

RECOMMENDATION

SOCIAL PROTECTION SYSTEM FRAMEWORK FOR FEMALE MIGRANT WORKERS (FMW) IN THE INFORMAL SECTOR



KEMENTERIAN KOORDINATOR BIDANG KESEJAHTERAAN RAKYAT
REPUBLIK INDONESIA

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1. BASIS

1.1. Empirical basis/ field facts

The number of Female Migrant Workers (FMW) from Indonesia working overseas experiences an increase from year to year. From 1994 up to June 2005 it is recorded that there were 2.762.066 FMW or approximately 72.5% of the total number of Indonesian migrant workers (Placement Data at www.tki.or.id) The majority of these FMW work in the informal sector (90%) with the majority chooses to work as household maids.

Aside from solving the problem of scarcity of employment opportunities at home, the departure of FMW) also produces significant amount of foreign exchange through the remittance of money earned abroad. Their role in the national economy is quite significant, the more so when linked to the impact of the economic crisis that engulfed the country in 1997. It's a wonder that they are frequently called as "foreign exchange heroes".

The departure of FMW at the same time has also opened up employment opportunities in the form of openings that starting from fulfil the needs of migrant workers and their families, as well as in the form of productive economic activities that migrant households develop. This, too, shows that the huge efforts of the FMW to make a living overseas are significant not only for themselves and their families, but also for the community and the government, at the local as well as the central level.

However, the true experience of the FMW shows that becoming a migrant worker, particularly those working in the informal sector (especially household maids), is not "easy". As women and migrant workers, FMW occupy a weak position from the social, cultural and economic perspective in their village of origin as well as in the country of destination.

- *In the village* – place of origin, these women occupy the lower layer in the social structure. The majority comes from low income families and have limited formal education.
- *In the country of destination* – place of work, FMW become lower class citizens due to their status and the type of work they perform.

These conditions make them vulnerable to various forms of human rights violation.

Their vulnerability becomes an exploitation arena by a various parties from the economic, physical, psychological as well as sexual aspect all through the migration process (pre-placement, placement, post-placement). It begins when they are recruited in their villages (area of origin), continue after they arrive in the temporary accommodation and job training centres, and also when they arrive at the home of their employer and the agency, until their journey home to their families. This vulnerability makes migrant workers an easy prey for trafficking.

Referring these problems, the migration process that initially was meant to reach a better living standard, in the end becomes a journey rife with risks. Therefore a social protection system that is able to provide with holistic protection to FMW is needed, in particular for those who work in the informal sector.

1.2. Legal basis

At the moment there are already a number of legal bases at the international as well as national levels that guarantee the protection and justice of human rights. The existence of such legal basis may become a reference for the process of developing a social protection system for FMW in Indonesia. These legal basis include:

a. Legal basis on human rights

- The Declaration of Human Rights – United Nations
- 1945 Constitution and its amendments
- Republic of Indonesia law No. 39, 1999 on Human Rights
- Republic of Indonesia law No. 26, year 2000 on Human Rights Court
- Republic of Indonesia law No. 11, year 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights
- Republic of Indonesia law No. 12, year 2005 on the Ratification of the International Covenant on Civil and Political Rights
- Presidential Decree No. 40, year 2004 on National Action Plan of Human Rights for the years 2004-2009

b. Legal basis on the status of women

- Convention on the Eradication of all types of Discrimination against Women (CEDAW)
- Republic of Indonesia law No. 7, 1984 on CEDAW

c. Legal basis on labour/manpower

- Convention on the Protection of Migrant Workers and their families
- Other relevant ILO Conventions
- Republic of Indonesia law No. 19, 1999 on the Ratification of ILO Convention No. 15 regarding the Eradication of Forced Labour

- Republic of Indonesia law No. 20, year 1999 on the Ratification of ILO Convention No. 138 regarding Minimum Age Allowable to Work
- Republic of Indonesia law No. 23, year 2002 on Child Protection
- Republic of Indonesia law No. 13, year 2003 on Manpower
- Republic of Indonesia law No. 39, year 2004 on the Placement and Protection of Indonesian Workers Overseas

d. Others

- Republic of Indonesia law No. 9, year 1994 on Immigration
- Republic of Indonesia law No. 37, year 1999 on Foreign Affairs Relations
- Republic of Indonesia law No. 40, year 2004 on National Social Security System
- and various relevant government regulations and ministerial decrees

However, aside from their linkage to growing issues that become increasingly complex, these policies still need to be followed up by several measures for effectively in implementation. The follow up measures are:

1. Formulations of regulations to implement existing policies, conducted in a participatory and synergic manner involving all stakeholders.
2. Dissemination and socialisation all the way to the grass roots level.
3. Effective and transparent supervision at various levels, starting from grass roots up to national level.
4. Strict law enforcement in the implementation process.
5. Systemic assessment and improvement of policies that have not side with the needs/interests of migrant workers, at the central as well as local levels.

