

**“Memorandum of Misunderstanding”
Policy Brief on Bilateral Labor Agreement of Indonesian**

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1. Introduction

The today global migration have caught the global attention. It concretely can be seen on agenda of the UN, ILO, IMF, World Bank, OECD, and WTO. Various initiatives were taken by these global inter-government organizations and international financial institutions (IFIs), namely: WTO's inclusion of Mode 4 of the General Agreement on Tariffs and Services (GATS); the formation of the Global Commission on International Migration (GCIM) by the UN in 2003, and the holding of High Level Dialogues with governments and other “stakeholders” by the OECD, and the Global Forum on Migration and Development (GFMD). All those initiatives were drove by what so called of global market of labor.

Particularly under the framework of GFMD, migration was assumed as an opportunity that by the migration policies can contribute to development. Following the pattern of labor flexibilization, GFMD also assume that temporary migration is a flexible way of meeting labor surplus and shortage across countries. Indeed, the circular form of migration, where mostly gave a worst impact to the migrant workers caused by crackdown and deportation, were also assumed as a form of empowerment when it linked to the skill and developments needs of the origin countries and to be factored into the skill requirement of the destination countries.

Following the GFMD and other neoliberal postulates, government of sending and recipient countries were push to formalize the process of labor migration and put it under the labor export policy. This was meant to maximize the benefit taken from labor migration. As for recipient countries, formalization of the process of migration could be use as tools to control the migrant and reduce the undocumented migrant workers and for sending countries, formalization of labor migration process were needed to create policy planning for development based on the benefit of migration. These were, in my opinion, become the crucial background of almost all-bilateral or multilateral labor agreement that affected the rights and welfare of migrant workers of the entire world.

According to Ministry of Manpower and Transmigration Erman Suparno, there are 25 countries of placement Indonesian migrant workers. Among those, only six countries, which are Malaysia, South Korea, Kuwait, Saudi Arabia, and Japan, that have signed the bilateral labor agreement with Indonesia. Erman Suparno admitted that particularly on memorandum of understanding with Saudi Arabia, still needed to revise.¹ During that time, Erman Suparno said that Indonesia had targeted to have labor agreement with ten more countries.²

The difficulties to review the Indonesian bilateral labor agreement is there is no appropriate data or sources that can be refer. Documents of bilateral labor agreement such memorandum of understanding between Indonesia and Malaysia, Indonesia and South Korea, or document on Japan Indonesia Economic Partnership Agreement (JIEPA) cannot be downloaded from the government official website. We can only collect information on bilateral labor agreement of Indonesia from

¹See “Pemerintah Targetkan MoU dengan 10 Negara Penempatan TKI” from Tempointeraktif.com. Wed, May 10, 2006. <http://www.tempointeraktif.com/hg/nasional/2006/05/10/brk.20060510-77277,id.html>

² Information from Ministry of Manpower and Transmigration are confusing because from position paper released by National Commission of Anti Violation against Women showed a bit different information. Based on the position paper, in 2006, Indonesia had signed five agreements with Kuwait in 1996, Jordan in 2001, Taiwan in 2004, Malaysia in 2006, and South Korea in 2006. There is no bilateral agreement with Saudi Arabia. Information that there is not yet a bilateral agreement with Saudi Arabia also confirmed by the government official from National Body on Placement and Protection Indonesian Overseas Workers when we have a meeting in their office on July 2007.

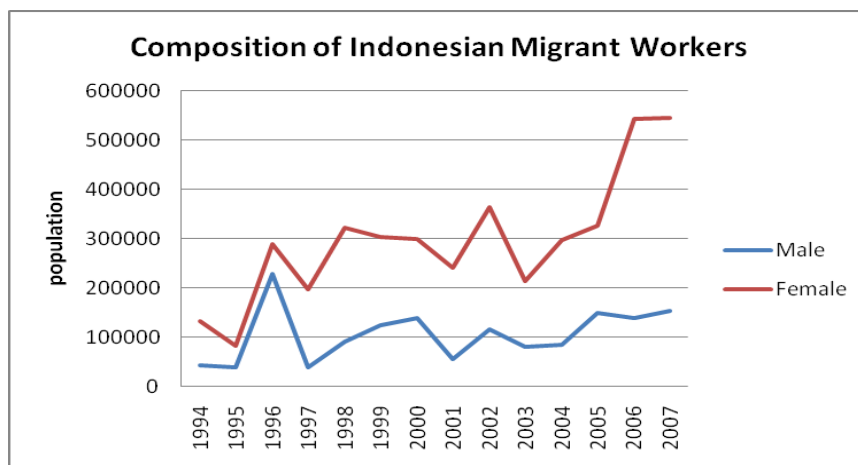
newspaper, position paper of NGOs, and other non-governmental sources. There are seems an intention of government to prevent access of public to those important data.

This paper will briefly describe and expose the experience of Indonesia as sending countries on bilateral labor agreement. The basic premises on this paper is a question of why Indonesia as sending countries had failed in protecting and recognizing the right and welfare of their own citizen whom now become migrant workers abroad?

