



# Realizing fair and ethical recruitment

## Insights from Indonesia

Yoga Prasetyo

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## Abbreviations

ASEAN	Association of Southeast Asian Nations
BP2MI	Badan Pelindungan Pekerja Migran Indonesia (Board for the Protection of Indonesian Migrant Workers)
CEDAW	Convention on the Elimination of All Forms of Violence against Women
COVID-19	Coronavirus disease 2019
CRPD	Convention on the Rights of Persons with Disabilities
GBV	Gender-based violence
EFMA	Employment of Foreign Manpower Act
HIV	Human Immunodeficiency Virus
HOME	Humanitarian Organization for Migration Economics
HURIDOCS	Human Rights Information and Documentation Systems
IDR	Indonesian rupiah
ILO	International Labour Organization
IOM	International Organization for Migration
IPA	In-Principle Approval
IRIS	International Recruitment Integrity System
ITUC	International Trade Union Confederation
KSBSI	Konfederasi Serikat Buruh Sejahtera Indonesia (Confederation of Indonesian Workers Welfare Union)
KUR	Kredit Usaha Rakyat (People's Business Credit)
LTSA	Layanan Terpadu Satu Atap (one-stop service centers)
MFA	Migrant Forum in Asia
MoM	Ministry of Manpower
MRA	Migrant Recruitment Advisor
NGO	Non-governmental organization
OPP	Orientasi Pra-Keberangkatan (pre-departure orientation)
PWD	Persons with disabilities
SBMI	Serikat Buruh Migran Indonesia (Union of Indonesian Migrant Workers)
SDGs	Sustainable Development Goals
SIP2MI	License for Recruitment of Indonesian Migrant Workers (Surat Izin Perekrutan Pekerja Migran Indonesia)
SSW	Specified-Skilled Workers
TIP	Trafficking in persons
TWC2	Transient Workers Count Too
UN	United Nations
USD	United States dollar

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## Executive summary

As COVID-19 starts abating, overseas placement of Indonesian workers is slowly returning to normalcy. Evidence shows that Indonesia's labor out-migration has been increasingly *feminized*, and many of Indonesian migrants are deployed to informal sectors, which remain largely unregulated and unprotected. Some steps have been taken by the Indonesian government to protect its migrant workers—the most commendable of which, perhaps, is the adoption of Law No. 18/2017 on the Protection of Indonesian Migrant Workers. One can argue that Indonesia's current legal framework on the protection of its migrants is robust. In fact, Law No. 18/2017 reflects some of the core principles of ethical recruitment. However, some challenges hinder the full implementation of the law, including a lack of political will and legal inconsistencies. It is such limited political will and confusion in legal frameworks that have contributed to failures in realizing fair recruitment, which manifest in a wide range of rights violations as explained below:

- **Access to information:** access to information on overseas employment is constrained by disparity in internet connectivity, leaving blind spots in much of rural Indonesia where illegal brokers come to play a key role. In fact, evidence in this study shows that the majority of respondents (56.1%) depend on brokers for information on jobs abroad.
- **Recruitment fees:** Indonesian migrant workers continue to pay exorbitant fees and costs for overseas placement despite an existing legal framework/commitment to zero-cost recruitment. Ironically, the Indonesian government 'outsources' its obligation to banks by introducing the so-called People's Credit Program, which allows migrants to take low-interest loans to finance their recruitment. This move creates confusion which, in turn, leads to some migrants failing to depart for destination countries.
- **Pre-departure training and orientation:** Respondents shared that training nurtured in them a false sense of inferiority, and some claimed that their training was either inadequate or irrelevant to their jobs abroad. This study also found that the overwhelming majority of respondents (97%) received information on rights and obligations during pre-departure orientation. The same respondents, however, also reported a variety of rights violations. It suggests that a bigger system of control is in place, which renders powerlessness among the migrants despite their knowledge of employment rights.
- **Employment contract:** As evidenced in this study, the majority of respondents reported signing a contract prior to migrating, but 15.3% of respondents shared that they had difficulties understanding the contractual information. Additionally, details of contractual information differ greatly from one migrant to another, suggesting the need for a standard employment contract. In response to it, Indonesia has attempted to create a standard contract, but it fails to incorporate many of the applicable international labor standards.
- **Freedom to liberty of movement and to leave employment:** 77.6% of total respondents reported having their identity documents taken by either employers or agencies or both. Indeed, confiscation of documents is a popular way of exerting absolute control on migrants'

lives. This study also found that migrants are actively discouraged to change employers and provided with very limited chances of flexible resignation.

- **Right to union:** 79.9% of respondents reported no access to unions. In fact, the right to union/association is nonexistent in many destination countries. Joining or forming a union can lead to unilateral dismissal or immediate deportation.
- **Non-inclusive recruitment:** Despite Indonesia's highly feminized labor migration, recruitment processes are far from being gender responsive and inclusive. In fact, Law No. 18/2017 actively perpetuates gender inequality by requiring migrants to seek their spouses' consent in order to be cleared for migrating. The same law also discriminates against persons with disabilities as it stipulates the requirement of 'physical and mental fitness', which is often translated to having no disabilities.
- **Rating of agencies:** a large number of respondents expressed unwillingness to return to the same agencies and employers, suggesting that recruitment practices at home shape the outcomes of migratory experiences abroad. Despite that, half of the respondents would not mind returning to the same destination countries. Based on the ratings given by reviewers, only 11.5% of employment agencies are seen by respondents as law-abiding.
- **Additional findings:** other problems that are foregrounded include unilateral termination of contracts, constrained access to communication during recruitment/training, and unpaid labor that is disguised under the banner of training.

### Way forward

- Government to promote gender responsiveness in recruitment processes by referring to UN Women's Self-Assessment Tools for Recruitment Agencies.<sup>1</sup> Government should also refer to Law No. 8/2016 on Persons with Disabilities (PWDs) to ensure that recruitment is accessible/inclusive to PWDs;
- Government to clear up legal inconsistencies and implement its commitment to zero-cost placement by ensuring that all recruitment and recruitment-related costs are jointly borne by prospective employers and the government;
- Government to abolish wage theft by promoting bank transfer as a method of payment so that migrants' salary payments can be verified;
- Government to establish a Memorandum of Understanding with governments of destination countries to ensure their protection throughout all migration cycles;
- Government to coordinate differing recruitment schemes and work together on data sharing, bearing in mind data privacy and protection;
- Abolish policies that discriminate against migrants on the basis of gender, such as prohibition of pregnancy and 'immoral conduct'.

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<sup>1</sup> UN Women Self-Assessment Tools for Recruitment Agencies: <https://bit.ly/3vsIBp7>



# 1. Introduction

Labor migration has long been used as a livelihood strategy by many Indonesian households. However, cross-border labor migration programs were only formally introduced by the Indonesian government in 1969. It was not until 2004 that a much-awaited law was passed to regulate the recruitment and protection of Indonesian workers abroad. The law, which was deemed to have placed heavy emphasis on the business aspect of labor migration, was eventually replaced in 2017 by Law No. 18/2017 on the Protection of Indonesian Migrant Workers. This new law is often lauded for its more comprehensive approach to the protection of Indonesian migrants, mainly because its protection frameworks cover all stages of migration and fields of work (land-based and sea-based). Nonetheless, much needs to be done to achieve its intended outcomes, bearing in mind that the law has not been fully translated into concrete implementing regulations.