1.3. Value basis

The social protection system to be developed needs to refer to a number of human basic values that are inseparable, namely:

- Human dignity
- Solidarity and social justice
- Gender equality
- Balance, mutual dependence, and collaboration

2. DEFINITION OF SOCIAL PROTECTION FOR FMW

Based on the four values mentioned above, social protection for FMW constitutes a scheme that is well arranged to solve the vulnerabilities inherent to the existence of FMW, so that FMW and their families are able to strive to achieve welfare, obtain social justice and security, and be able to develop their individual capacities.

3. DIRECTION AND VISION OF SOCIAL PROTECTION FOR FMW

The effort of developing a social protection system for FMW will be directed at three objectives, namely:

- *Social welfare*; constitutes the main reason for FMW in seeking employment overseas. It is also stated in the Preamble of the 1945 Constitution where welfare is also the responsibility of the government of the state of the Republic of Indonesia.
- *Safe migration*; constitutes a condition of pre-placement, placement and post placement process that will provide FMW with certainty of feeling safe in working overseas.
- *Empowerment*; constitutes strengthening of FMW's capacity so that they will be more self-reliant and fully understand the migration process as well as their rights.

Through the three objectives, developing a social protection system include efforts to review the phases of FMW placement overseas so it is easier, cheaper, faster, safer and transparent. At the same time, FMW also acquired acknowledgement and fair protection in advocating their rights. Included in these efforts are strengthening for FMW, their fellow migrant workers, families and communities.

4. SCOPE OF SOCIAL PROTECTION FOR FMW

There are four main and basic aspects that stakeholders need to pay attention in endeavouring a social protection system for FMW. The four aspects are:

4.1. Information services

Limited information supply is suspected as one of the root problems of the FMW's vulnerability. Therefore information services become one of the main aspect that should be developed and expanded within the framework of social protection system for FMW. Information services in this context are the provision of information facilities that consider the characteristics and needs of FMW, also the needs of other stakeholder in each placement phase. Included is the consideration of providing information services at the grass roots level (village of origin of FMW).

There are 3 (three) issues that should be considered in developing such information services, namely the substance, the management system and monitoring/evaluation. The expectation is that FMW will be able to acquire and access accurate and complete information easily and cheaply.

a. Information substance

The substance (materials) of information presented should be accurate, complete and easy to understand by the target users (particularly FMW). The types of information should cover everything that is found at each placement phase, such as:

- *Pre-placement*; include among others information regarding employment opportunities, procedures and requirements, cost and its components, rights and obligations of relevant parties, list of formal Indonesian Workers Placement Agencies (*PJTKI*), situation and conditions in the host country (language, culture, religion, social life, etc) reproductive health and HIV/AIDS prevention, various related regulations (law), certainty of departure, address/telephone number of government to be contacted, etc.
- *Placement*; include among others information on how to communicate with the family back home, remitting and saving the money earned, settlement of problems with employer/agency, legal settlement, address/telephone number for complaints (for example: the Indonesian Embassy in the host country, NGOs), data on the existence of FMW who are working overseas, etc.
- *Post Placement*; include among others covers information on procedure to travel back home, official currency exchange rate, filing for insurance claim, utilisation of remittance and entrepreneurship, address/telephone number to fill complaints, etc.

b. Information management system

The selection of an information management system also plays an important role because it includes the identification of:

- *Modes and targets* (FMW communities, FMW families, community leaders, religious leaders, traditional leaders, government agencies, CSOs, relevant private institutions)
- *Dissemination method* that is efficient (mechanism, media, packaging, location)

c. Monitoring and evaluation of information services

The monitoring and evaluation process of the implementation of information services should be conducted jointly by the government, the private sector, CSOs, FMW and their families, and the community.

d. Financing

The provision of information services at the grass roots level requires quite an amount of money, therefore should be thought through jointly possible funding sources either from the National Budget/Local Budget, the private sector, donor organisations or from the FMW community itself.