2. Labor Export Program in Indonesia

Labor export program in Indonesia is a continuation of cheap labor policy under the neoliberal globalization. Even it started since 1970s by sending domestic migrant workers to Middle East, but the significant increase of sending migrant abroad was happened since 1980s. In 1990s, government had put attention on the labor migration since the issues of labor migration was uploaded in General Lines of National Development (Garis-Garis Besar Haluan Negara, GBHN). In late 1990s, a decree signed by ministry of Manpower to regulate the process of labor migration. Then in 2004, the law on Placement and Protection Indonesian Overseas Workers had issued by government.

Up to now, at least six million citizen of Indonesia are becomes migrant workers. As can be seen from the figure below, most of Indonesian migrant workers are women and unskilled. Like other sending countries, economical difficulties are dominant reason of migration. Some of the migrant workers were recruited below ages or under 18 years. Particularly in Indonesia, women and girl unequal status profoundly influences their access to education and employment. It drove many Indonesian women and girl to migrate as the way to survive. In many cases, the reason is not merely for their own shake, but also representing the need of their families.



Source: BNP2TKI

Most of the Indonesian migrant workers are working in Asia Pacific regions, with in 2007 Malaysia as the most destined country with almost 2,004,885 Indonesian migrant workers. In Middle East, around 2,167,842 or most of Indonesian migrant workers works in Saudi Arabia. In America, most of Indonesian works in United States, and in Europe, Netherland become the most destined country with 2,553 Indonesian migrant workers. Indonesian migrant workers sustain the economic of the recipient countries by filling critical gaps and needed skills in health, construction, domestic services, and business sectors.

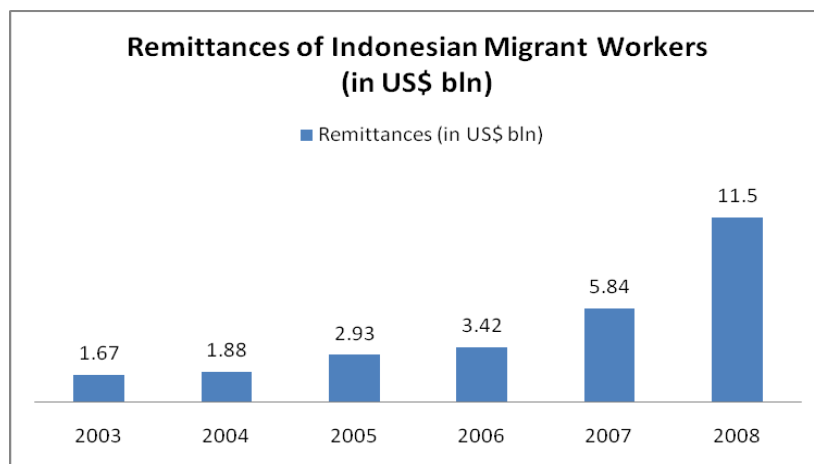
Distribution of Indonesian Migrant Workers by Region (2007)

Regions	Total
Asia Pacific	3,083,645
Middle East and Africa	2,513,233

America	18,338
Europe	8,881
Total in 2007	5,624,097

Source: BNP2TKI

As to other developing countries, Indonesia had more and more dependent on transfer remittances of migrant. As we can see on the figure below, amount of transfer's remittance had growth steadily since 2003. The latest data on remittance from government official reach almost US\$ 11.5 billion almost double of the remittance in 2007. Therefore, in Indonesia, remittance also could be the single largest source of foreign exchange, exceeding export revenues, foreign direct investment, and other private inflows. Under the global economic and financial crisis like today, the share of migrant remittances will increase compare to other economic sectors.



Source: BNP2TKI

Aside of remittance, government of Indonesia also receive huge income from placement fee that be burdened to migrant workers. Recently, government officially admitted that remittance of migrant had become the second largest income of Indonesia under income of oil and gas. For example, in 2008, from 11,155 migrant workers that recorded by National Body of Placement and Protection Indonesian Overseas Workers (BNP2TKI) been sent to South Korea, where each had to pay at least US\$500, Indonesia had received at least US\$5 million.

Since January to April 2008, the National Body of Placement and Protection Indonesian Overseas Workers claimed had sent 196,635 migrant workers. It meant that the Government of Indonesia already received US\$15.9 million only from passport, insurance, and pre-departure orientation. There are still other components and of course others fees must paid by migrant workers, which can make the amount increase larger. In short, exporting migrant workers abroad is actually a good business in Indonesia.

Contrary to the benefits shared by migrant to the countries, treatment on protection of rights and welfares of Indonesian migrant workers from the government is way from expectation. The bilateral labor agreements were only following the magnitude of Indonesian labor export program where there is no regulation signed by government to protect the rights and welfares of migrant workers. Almost all migrant workers become victim of bonded-labor, forced wage deduction caused by overcharging and burdened by high placement fees, and unsafe migration caused by restriction and border control policies of recipient countries.

The suffering of Indonesian migrant workers are not only when they stay or works abroad. Also when they comeback to home country, serial discrimination and violation still continue even they are no longer work or tied on contract. First violation is mandatory to enter the special arrival terminal in Soekarno Hatta Airport, Jakarta now call the office of arrival registration on Indonesian migrant

workers (Gedung Pencatatan Kepulungan Tenaga Kerja Indonesia, GPPTKI). The process of entering and leaving the GPPTKI is a process of extortion of migrant workers that done by official of GPPTKI in every level.