It is estimated that as of now (2022), there are around 3.3 million Indonesian nationals working overseas, the majority of whom are employed in Malaysia, Saudi Arabia, Singapore, Hong Kong, and Taiwan.<sup>2</sup> However, estimates on the number of Indonesian workers abroad vary. For instance, the National Board for the Protection of Indonesian Migrant Workers (BP2MI) claimed that there are 4.4 million Indonesians working overseas in 2022,<sup>3</sup> and still another estimate has been put forward by the International Labour Organization (ILO), quoting a far bigger number: 6 million individuals.<sup>4</sup> These discrepancies suggest the challenges involved in conducting reliable and robust data collection on Indonesia's labor out-migration, a necessary aspect for extending protection to them. Indeed, a study undertaken by the Union of Indonesian Migrant Workers (SBMI) in 2021 found that data collection on Indonesian migrants is elusive and unreliable as they are only based on the number of overseas votes, passport renewals, school attendance of children of migrant workers, and self-reporting by the migrants themselves. In other words, those migrating via unauthorized or irregular channels, or those failing to report their arrivals to Indonesian missions abroad, are barely documented.<sup>5</sup> Unreliability of data presents a real challenge in extending protection to all migrant workers, and more so during such crises as political conflicts, natural disasters, and more recently, COVID-19.

COVID-19 has had a major impact on Indonesian labor migration. The closure of international borders has left thousands of migrants stranded not only in destination countries, but

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<sup>2</sup> Bank Indonesia and BP2MI. (2022). *Number of Indonesian Migrant Workers by Host Countries*. <https://bit.ly/3P7PXq0>

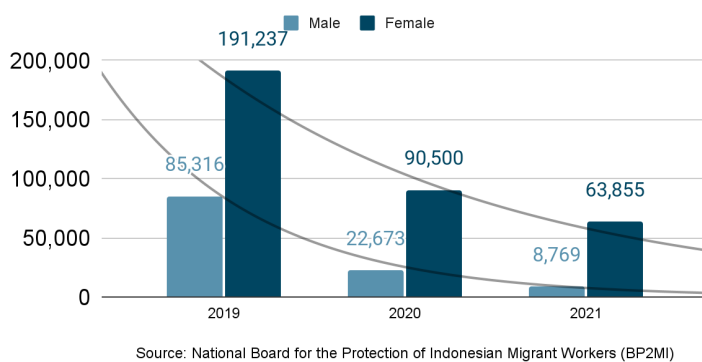
<sup>3</sup> Liputan6. (9 March 2022). *Kepala BP2MI Sebut Ada 4,4 Juta Pekerja Migran Indonesia Bekerja di Berbagai Negara*. <https://bit.ly/3uIXHqj>

<sup>4</sup> International Labour Migration. (2016). *Decent Work for Indonesian Migrant Workers*. <https://bit.ly/3PctE1S>

<sup>5</sup> Serikat Buruh Migran Indonesia. (2021). *Evaluasi Respons dan Tanggung Jawab Perwakilan RI dalam Melindungi Pekerja Migran Indonesia dari Dampak Pandemi COVID-19*. <https://bit.ly/3IroLA7>

also in training centers across countries of origin as they were awaiting placement. Data from BP2MI reveal that Indonesia's overseas deployment dropped by 52% from 276,553 in 2019 to 113,173 in 2020 as the pandemic raged, and it continued to decline in 2021, numbering 72,624. Some activists, however, are rather skeptical about this figure and caution against the possibility of intensified irregular migration as a result of domestic job losses and continued practices of illegal recruitment.

Figure 1: Overseas deployment of Indonesian migrant workers by gender



Aside from this significant decline in overseas deployment, some interesting features arise from the data. First, in regard to gender composition, the number of women migrants has significantly overtaken that of their male counterparts, that is, Indonesian women migrants comprised 69% of all Indonesian migrants deployed in 2019. This percentage increased to 80% in 2020 and a staggering 88% in 2021. In other words, almost 9 out of

10 Indonesian migrants deployed during the pandemic last year were women.

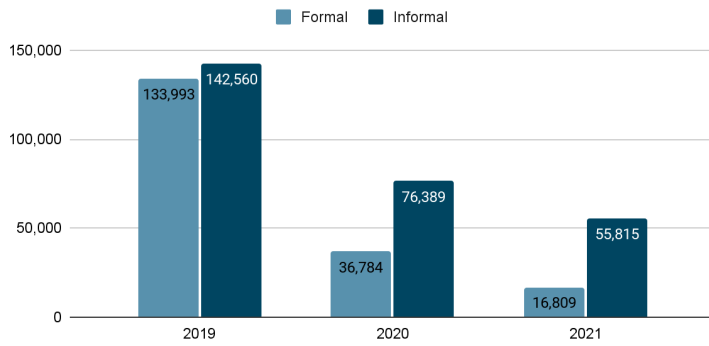
Indonesia's labor out-migration has not only been tremendously *feminized*, but it has also been increasingly *informalized*. The same data from BP2MI demonstrate that among 142,560 outbound Indonesian migrants in 2019, more than half (51%) were deployed in the informal sectors, of which domestic work constituted the largest proportion. Deployment in the informal sectors escalated to 67% in 2020, and increased yet again to a whopping 77% in 2021. Most of those migrants working in the informal sectors have only obtained primary and secondary (junior) education; both categories combined, they accounted for 68% of all outbound migrants in 2019 and 63% in 2021. The fact that more and more Indonesian women with limited formal education are being recruited to work in the informal sectors deserves our full attention, primarily because these sectors remain largely unregulated and fraught with human rights violations. Adding to this urgency is that even the ILO General Principles and Operational Guidelines on Fair Recruitment<sup>6</sup> and IOM's IRIS Ethical Recruitment Standards<sup>7</sup> have failed to incorporate principles and guidelines that explicitly address issues of gender inequality and gender-based violence (GBV). Promotion of gender-responsive recruitment is both timely and crucial because as Figure 3 indicates, there is a steady increase of labor out-migration from Indonesia as travel restrictions are being eased, and this outflow of labor continues

<sup>6</sup> See here: <https://bit.ly/3AMhBV8>

<sup>7</sup> See here: <https://bit.ly/3P649jh>

to be significantly dominated by women who take up employment in informal and thus vulnerable sectors.

Figure 2: Number of Indonesian migrants deployed per sector

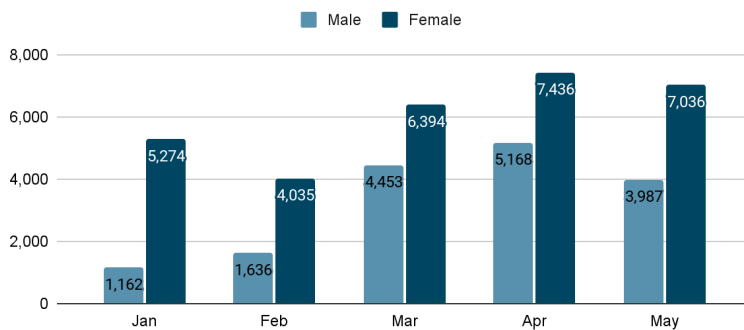


Source: National Board for the Protection of Indonesian Migrant Workers (BP2MI)

Another key feature of Indonesia’s labor out-migration is related to migration corridors. For instance, data from BP2MI demonstrate that some countries in Indonesia’s ‘old’ migration corridors have retained their attractiveness among Indonesian migrants; these include countries in Southeast Asia, such as Singapore, Malaysia, and Brunei, and those in the Middle East, such as Saudi Arabia,

United Arab Emirates, and Qatar.<sup>8</sup> Other migration corridors to East Asia, particularly South Korea and Japan, are not too new, yet these corridors are expected to witness more intensified inflows of migrant workers from Indonesia. The reason for this is that Japan has planned to bring 500,000 workers into their territory by 2025 under the so-called Specified-Skilled Workers (SSW) Program, targeting specifically at countries in Southeast Asia, including Indonesia.<sup>9</sup>

Figure 3: Number of Indonesian migrant workers deployed in 2022



Source: National Board for the Protection of Indonesian Migrant Workers (BP2MI)

Of particular note here is that there are newly emerging corridors into Europe—pathways that were previously of little significance. Data from BP2MI indicate that admission of Indonesian workers into Italy, Poland, and Turkey has been much larger over the past three years, even to the point of surpassing the deployment numbers into traditionally more popular destinations, such as Saudi

