html. Apart from WFS, other NGOs in the Philippines that are active in migrant workers' protection are *Centre for Overseas Workers*, *Blas F. Ople Policy Centre*, and *Asia Pacific Missions for Migrants* (APMM).

7 These ratifications include technical conventions such as C017 – Workmen's Compensation (Accidents) Convention and C157 – Maintenance of Social Security Rights Convention. For a full list, see ILO website: http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO:::

Defining Overseas Migrant Workers

General provisions of both laws provide different definitions of migrant workers. Section 2 of the Philippine law states that an "overseas Filipino 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 citizen". On the other hand, the Indonesian Law Article 1 stipulates migrant workers as Indonesian citizens who meet the requirement to work overseas for remuneration for a certain period of time. While the Philippine law incorporates a broader definition of overseas workers, the Indonesian law covertly stipulates that irregular workers who used unofficial channels or migrated illegally will not receive protection under this law. This is a violation of the ILO Convention C111 on Discrimination, which Indonesia has ratified, in which Article 1 (a) states that:

> *Discrimination includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.*

The differing views on protection of undocumented migrant workers make Indonesian workers more vulnerable towards physical torture and other poor treatment by their employers. Based on a report prepared by the Indonesian Migrant Worker Trade Union, most of the undocumented migrant workers are women who have obtained their employment without official documents, do not have standard salaries, and are not permitted to join a trade union ("Indonesia to Encourage," 2011). This negligence of rights stands in contrast with the commitment of ILO Convention C-087 on the Freedom of Association and Protection of the Right to Organize, especially Article 5:

> *Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.*

The Indonesian Embassy in Malaysia recorded that there were more than 800,000 illegal workers in Malaysia in 2009 ("TKI Bermasalah," 2009). Since they were perceived to be illegal, the Indonesian government would not be able to take any affirmative action in response to the treatment of the host country towards these workers.

Key Government Stakeholders and Responsibility

The Philippine Magna Carta provides more comprehensive details than the Indonesian law in terms of key government stakeholders involved in migrant workers' deployment and their responsibility. RA 10022 identifies the agencies involved, provides definitions of these agencies, and elaborates the responsibilities of these government units.[8] In addition, the law incorporates the establishment of a National Reintegration Center for Overseas Filipino Workers (NRCO) and Oversight Committee (Section 24) which comprises five senators and five representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. Comparable strategies are absent in the Indonesian law. Apart from the government agencies mentioned above, the Department of Foreign Affairs (DFA) is also involved in the protection of the interests and welfare of Filipinos abroad. Under the DFA, the Commission on Filipinos Overseas (CFO) is tasked to monitor and organize pre-departure registration and orientation seminars for Filipinos leaving the country (Gonzales, 1998).

In comparison, Indonesian Law No. 39/2004 addresses the role of the regional government and the BNP2TKI in the process of labor migration. As stipulated in Article 5, the government is obliged to regulate, guide, implement, and monitor the placement of Indonesian labor migrants, with the optional involvement of the local government, following delegated authority by the central government. The law then specifies the two roles of the national government, which comprise both execution and supervision. However, this situation creates a bias in reporting, since supervision should be carried out by non-governmental agencies (IOM, 2012). BNP2TKI is directly responsible to the president and in charge for the placement process of overseas workers, including servicing, coordinating, and monitoring in the pre-departure phase, during workers' placement, and during their return. However, unlike the Philippine law, the Indonesian law does not stipulate which other agencies or government departments are to be involved in this process. As a result, the management of overseas workers has created a dispute between the agencies and high-ranking officials involved in this matter.

It is important to note that a national agency responsible for the reintegration of workers, like the Philippine NRCO, is absent in Indonesia. In the latter, the Ministry

8 See Republic Act (RA) No. 10022 Section 14, Section 16 and Section 20, which regulate the role and responsibilities of the Philippine Overseas Employment Administration (POA), Department of Health, and the establishment of a Shared Government Information System for Migration, http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html

of Manpower and the BNP2TKI implement the process simultaneously. Furthermore, BNP2TKI is often dependent on international or national NGOs to handle reintegration cases, like in the project migrant village in Central Java, which is conducted in cooperation with IOM (Prihadiyoko, 2012). Publications by the Indonesian government tend to promote the workers' success story, rather than encourage the formulation of new programs for productive living options in the home countries.

Educating Workers

A perennial challenge to the government's public policy is the creation of educational programs for overseas workers to ensure their rights are protected. Education and training of prospective labor migrants is vital to improve their knowledge of basic rights and reduce cases of mistreatment by their prospective employers. Both the Indonesian and the Philippine governments have introduced workers' education programs in their laws. However, the Indonesian government has 'assigned' the rights to educate workers to private agencies, while the Philippine government takes direct responsibility. Some of the private agencies in Indonesia have no valid permit, cram many workers into a dormitory designed for fewer people, and keep the workers waiting for months before being sent abroad (Haryanto, 2011). The Philippine law, however, states that the responsibility for the education of workers lies in the hands of the overseas employment administration (RA 10022, Section 14, para. 2).