4.2. Capacity strengthening

The effort of strengthening FMW's capacity is considered vital, given the fact they have been treated as object by numerous parties in their process of seeking employment overseas. This effort is an awareness and enrichment process for FMW regarding various knowledge and skills related to their capacity and ability working as migrant workers. The activity can be conducted in each phase of the migration cycle, namely before becoming FMW, during their contract period, and after returning to their villages. The capacity strengthening effort becomes increasingly important with the issuance of the decision of the Constitutional Court annulling article 35 (d)

regarding the educational requirements in Law No. 39 year 2004 on the Placement of Indonesian Worker Overseas, so that the minimum requirement of Junior High School education or its equivalent is no longer a requirement for FMW candidates.

The effort of FMW capacity strengthening should be undertaken systematically with clarify on location where it is going to be implemented (village, district, province, destination country), adjusted to the stages of placement process. The activity should be conducted by a competent institution/agency such as government agencies, Indonesian Workers Placement Agencies and accredited training centres, and CSOs. Whilst the cost of the activity should not be borne by prospective FMWs. There should be a monitoring and evaluation process within the activity, so that it will truly benefited FMWs.

The capacity strengthening program effort should at the minimum cover the followings:

- *Development of alternative programs at the grass root level:*
 - Awareness of FMWs rights and dignity as human resources with the potential and choice to improve their own and their family welfare
 - Awareness of gender equity and equality for family members and the community
 - Provision of material on banking services
 - Provision of credit for placement fees with low interest accessible to prospective FMW
 - Provision of material on entrepreneurship (as employment alternative as well as to motivate prospective FMW and their family in utilising remittances
 - Provision of business capital assistance in the form of low interest loans accessible to former FMW
 - Organising the *Kejar Paket B* program (equivalent to Junior High School) and *Kejar Paket C* program (equivalent to Senior High School) adjusting the curriculum based on the needs of prospective FMW according to job demands in the host country (skill, language etc).
- *Improvement of the pre-placement training curriculum*
This program focuses on information regarding the rights and obligations of various parties, developing mental capacity and motivation, conditions and situation in the host country (language, culture, religion, social life etc), various related regulations (law), anticipatory measures in respect of improper treatment, and alternative communication media; such as: IT, cell phones and Internet that can be used for communication.
- *Development of additional training programs in the host country*
 - Understanding of various related policies applied by the host country's government
 - Understanding of the rights, obligations and settlement of problems
 - Provision of material that enhances capacity in performing their jobs
 - Provision of material that improves knowledge and skill (example: management, computer etc).

Aside from FMW, the organisations/agencies related to the placement of workers overseas also require similar program that relate to institutional capacity strengthening. Through this program, it is hoped that the quantity and quality of services provided by these organisations/agencies would be able to better meet the demands of FMW.

4.3. Social security provision

Social security is a vital aspect that also needs to be developed within the framework of social protection system for FMW, especially those working in the informal sector. This is based on the fact that FMW, have a weak legal status, with varying Employment Agreements system, and prone to lay off. They are not equal to other workers (for example: factory workers) who are able to access existing social security scheme. This “weakness” is acknowledged as a serious risk for insurance service provider companies as well as FMWs themselves.

In general the security/insurance scheme applied by insurance service provider companies is profit oriented and not social oriented. To participate in those security/insurance programs, there are several criteria and certain requirements that must be complied with by prospective participants. Therefore the government (via cross-sector coordination agency) is expected to facilitate the provision of social security/insurance for FMW involving related institutions/organisations that directly deals with placement process, such PJTKI, APJATI together with insurance service provider companies that care for and side with FMW. The provision of funds for social security/insurance should be based on a corporate social responsibility principle with a scheme formulation that involves all stakeholders.

Implementation of the social security/insurance program should be transparent, accountable and gender-sensitive. This includes the application of monitoring and evaluation together with strict legal sanctions for every violator. The application of monitoring and evaluation should use efficient and effective methods and instruments, engaging competent staff.

Followings are several points that could be considered in providing a social security program:

- premium should not burden to FMW
- membership card should be issued and kept individually
- filing claims should not be complicated
- some of the security programs (health, education) should also be able to cover family members of the FMW
- elucidation on the social security program

The types of social security that are needed include:

- *Health security*
This should cover the health security of FMW starting from pre-placement, placement and

post placement. This includes the provision of various programs such as the stipulation of medical check up standards, the stipulation of temporary accommodation standards (location, facilities, nutrition, health care) and health elucidation at grass root level that is beneficial to FMW family and community, etc. For the placement period, health security should be included in the Employment Agreement between FMW and employer.