Arabia, Japan, United Arab Emirates, and South Korea (see Table 1 on the next page) in 2021. Because the Indonesian government has not signed any agreements with the governments of the three European countries, however, these new migration pathways into Europe remain unregulated and are

<sup>8</sup> BP2MI. (2022). *Data Pekerja Migran Indonesia Periode 2022*. <https://bit.ly/3auTS1c>

<sup>9</sup> Rebekah S and Vukovic A. (2019). *How Can Japan Meet Its Goal of 500,000 Foreign Workers by 2025? By Contracting Out Labor Mobility Programs*. <https://bit.ly/3z8OQ41>

therefore generally precarious. There are instances of recruitment frauds that have taken a toll on prospective migrants. For example, 16 job seekers in Bojonegoro, Central Java, were deceived by unscrupulous sub-agents into paying large amounts of money, ranging from IDR 15 million to IDR 50 million, for promises of employment in Poland.<sup>10</sup> In a similar case, as many as 53 prospective migrants from West Nusa Tenggara also became victims of recruitment frauds by private recruitment agencies (PRAs).<sup>11</sup> These cases only show the tip of a much bigger iceberg, a direct consequence of limited information, loopholes in protection frameworks, and poor oversight of PRAs by the government.

Table 1:

Deployment of Indonesian migrants by destination country

Country	2019	2020	2021
Italy	1,349	411	3,225
Poland	430	837	1,195
Turkey	730	47	874
Singapore	19,356	4,481	3,217
Malaysia	79,659	14,742	563
Brunei	5,639	1,202	N/A
Hong Kong	71,779	53,178	52,278
Taiwan	79,573	34,287	7,789
South Korea	6,207	641	174
Japan	486	753	359
UEA	579	117	437
Saudi Arabia	7,018	1,926	747

Source: BP2MI

### 1.1 Regulatory frameworks governing recruitment in Indonesia

To date, there is no conclusive and mutually agreed definition of fair recruitment. Despite that, fair recruitment can be gauged in terms of compliance with ILO General Principles and Operational Guidelines on Fair Recruitment, as well as IOM's IRIS Ethical Recruitment Standards. These two documents, along with other instruments such as the UN Guiding Principles on Business and Human Rights, serve as a benchmark for realizing fair and ethical recruitment. Among the key indicators of

fair recruitment set out in those documents are principles of zero-cost placement, freedom of return and movement, respect for transparency of employment terms and conditions, confidentiality and data protection, and access to justice/remedy. It is worth noting, however, that the ILO General Principles and Operational Guidelines on Fair Recruitment fails to incorporate operational guidelines for civil society engagement. Additionally, this document and IOM IRIS standards do not contain specific provisions on the handling of gender-based violence throughout recruitment processes. This is

<sup>10</sup> Radar Bojonegoro. (20 April 2022). *16 Warga Bojonegoro Jadi Korban Tertipu Kerja di Polandia*. <https://bit.ly/3IyWjMx>

<sup>11</sup> Kompas TV. (3 June 2022). *Dijanangkan Kerja di Polandia, 53 Pekerja Asal NTB Tertipu Rp 15 Juta*. <https://bit.ly/3PmF8jt>

unfortunate, especially given the staggering feminization of Indonesia's labor out-migration in recent years, as well as widespread occurrence of gender-based violence during stages of pre-departure and post-deployment. For example, there are many instances in which forced contraception is administered on prospective women migrants in the form of pills, injection, or intra-uterine devices prior to departure, at times without their knowledge.<sup>12</sup> These practices of forced contraception are rooted in discriminatory migration policies that enforce no-pregnancy rule and immediate deportation of pregnant migrant workers—all aiming at reproductive control and the eventual impermanence of migrants' stay in destination countries.

Adopted around the time when safe migration and fair recruitment came to be a recurrent theme of global debates, Law No. 18/2017 on the Protection of Indonesian Migrant Workers ushered in a new regime of migration governance in Indonesia. The law clears up some of the confusion and inconsistencies in the previous law (Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers) by defining the roles and responsibilities of the central, provincial, district/municipality, and village governments. Under Law No. 18/2017, the Ministry of Manpower (MoM) acts as a regulatory body responsible for the issuance and revocation of SIP2MI (License for Recruitment of Indonesian Migrant Workers), developing an integrated information system, appointing labor attachés, and enacting regulations for migrant workers protection; while the implementing role lies more firmly with the Board for the Protection of Indonesian Migrant Workers (BP2MI), which is also in charge of administering placement of Indonesian workers migrating via Government-to-Government schemes to Japan and South Korea.

Although the central government reserves the right to issue and revoke SIP3MI, the provincial government may also issue permits for PRAs wishing to establish branch offices in a different province. The provincial government may also set up and maintain a one-stop service center as part of their obligation to protect migrant workers, provide job training through accredited government or private institutions, and facilitate the repatriation of migrants in distress in accordance with their scope of work. However, this role in repatriation does not lie exclusively with the provincial government; under Law No. 18/2017, both central and local governments also carry the obligation for the repatriation of migrants in their respective purviews. It is this overlapping role that often causes tensions between governmental bodies especially as it relates to funding.

Still under Law No. 18/2017, the district authorities are responsible for disseminating information and job orders, setting up a database of migrants, evaluating RPAs' performance, provision of job training, oversight of educational/training institutions, facilitating social and economic reintegration, and they may also establish a one-stop service center. Meanwhile, village

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<sup>12</sup> Anis Hidayah in The New Humanitarian. (24 Oct 2017). *Indonesia Ban Hasn't Stopped Horrors of Migrant Work in the Gulf*. <https://bit.ly/3yBI3hv>

governments are tasked to disseminate information and job opportunities, as well as verify and facilitate migrants documentation.

Law No. 18/2017 imposes stricter regulations on RPAs to ensure fair recruitment. For example, in order for RPAs to have their SIP3MI issued, they are required, among others, to have a minimum deposited capital of 5 billion Indonesian rupiah, as well as an additional 1.5 billion rupiah deposited in a state-owned bank, which can be cashed out by an authorized party<sup>13</sup> in cases whereby RPAs fail to claim responsibility for the protection of the migrants that they have deployed. Additionally, RPAs are prohibited from charging any recruitment fees and recruitment-related costs on prospective migrants,<sup>14</sup> and they are to “resolve any problems facing the migrants placed by them”, as well as “repatriate migrants upon contract expiration, termination of employment, death, workplace accidents, illnesses, and/or other problems causing damages to Indonesian migrant workers”.<sup>15</sup> The problem, however, lies in the enforcement of such legal frameworks. In practice, many unregistered RPAs operating under false names continue to perform recruitment; they charge exorbitant fees and deploy migrants without proper training and documentation, often resulting in violations of labor rights. A range of initiatives have been established to streamline recruitment processes and make migration safer, one of which is the so-called Migrant Recruitment Advisor (MRA)<sup>16</sup>.

As a global peer-to-peer review platform, MRA allows migrants to rate their employment agencies' performance and share their migratory experiences, helping prospective migrants evade unscrupulous agencies and identify the law-abiding ones. With the eventual goal of reducing chances of forced labor, this platform also provides much-needed information on migrants' basic rights, common problems in selected destination countries, tips for first-time migrants, as well as the laws and conventions relevant to countries of destination. Additionally, migrants can report their complaints through a reporting mechanism jointly developed by HURIDOCS and the Migrant Forum in Asia (MFA) called HAMSA.

## 1.2 Methodology

The present study aims to identify practices of (un)fair recruitment of Indonesian migrant workers. This analysis is based on a total of 1,152 reviews given by Indonesian migrant workers over the course of four years (2018-2021). Collected through the Migrant Recruitment Advisor (MRA) website platform, these reviews cover information regarding migrants' own evaluation of their

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<sup>13</sup> The Minister of Manpower is authorized to do so.