They have to pay much money for “porters” whom forcedly carrying their logged; if they suffered by cases, they are forced to sign agreement with government legal aid agencies—LBH Kompar—that they are willing to be represented by LBH Kompar to arrange and handle their case, sometimes they also have to give their passport, working visa, and other related document to the LBH Kompar; they also have to pay expensively the transport cost for the official travelling agencies from GPPTKI to their home; and when they arrived home, they still obliged to pay “voluntary fees” to the drivers that had took their home.

Sometimes, some of the migrant were cannot easily reintegrate with condition of their origin families. For many reasons, some returnee migrant were choosing to re-migrate just to escape from their families or because they still had no choice to live than being migrant. For those who were known used to be victim of trafficking—especially sexual trafficking—the integration process with their families become harder. Some of them were leaving their family and seeking their traffickers and “voluntary” ask to be trafficked.

In short, the phenomenon of Indonesian migrant workers is concrete expression of how government of Indonesia had failed to respect, protect, and fulfill the rights and welfare of citizen of Indonesia. Government is not only fail in providing decent jobs with decent wages but intentionally extort and takes benefit from those who need jobs. Government is not only failed in giving an appropriate services to the migrant workers but also deliberately worsening the condition of migrant workers. Government is also not only inadvertently did not give protection but also neglected the right of Indonesian migrant workers.

The phenomenon of large-scale migration in Indonesia is the result of exploitation and oppression by foreign monopoly capitalism and local reaction. Migrant are driven to leave their families and friends to seek jobs abroad because poverty, lack of employment and persistent of underdevelopment. People are displace because foreign corporations and their local collaborators covet and grab the land and other natural resources and use violence to achieve their vile objective. The fact is undeniable, when governments of sending and recipient countries, are both took the most benefits of global labor migration while the migrant suffer most by the global migration.

3. Bilateral Labor Agreement in Indonesia

Under the law number 39 year 2004, Government of Indonesia had oblige to conduct bilateral trade agreement to manage labor migration. This was assume as the way to reduce number of violence of the Indonesian migrant workers. But issue on protection rights and welfares of migrant workers was not as simply as signing the bilateral labor agreement. Indeed, the bilateral labor agreement of Indonesia as the sending country with almost all migrant recipient countries is simply understood as an implementation of labor export program. Under the formal bilateral labor agreement that signed by government of Indonesia with governments of receiving countries, Indonesian migrant still assumed as commodity for trade.

Descriptions below are brief explanation on the formulation of bilateral labor agreement with three recipient countries; Malaysia, South Korea, and Japan. As been mentioned above, these descriptions were not based on the primer data.

3.1 Case on Bilateral Labor Agreement with Malaysia

Malaysia is the main destination country of the Indonesian migrant workers, documented and undocumented migrant workers in region East and South East Asia. Indeed, According to Caram Asia

and National Commission of Anti-Violence against Women (2003), about 83% of migrant workers in Malaysia are from Indonesia. According to the latest data, more than two million Indonesian migrant workers work in Malaysia. Malaysia is also the main destination country for the undocumented migrant workers. Malaysia is the country that receives the largest number of undocumented Indonesian migrant workers.

Quoted from Keri Lasmi Sugiarti, there are four types of undocumented Indonesian migrant workers in Malaysia. The first type is legal migrant workers whose documents were confiscated by employers. They become undocumented after the Malaysian authorities inspected their place of work or they were apprehended for some other violation of law, they were unable to prove their *bonafide* by producing valid documents. Second, are those who were forced to work without valid documents. Many of them become undocumented migrant workers after they choose to leave their previous employer without taking their passport and other documents.

Third are the migrant workers who were experience in working in Malaysia without visa. They enter Malaysian territory by land and using Cross Border Pass (Pas Pelintas Batas) to enter and work in Malaysia. Fourth, there are migrant workers who were smuggled or trafficked to Malaysia. This group, which includes large number of trafficked migrant and girl never, had documents because they are taken to Malaysia clandestinely. All types of undocumented migrant workers in Malaysia are easy target for serial violation, abuse, and punishment. Based on Malaysian immigration law, all undocumented migrant workers will be accused as a criminal

The bilateral labor agreement between Indonesia and Malaysia was signed to reduce and prevent the numbers and worst impact caused by undocumented migrant workers. But in the end, it has failed to address the issue. Indeed, the formulation of bilateral labor agreement of Indonesia and Malaysia is become one major source of serious problem on violation rights of Indonesian migrant workers. The agreement was signed in 2004, and then it was revised in 2006. Eventhough most of the Indonesian migrant workers in Malaysia work in informal sectors, mostly as domestic workers, but the 2006 MoU only mention the agreement on formal sectors. The MoU was signed under condition when Indonesian migrant workers were treats to be deported by Government of Malaysia.

In the MoU, there are sets of rigid recruitment standards but carries no provisions on labor protection or explicit and direct sanctions against any contravention by Malaysian employers of the agreement. In addition, based on the terms and conditions of employment, Malaysian employers are required to recruit workers through licensed recruiting agencies and employment contracts will be kept not only by workers but also by both countries' relevant authorities and agencies. The MoU demands more but pays less, placing Malaysia in a strong position and weakening Indonesia's bargaining power since the terms and conditions, including wages, allowances, other benefits and working hours, are fully determined by Malaysian employers.