- *Education security*
Aside from FMW, education security should also be addressed to FMW's children left behind as well as children who are born and grown in the host country.
- *Employment severance security*
The participation of FMW in this security program should be included in the Employment Agreement between FMW and the employer.
- *Industrial accident and death security*
The participation of FMW in this security program should be included in the Employment Agreement between FMW and the employer
- *Old age security*
This type of security could be in the form of FMW's savings during the term of employment. This security can be withdrawn together with its interest when participant enters old age.

4.4. Settlement services (social assistance) for FMW cases

Empirical data indicate that there are quite a number of cases that FMWs are experiencing within each of the migration stages that they go through. Cases that need settlement services, at home as well as in the host country include:

- Wages are not paid or paid below standard
- Become a victim of deception
- Become a victim of verbal, physical and sexual violence
- Charge with committing a crime
- Having children out of wedlock
- Needs for family rehabilitation (divorce, neglected children, reorganisation of responsibility in household chores)
- Family reintegration of FMW with problems

The assistance provided may be in the form of direct assistance (medical, counselling, legal, financial support etc). This assistance is targeted at FMW who are the most vulnerable or FMW are experiencing a case. Moreover, it is necessary to develop a more sustainable service system, such as establishing an integrated services centre for women and children, in FMW's origin areas.

Financing resources may come from the state (National Budget/Local Budget) and other sources

from the society. These services should not create dependency of FMW; on the contrary, it should help encourage and strengthen the community in planning welfare for themselves.

5. STAKEHOLDERS

In developing a social protection system framework, FMW become a subject. In other words, FMWs should directly be involved actively together with other stakeholders in the process of formulating various policies related to the migration phases. Therefore there needs to be commitment and concern from all the stakeholders for mutual synergy in carrying out each of their role. The stakeholders include (but are not limited to):

1. The central government (among others the Coordinating Ministry of Peoples' Welfare, Ministry of Manpower and Transmigration, State Ministry of Women's Empowerment, Ministry of Social Affairs, Ministry of Foreign Affairs, Ministry of Justice and Human Rights, Ministry of National Education, Ministry of Home Affairs, etc)
2. The local governments (provincial, district)
3. The National Commissions (NC on Human Rights, NC on Violence Against Women, NC on Children)
4. Civil society organisations (NGOs, religious organisations etc)
5. Legislative institutions (Parliament and Regional Legislative Bodies)
6. Universities
7. The private sector (PJTKI, BLKLN, insurance service provider companies, banking institutions, and micro finance institutions)
8. FMW communities (at home and overseas)
9. FMW and their families
10. Social leaders, religious leaders and traditional leaders (from the centre to the local levels)
11. Individuals who care about FMW
12. Donor agencies

6. MECHANISM TO MAKE SOCIAL PROTECTION EFFECTIVE FOR FMW

In order for social protection to be implemented in according with the direction aspired above, the system to be developed should be as follows:

- *The basis* should be respect for mankind (human dignity, human rights), not pity and not patron-client relationship
- *The direction* should be empowerment (developing capacity, resilience, independency and better bargaining power), so that FMW may achieve welfare, justice, safety and the ability to develop their capacities. Thus the protection provided would be effective.
- *The process* should not degrade FMWs; taking into consideration the situation and position of FMW-domestic opening up spaces to develop capacity, resilience, independency and

better bargaining power. The process should be transparent, accountable, not corruptive, and efficient. Moreover it should engage public participation, starting from the phase of planning, implementation, monitoring and evaluation.

- *Financing* must be planned and endeavoured so that it is adequate and sustainable.

GLOSSARY

APJATI	<i>Asosiasi Pengerah Jasa Tenaga Kerja Indonesia</i> (Association of Indonesian Workers Placement Agencies)
BLKLN	<i>Balai Latihan Kerja Luar Negeri</i> (Overseas Workers' Training Centre)
CEDAW	Convention on the Eradication of all types of Discrimination against Women
CSO	Civil Society Organisation
FMW	Female Migrant Workers
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
ILO	International Labour Organisation
NGO	Non-Government Organisation
PJTKI	<i>Pengerah Jasa Tenaga Kerja Indonesia</i> (Indonesian Workers Placement Agencies)