<sup>14</sup> Article 30 of Law No. 18/2017 on the Protection of Indonesian Migrant Workers. <https://bit.ly/3uSjYCd>

<sup>15</sup> Article 86 in Chapter V of the Government Regulation No. 59/2021 regarding the Implementation of Protection for Indonesian Migrant Workers. <https://bit.ly/3PbBvNP>

<sup>16</sup> MRA was established by the International Trade Union Confederation with the support of ILO Fair Recruitment Initiative. Access here: [www.recruitmentadvisor.org](http://www.recruitmentadvisor.org)

recruitment agencies and migratory experiences in regard to pre-departure information and orientation, employment contract, recruitment costs, and other rights as enshrined in international human rights instruments. Reviews were sought from a) migrants who have used the service of an agency but are still in Indonesia awaiting their placement, b) migrants currently employed in a destination country, and c) migrants who have returned to Indonesia after working overseas. Data from the reviews were analyzed and visualized.

Additionally, a desk-based literature review has been incorporated into the present report; these include international guidelines and conventions, national laws, academic papers, and grey literature pertaining to (un)fair recruitment. In-depth interviews were also held with a representative of One-Stop Service Center in Tulungagung and several migrant workers. Data from these interviews were analyzed using a qualitative content analysis method in order to enrich the understanding of fair recruitment in Indonesian contexts.

### **1.2.1 Weighting system for agency rating**

In the survey, migrants are requested to rate an agency's performance, for which a set of questions regarding agencies' compliance with fair recruitment principles and guidelines are presented. Each of these questions has some value to it that has been defined previously. At the end of the survey, the total value of all responses will be calculated to reflect an agency's performance rating (1-5 stars), each showing the degree of compliance with the principles and guidelines of fair and ethical recruitment. More information pertaining to this weighting system can be found in Annex 1.

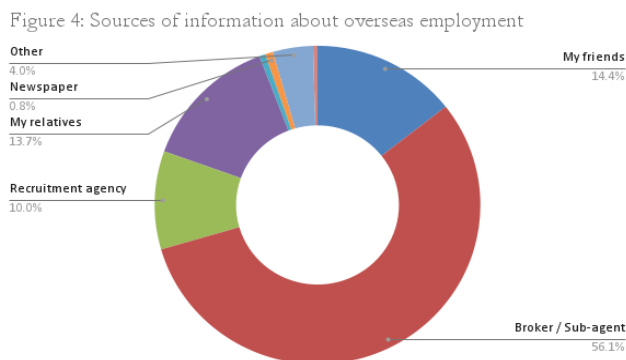
### **1.2.2 Limitations**

This report attempts to present the current state of fair recruitment practices in Indonesia based on the reviews garnered through MRA website and other data sources explained earlier. Readers, however, should take note of some limitations. First of all, reviews from Indonesian migrant workers were collected between 2018, prior to the onset of COVID-19, and 2021, a time when the pandemic peaked and affected all countries globally. Thus data from such reviews do not explain the practices of recruitment following the easing of border control, for which secondary data sources are used. Another important point to note is that many of the review questions were left unanswered by migrant respondents, including those questions pertaining to gender, sector of employment, formal education, countries of destination, and length of employment. It is, thus, rather difficult to capture sufficiently the gender dimension of labor recruitment or understand adequately the ways in which employment sectors, countries of destination, and formal education are interlinked with certain practices of fair/unfair recruitment.

## 2. Key Findings

### 2.1 Access to information

Studies have shown that limited access to information regarding procedures for overseas employment increases migrants' susceptibility to irregular migration and rights violations.<sup>17</sup> In the case of Indonesia, access to information on labor migration is often constrained by disparity in internet access. A survey by the Indonesian Internet Providers Association has revealed that despite an increase in percentage of internet users, from 64.8% in 2018 to 73.7% in 2020, internet connectivity is still predominantly confined to the urban areas of Java, the country's most populous and developed island.<sup>18</sup> This has left much of rural Indonesia, from which most migrants originate, with little or no internet connection. In fact, almost 80% of those without internet access live in villages across Sumatera, Java, and Bali, and about 60-70% of Indonesians living in the country's eastern regions remain insufficiently connected to the internet due to unreliability or absence of connection.<sup>19</sup> It is in these 'blind



spots' that intermediaries have come to play a key role in gatekeeping information during recruitment of migrants—linking the rural with the urban, the little-informed prospective migrants with recruitment agencies mostly operating in cities. This intermediation proves advantageous for recruitment agencies as it keeps them from direct public view and

depicts a more human, familiar face to migration brokerage to further entice prospective migrants.<sup>20</sup>

Reviews collected for this study demonstrate that migrants rely solely on non-state actors for information about job opportunities abroad, with brokers/sub-agents being the most dominant source of information (56.1%). Other major sources of information include

<sup>17</sup> Human Rights Working Group. (2018). *Migrant Workers' Rights in ASEAN Region: A Baseline Study*. Jakarta: Human Rights Working Group.

<sup>18</sup> The Jakarta Post. (11 November 2020). *Indonesian internet users hit 196 million, still concentrated in Java: APJII survey*. <https://bit.ly/3J70HTI>

<sup>19</sup> World Bank. (13 May 2022). *How to bridge the gap in Indonesia's inequality in internet access*. <https://bit.ly/3B89L8r>

<sup>20</sup> Azis, A., Ariefiansyah, R., Utami, N.S. (2020). *Precarity, Migration and Brokerage in Indonesia: Insights from Ethnographic Research in Indramayu*. In: Baas, M. (eds) *The Migration Industry in Asia*. Palgrave Pivot, Singapore. [https://doi.org/10.1007/978-981-13-9694-6\\_2](https://doi.org/10.1007/978-981-13-9694-6_2)



friends (14.4%), relatives (13.7%), and recruitment agencies (10%). Thus information on labor migration is largely in the hands of the private sector, making prospective migrants particularly prone to deception. An interview with Dwi<sup>21</sup>, an Indonesian migrant working for a US-based cruise line, shines some light on some of the challenges involved in accessing information despite stable internet connectivity.

“I heard about this job from a lecturer and school alumni who used to work on cruise ships; but information was limited, so I turned to the internet to find out more. I read articles written by people who have worked on cruise ships. I was confused because there was just too much conflicting information. One website said one thing, and the other said other things. The recruitment processes varied from one company to another, and I did not know how to verify it. I could not find any information from government websites. There was very little information on recruitment costs. Later I learned that employment agencies did not charge any fees on those intending to work for cruise lines, but there were illicit brokers who deceived recruits. They said, ‘You should pay this amount of money if you want to get the job’, and many of my friends fell victim. They were deceived by brokers to pay anywhere between 15 million and 30 million when the employment agency itself did not charge any fees.” (Dwi, online interview, July 21, 2022)

The case of Dwi suggests the need for an authoritative source of information, by which prospective migrants can verify information and reduce the likelihood of deception during the recruitment processes. To this end, some steps have been taken by the government. For instance, Articles 38, 40 and 41 of Law No. 18/2017 place an obligation on the government to provide information on safe migration through the establishment of a one-stop service center (LTSA). As per 2021, as many as 45 units of LTSA had been erected throughout Indonesia. However, a survey covering 209 respondents by Jaringan Buruh Migran (2021) found that the large majority of migrants (79.4%) are incognizant of LTSA’s existence, and among those who have knowledge of LTSA, many are made aware by migrant groups and, rather ironically, recruitment agencies.<sup>22</sup> The same study also identified that LTSAs remain underutilized as they are typically located in urban centers, away from migrants’ places of residence, for which migrants need to spend 2-3 hours of commute time. Still, others are not inclined to use LTSA for fear of incurring additional administrative fees.<sup>23</sup> Addressing these challenges is necessary to ensure that migrants can access accurate information on labor migration.

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<sup>21</sup> All names of interviewees are anonymized to protect their privacy.