By 2006 MoU, Indonesia is also assumed to accept Malaysian employers' rights to conduct selection and set qualification requirements that are unable to be met by most workers. Indonesian workers are required, among other things, to be from the 18 to 40 years age group, possess the required qualifications and skills, sufficient knowledge of Malaysian culture and social practices and be able to communicate in English or Malay. Many Indonesians have sought jobs overseas because apart from the rare job opportunities at home, they are unskilled in both specified fields and communications.

Therefore, the news of new effort to renegotiate the agreement seemingly could be a good news for Indonesian migrant workers. However, improvement protection and recognition the right and welfare of Indonesian migrant workers still questionable. Both, Indonesia and Malaysia still have no comprehensive framework on protection and recognition the rights and welfare of migrant workers. Until now, Indonesia and Malaysia also have not ratified the UN Convention on Protection all rights of Migrant Workers and Their Families. Particularly under the recent situation, when the global economic and financial crisis affected to both Indonesia and Malaysia, issues on protection and recognition of rights and welfare of Indonesian migrant workers could possibly become the minor issue.

Recently, Government of Indonesia and Malaysia are planning to renegotiate the memorandum of understanding of placement of Indonesian migrant workers in Malaysia. The commitment of renegotiating the were achieved after the bilateral meeting between two countries that were

represented by ministry of human resource of Malaysia S Subramaniam and Ministry of Manpower and Transmigration of Indonesia, Erman Suparno in Malaysia (14/11/2008).

According to Erman Suparno, there were some progress and development of two governments regarding the labor issue. Malaysia was being said had a commitment to review the memorandum of understanding of placement migrant workers in Malaysia. Some crucial issue had been agreed to be discussed by Malaysia and Indonesia. Malaysia, said Mr. Suparno, are willing to review some clauses in 2006 Memorandum of Understanding and Labor Act 1955 in order to cover the issue on informal sectors, including domestic worker. Other crucial clauses, which also rose, are passport confiscation, protection of Indonesian migrant workers, wage improvement, and education access to the children of Indonesian migrant workers.

The plan to overhaul the bilateral labor agreement between Indonesia and Malaysia were emerge last year. Then, on the Indonesia-Malaysia Eminent Persons Group (EPG) meeting last October 2008 in Kuala Lumpur, the issue on renegotiation of bilateral labor agreement between Indonesia and Malaysia were being pursue. From the meeting of Indonesia-Malaysia EPG there are some recommendation regarding the migrant that submit to government of Indonesia and Malaysia.³

3.2 Case on Bilateral Labor Agreement with South Korea

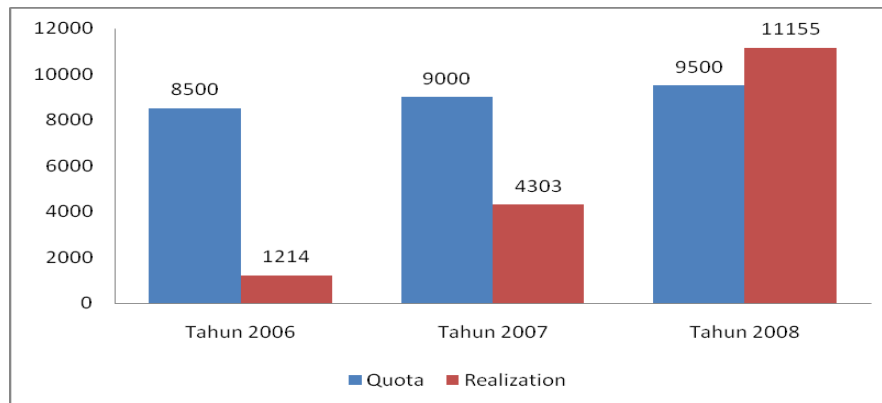
The bilateral labor agreement between Indonesia and the government of South Korea was signed in 2006 before the National Body of Placement and Protection Indonesian migrant workers (BNP2TKI) had been established by President of Indonesia. According to the agreement, government—through Directorate General of Placement and Protection Indonesian Migrant Workers of Department of Manpower and Transmigration—recognized as the only institution that could formally send Indonesian migrant workers to Korea.

Since September 2006, President Decree number established the BNP2TKI number 81 year 2006, the Directorate General of Placement and Protection of Indonesian Migrant Workers was abolished. Authorities on placement of Indonesian migrant workers to Korea were transferred to the BNP2TKI. To harmonize the new formation and acceleration of the G-to-G agreement, the Chief of BNP2TKI formed a committee on Korea. The body also designed the new regulation on placement migrant workers to Korea that signed by Ministry of Manpower and Transmigration. According to the new regulation, beside of strengthening the position of government authority to monopoly the placement process, the placement fee to South Korea was reduced until Rp 5.4 million or around US\$550 per migrant. This fee was far below from the fees that took by the private placement agencies.