In comparison, Indonesian Law No 39/2004, Article 86, Subarticle 2, states that in undertaking education and training for workers, the government can include recruitment agencies, other organizations, and/or the community. However, the government has failed to monitor whether the workers have received adequate education or training (Syaiful, 2009). According to the Transmigration and Labor Ministerial Regulation No. 17/MEN/VIII/2009, the listed pre-departure briefings should be delivered within a timeframe of at least 20 hours. However, a survey carried out by the *Institute for Ecosoc Rights* found that the pre-departure briefing is delivered in eight hours (or less) to an often over-crowded room (IOM, 2012). In other cases, a significant number of individuals did not receive any pre-departure training at all (IOM, 2012). Uneducated workers, upon their return, are more vulnerable towards the Indonesian 'one roof' system at the arrival gate at the airport. Indonesian labor migrants have to go through the repatria-

tion system at Terminal IV at the Soekarno-Hatta International Airport and are often harassed by corrupt officials and unofficial brokers (who often act as transport providers charging more for transport services to the workers' hometowns) (Safitri, 2012).

Rights of Migrant Workers and Family Members

In response to numerous cases involving workers abroad, the Indonesian and Philippine governments have regulated legal assistance systems in their laws. For Indonesia, the scheme is stated in Indonesian Law No. 39/2004 Chapter VII, Article 80 (1) and (2):

> *(1) In consideration with the situation and period where migrant workers are situated in destination countries abroad:*
>
> *a) Legal assistance is given in accordance with the rule of law in effect in destination country and international custom*
>
> *b) Protection of the fulfillment of rights is in accordance with the contract and/or the rule of law where the migrant worker is located*
>
> *(2) Further guidelines regarding the protection of migrant workers during their placement abroad according to Article (1) are stipulated with Government Regulation. [Author's translation]*

However, this provision has proven to hold little weight since many labor migrants have experienced poor handling of their cases, indicating weakness in the legal aid services (Liu, 2012). The embassies in host countries serve as government representatives and point of contact for troubled workers. However, the legal response to overseas workers' cases seems to be practiced on an ad hoc basis. The Task Force (known as *Satgas TKI*) mandated with assisting and providing legal advocacy to Indonesian migrant workers facing legal problems, especially death sentences, was formed only recently under Presidential Decision No.8/2012 as a response to mounting criticism against the government, especially after the case of Ruyati (Liu, 2012). In contrast, the legal assistance system for international and domestic cases is regulated in several provisions of the Philippine RA 10022, with an emphasis on 'free' access and the inclusion of undocumented workers (Section 1 (e), Section 8, and Section 18).

Another important issue raised by migrant worker activists from Migrant Care is the ratification of the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was issued in 1990. While the Philippines ratified this convention in 1995, Indonesia signed it in 2004 and was slow in implementing it. In February 2012, President Yudhoyono issued a letter R-17/Pres/02/2012 that mandated the Ministry of Manpower to discuss the process, followed by the par-

liament's ratification in April 2012 (House of Representatives, 2012). The ratification obliges countries to ensure workers' basic human rights, including the right to return to their home countries, the right to be informed of working conditions before taking up employment, and the right to form trade unions. In contrast, the Philippine law is more advanced in terms of ensuring the rights of migrants and their families. For instance, RA 10022 Section 23 mandates that migrant workers are entitled to a compassionate visit by family members when hospitalized.

Bilateral, Regional, and International Cooperation

The Colombo process obliged the state to operationalize the mandate of protecting their migrant workers in domestic as well as international context (Wickramasekara, 2006). According to the process, both bilateral cooperation and the Memoranda of Understanding are important for managing migration as they (1) ensure continued access to the labor markets of receiving countries, (2) reduce domestic unemployment pressures, (3) ensure protection of migrant workers' rights and welfare, and (4) earn foreign exchange through workers' remittances (Wickramasekara, 2006). The Philippine law elaborates several conditions that host countries must observe, including laws protecting labor and social rights of migrant workers, a signatory of multilateral conventions relating to the protection of migrant workers, and concluded bilateral arrangement with the Philippine government (RA 10022, Section 3). The latter article is found in the Indonesian law, while other provisions were absent. Article 11 and 27 of Law No 39/2004 state that placement for overseas workers could only be applied in countries that have signed a written agreement with the Government of Indonesia.

Conclusion

The analysis of Indonesia's and the Philippines' regulatory framework to provide protection for overseas workers highlights the fact that, the Philippine regulatory framework is more advanced than the Indonesian. The Indonesian government clearly puts economic importance over the protection of workers. Although both governments recognize migrant workers as 'economic heroes' of the nation, the Philippines regulates migrant workers' protection in a more comprehensive way. For instance, in

opposition to the Philippine law, by defining 'migrant workers', the Indonesian law does not recognize irregular or illegal workers in their protection scheme. In addition, the Indonesian law does not define specific roles of the government agencies, which often creates confusion when handling migrant workers' cases. The role of private agencies in educating Indonesian migrant workers also becomes a source of problems since the monitoring of those agencies is still weak.

Thus, it is important for Indonesia to revise its law to maximize the protection of its migrant workers. For Indonesia, the government needs to consider several aspects of the law, especially the definition of the roles of various government agencies and the education of migrant workers. The clear division of tasks between the Philippine government agencies means that the government could work more effectively. In contrast, vague articles in the Indonesian law about the role of regional government resulted in misinterpretations and conflicts among the government agencies involved in the management of migrant workers. As for migrant workers' education, the article in the Indonesian Law No. 39/2004 that allows for unreliable private agencies to educate workers has made workers less prepared and aware of their rights and responsibilities (Haryanto, 2011). This situation has made Indonesian workers more desirable by employers as they tend to prefer workers who are less educated and know less about their rights. In response, the workers have more opportunities to find employment. The government enjoys more remittances, even though negligence of workers' education has created legal problems that affect the government's credibility. It also means that Indonesian workers are more vulnerable towards abuse and legal problems. To fix this situation, Indonesia needs to address its regulatory failure and impose fair protection for its workers – even if it is opposed by the host government.

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