<sup>22</sup> Jaringan Buruh Migran. (2021). *Tinjauan Pelindungan PMI Melalui Layanan Terpadu Satu Atap yang Berperspektif HAM dan Gender*. Jakarta: Jaringan Buruh Migran.

<sup>23</sup> Ibid.

## 2.2 Recruitment fees

The ILO defines recruitment fees as “any fees incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing, or location of their imposition or collection.” Meanwhile, recruitment costs are defined as “expenses *integral* to recruitment and placement within or across national borders.”<sup>24</sup>

Indonesia’s commitment to the employer-pays principle is reflected in Article 30 of Law No.18/2017, which provides the legal basis for prohibition of charging recruitment fees on migrant workers. This commitment is translated and further reiterated in the Regulation of BP2MI No. 9/2020 regarding Zero-Cost Placement of Indonesian Migrant Workers, under which Indonesian migrants are exempted from recruitment fees and costs for a) departure and return flights, b) visa processing, c) accommodation, d) local transportation from the place of origin to the point of international departure, e) medical and psychological examinations in Indonesia, f) additional health examinations relevant to countries of destination, g) Social Security for Indonesian Migrant Workers, h) Police Clearance Certificate, i) passport replacement, j) agency service fees, k) legalization of employment agreement, l) job training, and m) certification of skills/qualifications. While the itemized fees and costs specified in letters a-k are to be borne by employers, the Regulation clearly states that local governments are responsible for covering the costs for job training and skills certification (letters l and m).

Although Law No. 18/2017 has made it abundantly clear that provincial and district governments are obligated to provide free training and skills certification, implementation on the ground has been messy. This is often attributed to limited state funds and poor interdepartmental coordination. The government’s seeming reluctance to commit to their own promise became self-evident when they rolled out the People’s Business Credit (KUR)<sup>25</sup> program, which enables migrant workers to take low-interest loans from state-owned banks as an alternative financing scheme for their recruitment. This move invites criticisms from migrant groups as it is in direct contradiction to the government’s own commitment to zero-cost placement, signifying an attempt at outsourcing their obligation to banks. To avoid blame for their failures to live up to zero-cost placement, the government often depicts KUR more as a charitable program that is meant to help migrants evade the dangers of ‘loan sharks’.

These legal inconsistencies have placed a major obstacle in the implementation of zero-cost placement, creating general confusion among migrants. As a result, migrants continue to bear the fees and costs of their recruitment. The reviews collected from migrant

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<sup>24</sup> Tripartite Meeting of Experts on Defining Recruitment Fees and Related Costs. <https://bit.ly/3cExNx8>

<sup>25</sup> Regulation of Coordinating Ministry for Economic Affairs No. 1/2022 concerning Guidelines on the Implementation of People’s Business Credit, The Regulation was further translated by BP2MI into Head of BP2MI Decision No. 72/2022 regarding Technical Guidelines on People’s Business Credit for Placement of Indonesian Migrant Workers.

workers in this study demonstrate that they continue to bear the fees and costs of recruitment, as can be seen in Table 2 below.

**Table 2:**  
**Recruitment fees and associated costs paid by reviewers**

Items	%
<b>Recruitment fees</b> (payment to recruitment agency for advertising, interview arrangement, document submission, & placement fees)	100
<b>Medical costs</b> (payments for medical examinations, tests or vaccinations)	84
<b>Insurance costs</b> (costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds)	87
<b>Costs for orientation</b> (costs for pre-departure and post-arrival orientations)	81
<b>Equipment costs</b> (costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively)	80
<b>Administrative costs</b> (costs for processing employment contract, passport, visa, employment and residence permit, etc.)	91
<b>Travel and lodging costs</b> (expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation)	83
<b>Costs for skills training and qualification tests</b> (costs for language tests, skills tests, certificating, or licensing)	79
<b>Costs for special skills training</b>	75
<b>Did not pay any fees/costs</b>	0
<b>Other</b>	6

**N=1,082**

Some interesting features emerge from the reviews given by 1,082 Indonesian migrant workers (94% of total respondents). First, all of the 1,082 reviewers reported to have paid recruitment fees, and the vast majority of reviewers were also required to pay for the fees and costs that must have been borne jointly by prospective employers and the government. These include administrative costs (91%), insurance costs (87%), medical costs (84%), travel and lodging costs (83%), costs for orientation (81%), and skills training and licensing costs (79%). That the majority of migrant workers are required to finance their skills training and licensing needs more attention. This is because pre-departure training is not only the costliest

component of recruitment fees,<sup>26</sup> but also the area in which occurrence of frauds is commonplace. For instance, a study done by Human Rights Working Groups found that migrants are charged exorbitant fees, typically ranging from IDR 5 million to a staggering IDR 30 million (USD 334-2,000), for a 3 to 6-month Japanese language training.<sup>27</sup> This is far above the average fees charged by most language institutions for similar duration of Japanese language learning, which usually stand at IDR 1.5 million (USD 100). These continued deception and other violations, despite five years of enforcement of Law No. 18/2017, imply that the discourse of zero-cost placement is more of a gimmick rather than a real commitment to protection, and that swift actions must be taken by the government to ensure effective enforcement of what is already considered to be a robust law.

### **2.3 Pre-departure training and orientation**

Pre-departure skills and language training is a crucial aspect of safe migration as it minimizes skills mismatches and misunderstanding. However, this study found that there are instances in which such training promotes docility. A number of respondents working in the domestic sector recounted their training experience, in which they were told to be submissive, quiet, and always ready to follow employers' orders without complaining. This sort of conditioning is particularly rampant within the domestic sector, perpetuating the unequal power relation between migrant domestic workers and their employers. It promotes a false sense of inferiority among migrant domestic workers to the extent that they willingly condone abuse as though it were an inherent part of their work. Additionally, some respondents shared cases in which pre-departure training is more akin to unpaid labor as they were made to do regular household chores without proper monitoring and evaluation.

This study has also found cases in which pre-departure training is either inadequate or irrelevant, as can be seen in the case of Rani<sup>28</sup> below.

“When I registered at an employment agency, I was signed up for some training, but I was trained for office work rather than domestic work. I did not bother to ask because my only wish back then was to leave immediately. I was escaping a marriage my parents were arranging for me. The agency in Indonesia gave me some language training for about two weeks, but it was very basic. When I settled into my job in Hong Kong, I had difficulties communicating with

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<sup>26</sup> Based on Decision of BP2MI Head No. 214/2021 concerning Technical Guidelines on Zero-Cost Placement of Indonesian Migrant Workers. <https://bit.ly/3Ban6gG>

<sup>27</sup> Human Rights Working Group. (2020). *Shifting the Paradigm of Indonesia-Japan Labour Migration Cooperation*. Jakarta: Human Rights Working Group. <https://bit.ly/3otZlZy>

<sup>28</sup> Name is anonymized to protect the informant's privacy.

my employers and their child. It was hard because my main task was to look after their child, and you know, children are talkative [laughs].” (Rani, online interview, July 20, 2022)

The case of Rani is not an isolated one; it is representative of many similar stories in which migrants, mostly women, are compelled to move away in search of some degree of safety and freedom, while simultaneously being exposed to different forms of vulnerability throughout their migration stages. In many cases, spontaneous migration like Rani’s tends to end up in situations of undocumentedness because irregular migration is deemed faster, less costly, and less complicated. The issue is that those migrating via irregular channels tend to skip much-needed training and pre-departure orientation sessions, further exposing them to precarity. In fact, a survey of distressed Indonesian migrant workers in Ryadh and Jeddah shelters revealed that those who attended pre-departure orientation sessions were less likely (40%) to experience abuse.<sup>29</sup>

Unlike its predecessor, Law No. 18/2017 does not contain any provisions on pre-departure orientation. Instead, all matters pertaining to pre-departure orientation are regulated under Government Regulation No. 10/2020 concerning Procedures for Overseas Placement by the Board for Indonesian Migrant Workers Protection (BP2MI).<sup>30</sup> As an implementing body, BP2MI is responsible for administering pre-departure sessions, which run for 10 hours and cover a range of topics, including employment contract, applicable laws in destination countries, customs and traditions, psychological preparedness, and potential dangers such as HIV, drug abuse, and trafficking in persons (TIP).