The private placement agencies on Korea reacted to the new regulation on placement migrant workers in South Korea. Their interest to continue their business is highly restricted. Reaction of private placement agencies was informally supported by the Ministry of Manpower and Transmigration as institution that one of their authorities been captured by the existence of BNP2TKI. This was believed by public in Indonesia as the hidden background of the reestablishment of the Directorate General of Placement and Protection Indonesian Migrant Workers under the Department of Manpower and Transmigration. Polemic on the effectiveness of BNP2TKI in arranging the placement process of Indonesian migrant workers in South Korea continues until today. As part of this polemic, the national body respond the critique by releasing news information on the achievement of the body in sending migrant to Korea. As can be seen on the figure below, the number of Indonesian migrant workers in Korea in 2008 had beyond the quota.⁴

³ See "Indonesia-Malaysia EPG forms team to discuss migrant workers` problem". Antara News 10/11/08 19:38. Retrieved from <http://www.antara.co.id/en/arc/2008/10/11/indonesia-malaysia-epg-forms-team-to-discuss-migrant-workers-problem/>

⁴ See "Wawancara Moh Jumhur Hidayat: Penempatan TKI ke Korea Naik 1.000 Persen". Thursday 04 Desember 2008. Retrieved from <http://www.bnp2tki.go.id/content/view/718/231/>.



Source: BNP2TKI

Such dispute high ranking of inter-government institution and between governments with the private placement agencies put the Indonesian migrant workers in Korea in very difficult situation. Beside of the G-to-G agreement cannot prevent the Indonesian migrant workers to become undocumented or being laid-off, access of migrant workers on services and protection of rights and welfare also restricted. Because of there still exist two mechanism of sending migrant workers to South Korea—government and private mechanism—those two institutions were tended to blame each other when they were faced a problem of Indonesian migrant workers in Korea.

Another aspect that need to be noted are that based on the G-to-G agreement, Indonesian migrant workers are also have to surrender their passport and work visa to their employer. That what make them did not sufficient bargaining position if they have dispute with their employer. They will be assumed had violated the contract if they are no longer willing to continue the work or if they want to find another jobs. Even though government sent them, but since there is no government official that could represent the workers if they have dispute with their employer. Services of the Indonesian embassy in Korea also did not have progression. Because of the worst work condition, some of the Indonesian migrant workers were choose to escape from their work places and find another job eventhough they did not have passport.

3.3 Case on Bilateral Labor Agreement with Japan

Agreement with Japan was signed by BNP2TKI representing Indonesia as sending country and The Japan International Corporation of Welfare Services (JICWELS) representing Japan as recipient country in Jakarta last May 2008. Alike with two bilateral labor agreement above, those agreement also focus on formal sectors. Indonesia, through Ministry of Manpower and Transmigration Erman Suparno said that Government of Indonesia was appreciated the willingness of Government of Japan of giving opportunities and accept the Indonesian skilled-labor to work in Japan. Indonesia, said ministry, highly understood the position of Japan which cannot open the agreement on informal or unskilled labor.⁵

The MoU is part of the Japan Indonesia Economic Partnership Agreement (JIEPA). Whilst the JIEPA is comprehensive in scope and coverage, but the most eye-catching clause is that Japan plans to receive some 400 Indonesian nurses and 600 caregivers over the next two years. The Agreement specifies that Japan will accept 200 nurses and 300 caregivers each year, with the first group to arrive in August. It has been reported that nurses will hold special visas for up to three years and caregivers for four years. Although a similar provision was included in the Japan-Philippines EPA signed in

⁵ Press release of Department of Manpower and Transmigration. Retrived from <http://outsourcingonline.wordpress.com/2008/06/16/penandatanganan-mou-penempatan-tki-nurse-dan-caregiver/>

September 2006, this is the first time Japan will recruit a large group of foreign professionals in the medical and welfare field.

During their first six months, the Indonesians will undertake some 850 hours of Japanese-language tuition in which time they will study everyday conversation in addition to hiragana, katakana and about 700 kanji (Chinese characters). In February, they must sit a Japanese language exam and will be sent back to Indonesia if they fail. Thereafter, both nurses and caregivers will have to prepare for their respective national exams while working, and those who fail to obtain the licenses before their visas expire will also be required to leave the country. The workers will have to learn how to pass the demanding national exam during on-the-job training at their workplace. A test to be taken after two years of employment has also been mooted.

It seems that this particular scheme has already been beset with difficulties, however. Notice was only given three days before a competency test was held in May 2008, with the result that only 251 nurses applied for this year's intake. Of these, only 180 fulfilled the criteria of having graduated from nursing academies in Indonesia and possessing a minimum of two years nursing experience. From this cohort of 180 participants, 174 passed the test.⁶

Therefore, to achieve the quota of 200 nurses for this year, the Health Ministry invited an additional 70 nurses to take another competency test, but had trouble securing enough attendance. In the final tally, only 174 nurses and 131 caregivers successfully navigated the application process, meaning that of the 105 facilities looking to hire to the Indonesians about 40 will be unable to do so.⁷ Whilst the caregivers did not need to sit any test or submit any work experience, it is stipulated that they must either be university graduates with six months relevant training or be qualified nurses in Indonesia. At least two Indonesian care workers will be employed at each institution.⁸

Indonesia presently dispatches around 200 nurses abroad annually, in particular to Brunei, Kuwait, Malaysia, the Netherlands, Saudi Arabia, the United Arab Emirates and the United States.⁹ However, given that around 30,000 people graduate each year from the country's 770 nursing schools, Erman Suparno, the Manpower and Transmigration Minister, hopes that Japan will recruit a larger quota of its health care professionals in future. At present, only some 30% of these graduates work as nurses.¹⁰

Two further sticking points emerged during implementation negotiations between the two governments. Firstly, the Indonesian nurses will be considered nursing assistants until they pass the Japanese national nursing exam.¹¹ The Indonesian side is concerned that these career nurses will be dissatisfied being constrained by such an arrangement. Secondly, the Japanese government has refused to guarantee minimum wage levels, despite the Indonesian government having determined that the monthly salary for a nurse assistant should be at least 200,000 yen and 175,000 yen for caregivers. Tokyo did agree, however, to 'request' that employers meet these figures.¹² Equivalent salaries in Indonesia usually range between about 10,000 yen and 30,000 yen a month.

Unfortunately, exploitation of foreign workers in Japan, including many Indonesians, on training programmes has been prevalent. Similar schemes have resulted in trainees being forced to work long hours with commissions deducted from salaries as low as 58,000 yen a month. Some of the approximately 6,000 Indonesian trainees employed in Japan have also been subjected to physical abuse and forced to do unpaid overtime, whilst others have been denied such basic human rights as freedom of movement.¹³

⁶ Kyodo, 'Indonesian nurses look forward to work in Japan,' May 11, 2008.

⁷ Yomiuri Shimbun, 'Recruiting of Indonesian nurses falls short,' July 3, 2008.

⁸ Yomiuri Shimbun, 'Recruiting of Indonesian nurses falls short,' July 3, 2008.

⁹ Kyodo, 'Indonesian nurses look forward to work in Japan,' May 11, 2008.

¹⁰ Asanobu Sato and Atsuko Kobayashi, 'Indonesian care workers face many obstacles,' Yomiuri Shimbun, May 22, 2008.

¹¹ *ibid*

¹² *ibid*

¹³ Arudou Debito, "Japan's Future as an International, Multicultural Society: From Migrants to Immigrants," Japan Focus, October 28, 2007.

To prevent such reoccurrences, the Labor Ministry has asked the Japan International Corporation of Welfare Services (JICWELS) to monitor places that employ the nurses and caregivers. Once a year JICWELS will conduct on-site checks, but since the only punishment for transgressors is a three-year ban on further employing foreign workers it is doubtful if exploitation can be prevented. Another potential difficulty is that these facilities must also display a degree of religious tolerance given that some 82% of Indonesians are Muslim, although not all are santri or devoutly practicing. Devout applicants might be wondering about the provision of halal food, for example.

Nevertheless, despite these obstacles, it would appear that such a policy is somewhat overdue. Already boasting the world's longest life expectancy along with one of its lowest birthrates, in 2005 Japan's population started falling in absolute terms and immigration is below the level required to replace the decline. As a result of this and changing family structures, demand for facilities providing long-term care for the aged has mushroomed. Highlighting the staffing difficulties involved, local media reported in June 2008 that three such places in Fukuoka City have experienced a total of 82 accidents involving patients over the past five years, of which 29 have been fatal.

The facilities say that chronic personnel shortages are a significant factor in these incidents. The central government is adamant, however, that the JIEPA is not designed to fix labour scarcities as nursing homes and hospitals are not permitted to count these workers in their mandated staffing quotas. Furthermore, hiring an Indonesian worker will cost each employer an additional 600,000 yen, when factoring in the recruiter's fee.¹⁴ Moreover, personnel shortages also render finding the time to train foreign employees problematic, casting into doubt the practicality of the whole scheme.

It should be noted that while not renowned as an immigration destination, Japan does have a sizeable number of foreign workers. However, the central government has provided social support or an attractive path to permanent residence or citizenship, and restricts foreign workers' rights.¹⁵ Anecdotal evidence suggests that in the bigger cities those who appear non-Japanese are subject to rampant racial profiling in the form of checking foreign registration cards or passports, which must be carried at all times. From November 2007, even permanent residents returning to Japan must submit to fingerprinting at immigration posts in airports and ports.

4. Impact of the Bilateral Labor Agreement

There are some factors that made the bilateral labor agreement failed to address the protection of rights of all Indonesian migrant workers. First, all bilateral labor agreements that was signed had systematically neglected the need to be based on human right perspectives. Until now, Indonesia has not ratified the UN Convention on Protection all Rights of Migrant Workers and their Families, so in fact Indonesia has not have the conceptual framework based on human right perspective on protection the rights of migrant workers. It was merely focus on free trade on labor. Commercialization of migration process by government of sending and receiving countries under the bilateral trade agreement has reduced the social essence of human migration as the way for survival.

Second, the bilateral labor agreement was focus on formal sector while majority of Indonesian migrant workers are working in low-skilled informal sectors. The main objective of the bilateral labor agreement is to reduce the number of undocumented migrant workers by creating the legal and secure channel of migration. However, most of the bilateral labor agreements had failed to mention the urgent to protect and fulfill the rights of the undocumented migrant workers as victims of unsafe migration process. The agreement also did not justiciable but justified the violation to migrant workers.