**Table 3:**  
**Information during pre-employment orientation**

Item	%
Information about my rights and obligations	97
Information about useful contacts and services at destination	37
Information about what to do if I have a complaint	37
I did not receive any pre-departure orientation	0
Other	4
N=888	

<sup>29</sup> Sumas, S. (2020). *Evaluasi Pembekalan Akhir Pemberangkatan bagi Pekerja Migran Indonesia di Luar Negeri*. *Jurnal Widyaiswara Indonesia* Vol. 1, No. 3, pp. 130-139

<sup>30</sup> See the document here: <https://bit.ly/3PX1mrh>

Questions about information given during pre-departure orientation were asked in this study, and reviewers' responses provided some interesting insights. Notable among these findings is the fact that an overwhelming majority of reviewers reported receiving information on their rights and obligations (97%). However, only 37% of reviewers obtained information about useful contacts and services available in destination countries, and the same number of reviewers (37%) admitted getting information on what to do should they wish to file complaints. Interestingly, despite the vast majority of respondents claiming that information on rights and obligations was provided, this study also found that violations of rights were widespread. In fact, 45.1% of respondents did not receive the wages previously promised to them, and 33.7% of reviewers reported some discrepancies between the jobs promised and the actual jobs they were required to perform. Still, 77.6% of respondents shared that they had their identity documents confiscated by either employers or agencies. This contradiction may suggest that a larger system of control is at play, giving migrants no means of resistance despite having some knowledge of their rights (see section 2.5 on the right to liberty of movement for more discussion). Equally important to note is that these questions were only answered by 888 out of 1,152 respondents. In other words, about 264 (or 23%) respondents might not have sitted through any pre-departure sessions at all, due to either failed departure or irregular migration pathways.

Indeed, one of the main challenges of ensuring migrants' attendance in pre-departure orientation sessions lies in the differing ways in which Indonesia and destination countries interpret (ir)regular migration. In Indonesia, for instance, only private recruitment agencies and BP2MI are authorized to administer overseas placement of Indonesian workers, for which they are obligated to incorporate pre-departure orientations. In some destination countries, however, direct hiring is legally permissible. A good example for this would be Singapore. The Singapore government allows prospective employers to recruit domestic workers (first-time or otherwise) directly from their origin country. Under this scheme, employers can submit an online application to issue an In-Principle Approval (IPA), which allows migrants' entry to Singapore on a tourist visa.<sup>31</sup> The IPA will then be converted to a work permit, enabling migrants to stay and work in the country.

Singapore's direct hiring scheme also invites us to rethink what constitutes undocumentedness; i.e. those traveling on a tourist visa with an eventual goal of securing employment in Singapore may be categorized as 'irregular' or 'undocumented' migrants in the eyes of the Indonesian government. Yet these same migrants are seen as perfectly documented workers in the viewpoint of Singapore. Thus, such a recruitment scheme as Singapore's direct

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<sup>31</sup> Singapore Ministry of Manpower. *Apply for a Work Permit for migrant domestic workers*. <https://bit.ly/3PC3hTS>

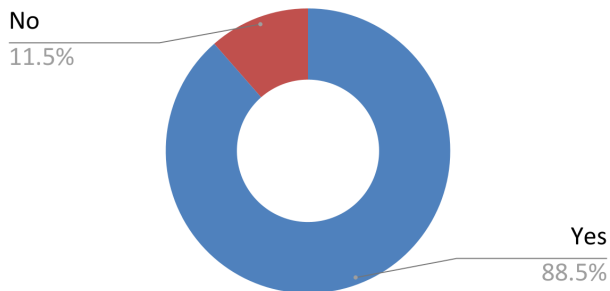
hiring presents a real challenge in the implementation of Indonesia’s mandatory pre-departure orientation. Addressing a challenge of this sort would require countries of origin and destination to sit and work together on synchronizing various recruitment schemes to ensure that prospective migrants are well-equipped prior to departure.

## 2.4 Employment contract

Law No. 18/2017 stipulates that an employment contract must be signed during *Orientasi Pra-Keberangkatan* (pre-departure orientation), which incorporates a dedicated session on terms and conditions of an employment agreement. The rationale for this is to ensure that outbound migrants receive an adequate level of comprehension prior to contract-signing and, as BP2MI also presides at the orientation, to minimize risks of deception and coercion by recruitment agencies during contract-signing. Nonetheless, there are instances in which recruitment agencies fail to provide a written employment contract prior to departure, as can be seen in the case of Rani below:

“I had no idea [about the employment contract]. I did not sign anything in Indonesia, but all I can remember is that they directed me to an office on my second day in Hong Kong. I was made to sign a piece of paper about loans, but I did not know for what and how much the loans were. I never knew what an employment contract looked like. It was only when I transferred to my second employer that I came to know [about employment contracts]. I thought to myself, ‘Oh, so this is what they call an employment contract.’” (Rani, online interview, July 20, 2022)

Figure 5: Receipt of employment contract prior to departure



Rani’s story is far from being unusual. This study finds that 11.5% of migrant respondents departed for destination countries without signing any written contract. Of important note here is that the percentage could be far higher if other recruitment schemes, such as direct hiring, and illegal recruitments are taken into

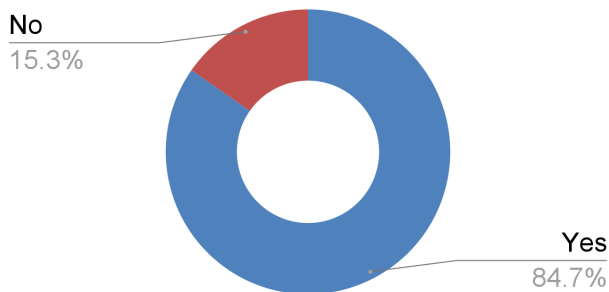
consideration. Meanwhile, 88.5% of respondents admitted signing an employment contract in Indonesia. Pre-departure contract-signing, however, does not automatically prevent violations of rights. In fact, a report jointly prepared by Singapore-based NGOs Humanitarian Organization for Migration Economics (HOME) and Transient Workers Count Too (TWC2)

explains that there are many instances in which despite signing an employment contract before migrating, Indonesian migrant domestic workers are routinely forced to sign a new contract with less favorable terms upon arrival in Singapore.<sup>32</sup> Some respondents reported having to sign an employment contract without being allowed to read it, while others were made to sign blank contracts.

Another issue in terms of contract concerns language use. In some cases, employment contracts are written in a foreign language or are laden with technical terms to the extent that they are not readily understandable. In fact, reviews collected for this study demonstrate that 15.3% of respondents reported difficulties understanding their employment contracts. Adding to the problem of language comprehension is the fact that, at times, migrants are actively discouraged from negotiating better terms of employment. For instance, HOME and TWC2 presented some cases in which, upon being asked about the right to rest days, employment

agencies interjected, “You want to work or holiday?”<sup>33</sup>

Figure 6: Whether contract is understandable to migrant workers



Attempts have been made by the Indonesian government to determine a minimum set of employment terms in order to protect Indonesian migrant workers. Yet as we can see in Table 4 below, not much improvement has been observed in Law No. 18/2017 as it compares to the old

law. In fact, only one term has been added to the list (point f), which remains largely vague. These minimum terms of employment espoused by the Indonesian government fail to live up to international labor standards. There are no provisions on job description, job site, frequency of pay, overtime rates, accommodation standards, vacation and leave entitlements, benefits of employment, details of transportation to and from the country of destination, details of meals to be provided by the employer, conditions of lawful termination, and the right to union.