Third, bilateral labor agreement was signed while the government of Indonesia had failed to recognize and provide the protection the rights of Indonesian migrant workers. The structure of labor export policy of Indonesia has become the weaknesses of position of Indonesia in negotiating the bilateral agreement with other countries.

¹⁴ Sato and Kobayashi, 2008.

¹⁵ Takeyuki Tsuda, 'Local Citizenship and Foreign Workers in Japan,' Japan Focus, May, 26, 2008.

Therefore, after visiting Indonesia, the UN Special Rapporteur concluded that the bilateral labor agreement without any recognition of rights and welfare of Indonesian migrant workers was indeed worsening the life and conditions of Indonesian migrant workers. The bilateral labor agreement and combined with other policy since the recruitment process until their backed home, had intensified the exploitation of Indonesian migrant workers.

In Saudi Arabia, reported by Human Right Watch (2008), Indonesian migrant workers were treated as slavery. They have no right to have day off, they are vulnerable for all kinds of abuse, killing, rape, torture, death sentence and unjust trial. Some of them were reported been smuggled to war zone in Middle East like Iraq and Kurdistan. Also in country with restrictive religious though like Saudi Arabia and other Middle East countries, women migrant workers that become victims of sexual abuse and rape could be jailed.

In Malaysia, Indonesian migrant workers—the documented or undocumented migrant workers—are facing a brutal form of xenophobia. Crackdown and deportation and frequently combine by many kinds human right violation done by government apparatus or government paramilitary called “Rela”. Government of Malaysia also obliged the migrant workers to surrender their passport, works visa, and other important documents to their employers. Right to have day off sometimes also the also right to have wages are been neglected. And for undocumented migrant workers, they still have to face of being criminalized before they’re sent deported home.

In Taiwan, global economic and financial crisis hit hard to Indonesian migrant workers. Some of them also being terminated or lay off as the impact of global recession to the industrial sectors but they still trying to stay in Taiwan to find other jobs because there are debt incurred by migration process still must be paid even as the consequences they will be undocumented. Thousand of Indonesian migrant workers are being jailed because considered had been violated the local migration policies. The fate of Indonesian migrant workers that were recruited as foreign bride even worse. Beside of obliged to give sexual services to their so called “husband”, they also still have to work to survive without any works permit from local authorities.

In South Korea, under the “G to G” agreement between Indonesia and Government of South Korea, situation of Indonesian migrant workers in Korea remain the same. Their wage still being deducted even according to the latest regulation they were guaranteed to have full pay without any deductions. Particularly after the global economic crisis hit Korean industry, numerous of Indonesian migrant workers had been forced to leave their jobs. Industry in Korea was likely preferred to hire the undocumented migrant workers to pay fewer wages on workers. Some of the documented migrant workers were systematically changing the status of migrant into undocumented to reduce the cost of wage.

In Hong Kong, where being assumed had better policy on protection the migrant workers, Indonesian migrant workers still have to surrender their seventh month wages to agencies. Government of Hong Kong also still put levy on migrant workers salary and put into effect the two week regulation for migrant who had been terminated from their jobs. Many Indonesian migrant workers whom were terminated, escape from being overstay in Hong Kong to Macau. Without any works permit, they were force to work in worst form of working such prostitution.

In countries like Singapore and Malaysia, since their labor law only regulate and protect workers in formal sectors, rights protection of Indonesian migrant workers had been excluded, especially for those whom works as domestic helper. That’s why, most of migrant workers cannot filed their case into labor tribunal when they had dispute with their employers. There is also no regulation in protection of the undocumented migrant workers. Almost all recipient countries, put very restrictive regulation to undocumented migrant. Other violations like poor working condition, lack of rest day, long working hours, illegal deployment, unequal wages, falsified contract and document identity, under-ages, inadequate living condition, mistreatment, food deprivation, restriction to access religious freedom, restriction on reproductive and marriage rights, discriminative social services, etc also always been recorded.

5. Skilled-Labor for Better Protection?

In the mid of exposition and opposition to the labor export policy and its implementation and combined by increasing demands of foreign exchange to anticipate the worsening economic situation under the global economic and financial crisis, the government of Indonesia are trying to respond all critique and demand by sending skilled migrant workers abroad. Exporting skilled-migrant workers are be assumed as the way to increase the income of foreign exchange and at the same time could reduce the number of violation that suffered by migrant workers in the future. Skilled-migrant workers are being assumed will have a better access of protection and better income that could increase the remittances.

That is why, government of Indonesia are actively try to expand the target of placement and design the new arrangement and negotiation to placed the skilled migrant workers with various countries. Target of placement Indonesian migrant workers are no longer only to the 'traditional' recipient countries, like countries in Middle East, East Asia, and South East Asia. Government is planning to have agreement with Australia, New Zealand, East Europe, and South Africa.

This effort was based on reality that in Indonesia, number of educated unemployment are very high. Approximately, every year 300,000 university graduate from Indonesia become unemployed every years. Other factors is that almost all bilateral labor agreement has only cover the formal sectors which could be assumed that demand on skilled migrant workers are in fact very high and has not much to fulfill by Indonesia. Last, government also try to send skilled migrant workers to anticipate the increasing number of unemployment caused by lay off in industrial sectors that affected by financial crisis.

In the term of remittances, government of Indonesia has targeted to receive Rp 125 trillion or US\$ 12.5 billion. According to government, present compositions of Indonesian migrant workers are comprised by 65% unskilled and only 35% skilled labor. Exporting skilled migrant workers also assumed by government as the way to reduce the number of violated Indonesian migrant. Logically, the skilled migrant workers have wider access to many sources of information, has ability to defend themselves from any right violation, and will not be placed on domestic sectors where be the most vulnerable places for Indonesian migrant workers.

What are skilled migrant workers? According to International Organization on Migrant (IOM, 2008) it is not always clear just who the highly skilled are. The most obvious indicators are either the level of education or occupation. Depending on the objective to be achieved, one or other is preferred. If relevance to policy is important, most government typically uses a combination of both education and occupation to select the highly skilled. The most basic definition of highly skilled migrants tends to be restricted to person with tertiary education, typically adult who completed a formal two years college education or more. This was included the temporary and in its development covered the foreign student. Demand on skilled migrant workers also high. There is information that in OECD countries, 63% of their skilled workers came from non-OECD countries.

Will they be able to reduce the violation on migrant workers? This has to be clarified, the violations to migrant workers was not because they did not informed of their rights. It is naturally that every oppressed and exploited person will try to defend his or her rights. The causes that make them be victim of violations are because they live in dangerous and vulnerable positions, particularly if they are migrant and undocumented, which could make them vulnerable to any kinds of violations. Problem that makes those violations become worst and traumatic for the victims is because they did not have proper access to justice.

By this preposition, sending skilled-migrant workers or to be informed on basic rights will not directly make them secure from any violations. Respecting, protecting, and fulfilling the rights of migrants is not as simply as inform them of what kinds of rights that they could have as migrant. It is an obligation of government—both sending and receiving countries—to provide the proper mechanism for the migrant to have and defend their rights. Those mechanism include the restriction and sanction for those who violate the rights of migrants and procedures that could make rights become justiciable for migrants.

Other aspect that also important is to understand that labor migration under the neoliberal-globalization is a form of massive devastation of productive forces that essentially violation the right of migrant as humankind. Under the neoliberal-globalization, everything, including human rights is commodity for sale. One can have their right if they have ability to pay those rights. Based on this preposition, sending skilled-labor abroad will only devastated their productive forces. Sample of this is under the bilateral labor agreement between Indonesia and Japan, the graduated nurses and caregivers from Indonesia will only considered as trainee nurses and caregivers. This form of deskilling could be directed to the devastation of the productive forces. The value of their labor will be degraded.

Again, sending skilled migrant workers are essentially has no connection with improving the protection of rights and reducing the possible violation of right to the Indonesian migrant workers.

6. Conclusions and Recommendations

Bilateral labor agreements are concrete samples of implementation of labor export policy in Indonesia. It has not only comprehensively failed to provide a proper protection for migrant workers but also failed to understand the poverty as the root causes of forced migration. Indeed, the labor export policy of Indonesia has not only worsening the underdevelopment in Indonesia but also becoming the major causes of human right violation to the people particularly to migrant workers and their families.

Government of Indonesia had also failed to understand the nature of global labor market flexibilization where the factor of demand in global labor market becomes the most dominant force to mobilize the labor. Government had failed to understand that under the neoliberal-globalization that control and dominate by transnational corporations, workers are assumed as only a commodity for sale. By blindly following the neoliberal postulates, the government of Indonesia had systematically intensified the exploitation and oppression of their own citizen the Indonesian migrant workers.

Women and girls whose comprise the majority of migrant workers from Indonesia that a large number of those had forced to become undocumented migrant workers had been placed in a dangerous position. Under the situation where government are neglected the rights of migrants, those women and girls, especially the undocumented migrant women and girls, are easy target to any kinds of violation, such forced labor, physical and sexual abuses, rape, torture, and killing, and other violation that directly or indirectly attacking their live and dignity.

Therefore, the most urgent recommendations is to ratified the 1990 UN Convention of Protection all rights of Migrant Workers and their Families, harmonizing all laws and regulations regarding the placement and protection migrant workers abroad, and abolishing all laws and regulations that factually violated the rights and welfares of migrant workers. After ratifying the 1990 UN Convention, Indonesia also needs to abolished all bilateral labor agreements and push the recipient countries to make conceptual framework on deployment of migrant workers based on human rights perspectives.

Indonesia needs to formulate and promote the right based bilateral or multilateral labor agreement by covering all rights and aiming to prevent all violations of rights of migrant workers. The formulation must covered the most urgent issue, such undocumented migrant workers, decriminalization of victims of human trafficking, access to justice for migrant workers whose suffered by any kinds of abuses, and create and protect the right of migrant workers to initiate their own strategy of defending and promoting the rights and welfare of migrant workers.

Last, as recognition of the root causes of forced migration, government must design a pro-people development that significantly directed to the elimination of poverty based on social justice, democracy, and people sovereignty.***