<sup>32</sup> HOME and TWC2. (2017). *A Submission for the 27th Session of the UN Committee of Migrant Workers*. <https://bit.ly/3Q2tf2N>

<sup>33</sup> Ibid.

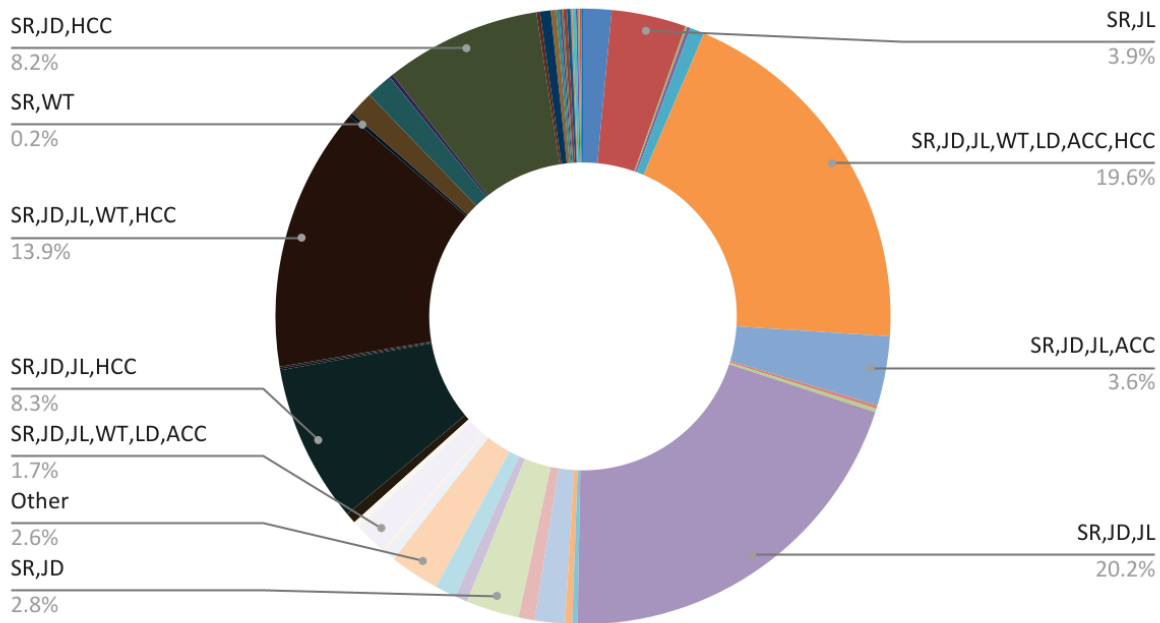


**Table 4:**  
**Minimum details in an employment contract**

<b>Old Law (Law No. 39/2004 on Placement and Protection of Indonesian Migrant Workers)</b>	<b>New Law (Law No. 18/2017 on Protection of Indonesian Migrant Workers)</b>	<b>IOM IRIS Ethical Recruitment Standards</b>
Article 55: a. Name and address of the employer b. Name and address of worker c. Job position or type d. Entitlements and responsibilities of both employer and worker e. Terms and conditions of employment, including work hours, salary, mode of payment, leave of absence, facilities, and social security f. Duration of contract	Article 15: a. Name, profile, and full address of the employer b. Name and full address of worker c. Job position or type d. Terms and conditions of employment, including work hours, salary, mode of payment, leave of absence, rest hours, facilities, and social security and/or insurance e. Duration of contract f. Guarantee of safety and security throughout employment	Principle 3: a. Name and address of the employer b. Job description, position, and site c. Wages, frequency of pay, overtime rates, lawful deductions from pay d. Working hours and rest days e. Vacation and leave entitlements f. Benefits of employment g. Duration of contract h. Details of transportation to and from country of destination i. Details of accommodation and meals provided j. Conditions of termination k. Union or other legal dues payable

It has been mentioned previously that 88.5% of respondents in this study reported signing a written employment contract before migrating. Upon scrutiny, however, we have found that details of employment terms in these contracts differ greatly from one migrant to another (see Figure 5 below). For instance, many (20.2%) of these employment contracts stipulate employment terms that pertain to salary, job description, and job location *only*. Data from the surveys demonstrate that only 19.6% of respondents reported signing a more comprehensive employment agreement that fairly aligns with international labor standards, containing information on salary, job description, job location, working hours, leave days, details of accommodation, and healthcare coverage. However, attention should be directed at the remainder of these respondents (60.2%), whose employment contracts set out very limited terms, regulating matters that pertain to only a few of the details shown in Figure 7. This finding reaffirms the urgency to enforce a standard employment contract across destination countries and lines of job.

Figure 7: Details of information in employment contract

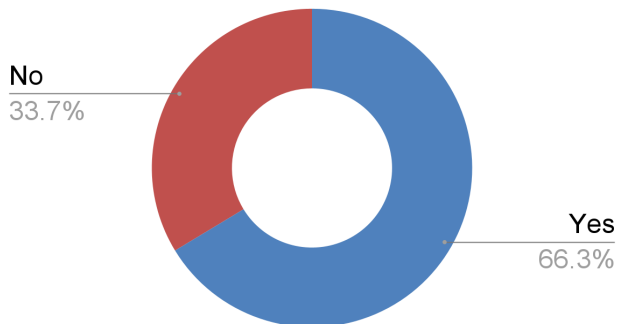


Description:

SR : salary                      JD : job description                      JL : job location  
 WT : working time              LD : leave days                      AD : accommodation  
 HCC : health care coverage

Despite signing an employment contract that specifies the migrant’s scope of job responsibilities, there are frequent instances of deception especially within the domestic sector. This study has identified that 33.75% of respondents did not receive the jobs that were promised previously.

Figure 8: Whether actual job is the same as promised

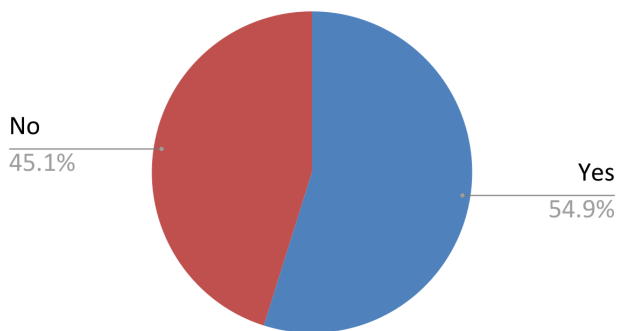


There are numerous cases in which migrants reported deception about the nature of their job, such as having to perform elderly care in addition to childcare, cater to more individuals than promised, work longer hours and larger workloads without extra pay, and work for another household in addition to the

one stated in the agreement.<sup>34</sup> Additional comments from reviewers also explain that there are

<sup>34</sup> HOME. n.d. *Trafficking into Domestic Servitude in Singapore*. <https://bit.ly/3Oxnrgo>

Figure 9: Whether actual salary is the same as promised



discrepancies in terms of decency of accommodation and meals, and some migrant workers are *forced* to give up their rest day entitlement in lieu of monetary compensation.

Another contract-related issue facing Indonesian migrant workers is related to salary. Past studies have found that deception about salary is pervasive,<sup>35</sup> and this problem is further exacerbated

by the COVID-19 pandemic. Reviews collected for this study found that 45.1% of respondents did not receive the salary that was promised. This finding corresponds to that of a survey done by SBMI covering 148 respondents, which found that wage theft was commonplace among Indonesian migrant workers; in fact, 41% of SBMI's respondents reported experiencing non-payment of wages and unlawful salary deductions.<sup>36</sup>

## 2.5 Right to liberty of movement and freedom to leave employment

Tri<sup>37</sup> recently graduated from high school in a Central Javanese town of Magelang. Like many of her friends who came from a low-income background, Tri's immediate move was to look for a job and earn a living. She sent numerous job applications without hearing good news until one day, a company invited her for an interview, which turned out to be a successful one. In the final stage of her application in which her height was measured, unfortunately, Tri failed. Her height of 152 cm fell short of women's minimum height set for most jobs in Indonesian factories—155 cm. Tri was filled with disappointment, but upon hearing news from a friend about a job opportunity in a Malaysian factory, she gathered herself and tried her luck again since, she recounted, it did not stipulate any minimum height.

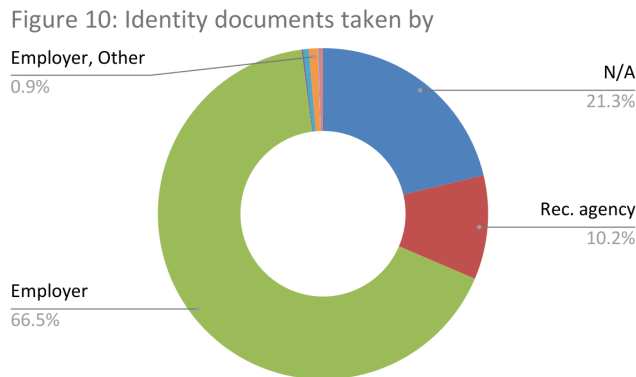
Tri's recruitment was rather swift. She spent two months processing her documents before flying to Kuala Lumpur, where her factory was located. Something was amiss, however. Upon arrival at her factory dormitory, Tri's identity documents and those of her colleagues were confiscated by the factory, in exchange for which they were given a factory ID. This ID allowed mobility only within a specified area in the factory's vicinity, beyond which migrant

<sup>35</sup> Ibid.

<sup>36</sup> Serikat Buruh Migran Indonesia. (2021). *Evaluasi Respons dan Tanggung Jawab Perwakilan RI dalam Melindungi Pekerja Migran Indonesia dari Dampak Pandemi COVID-19*. <https://bit.ly/3IroLA7>

<sup>37</sup> All names of informants in this study are anonymized to protect their privacy.

workers would risk police arrests and, eventually, deportation.<sup>38</sup> A similar account was shared by another informant, Rani, whose passport and visa were confiscated by her agency as soon as she went through the immigration checkpoint in Hong Kong Airport.



There are innumerable stories like those of Rani and Tri. In fact, this study found that 77.6% of respondents reported having their legal documents confiscated, of which 66.5% were by employers, 10.2% by recruitment agencies, and 0.9% by both employers and agencies.

Meanwhile, only 21.3% kept their own documents. These documents included passports, visas, Indonesian identity cards, birth certificates, and/or school certificates. Regardless of the types of documents taken, the underlying motive for such confiscation is apparent, that is, to severely restrict mobility and exert absolute control on migrants' life—a direct violation of Principle 2 of ILO General Principles and Operational Guidelines on Fair Recruitment.

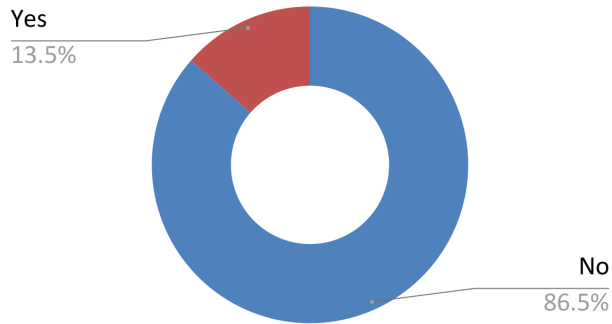
This form of control, however, is much more intricate than it looks on the surface. It stems from migration policies that are designed, at the outset, to be *selectively* restrictive toward certain groups of migrants depending on their levels of 'desirability', in which case low-paid migrants are deemed least desirable. Being seen as 'unskilled' and thus dispensable, low-paid migrant workers are forced to leave once their labor is no longer wanted. They are merely permitted to stay and work temporarily without any pathways to permanent residency, family reunification, or career mobility. It is against this background that the whole system of control is put in place. For instance, before hiring a migrant domestic worker, all employers are required by the Singapore government to deposit a capital of \$5,000.<sup>39</sup> This bond will be forfeited in cases of violation of the Employment of Foreign Manpower Act (EFMA), a law that specifically governs the employment of domestic workers. The problem with this law, however, is that it sets out conditions that are vague and discriminatory, stipulating that migrant workers must not "become pregnant or deliver any child in Singapore during and after the validity period of the work permit", and they "shall not be involved in any illegal, immoral or undesirable activities, including breaking up families in Singapore".<sup>40</sup> Having their \$5,000

<sup>38</sup> This account was provided by the informant during an offline interview conducted on July 20, 2022.

<sup>39</sup> Singapore Ministry of Manpower. *Security bond requirements for migrant domestic workers*. <https://bit.ly/3J8GwEF>

<sup>40</sup> Employment of Foreign Manpower Act (Chapter 91A). <https://sso.agc.gov.sg/Act/EFMA1990>

Figure 11: Flexible resignation



bond at stake, some employers feel entitled to discipline their migrant workers by restricting their freedom of mobility. In other words, the government deliberately distributes some of its power to employers in order to help them discipline and keep migrants under control.

Another mechanism of control is evident in the ways in which the state makes job-hopping difficult for migrant workers. In cases of premature termination of contract, for example, migrant domestic workers in Singapore must obtain the consent of their previous employer and give a one-month notice should they wish to transfer to another employer. Failure in providing a one-month notice will result in mandatory payment of one-month salary to the other party.<sup>41</sup>

In a worse scenario, migrant workers are unable to change employers even with a prior notice. For instance, in December 2021 as many as 1,748 visa applications submitted by migrant domestic workers were denied by the Hong Kong government on the grounds of suspected job-hopping, i.e. “which is when domestic workers prematurely terminate their employment contracts or deliberately perform poorly to force their employers to fire them to change employers,” uttered the Hong Kong Immigration Department.<sup>42</sup> This number was far higher as compared to 319 rejections in the previous year.<sup>43</sup> Reviews collected for this study also confirm such trends, in which the vast majority of respondents (86.5%) reported being unable to resign from their job despite a notice, while only 13.5% claimed the ability to do so.

## 2.6 Right to union

Migrant organizations and unions are integral to the well-being of migrant workers as they help negotiate more favorable terms of employment through collective bargaining. Their indispensable role in the protection of migrants’ rights is particularly evident during the COVID-19 pandemic. Migrant unions and organizations have been assisting Indonesian missions abroad in mitigating the detrimental effects of COVID-19 by distributing aid

<sup>41</sup> Singapore Ministry of Manpower. *Transfer a migrant domestic worker (MDW) directly to a new employer.*

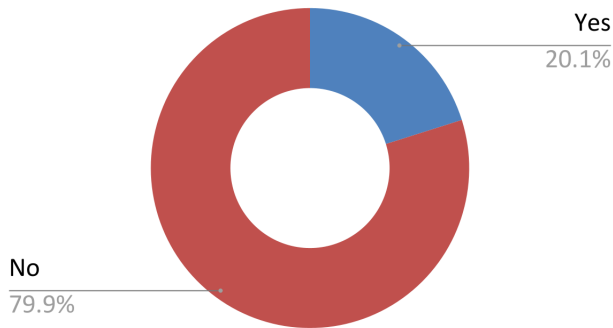
<https://bit.ly/2R6pP1k>

<sup>42</sup> Hamlett, Tim. (12 December 2021). *Hong Kong’s domestic workers are job-hopping – what is wrong with that?.* Hong Kong Free Press. <https://bit.ly/3cIoEnU>

<sup>43</sup> Ibid.

packages and COVID-19-related information to migrants who have gone ‘off the radar’. These include undocumented migrants, migrant who have no means of communication, migrants who have not enjoyed their rest day entitlements and are therefore unable to collect aid packages from pick-up points, and those who live in far-flung areas of destination countries.<sup>44</sup> In other words, it is migrant unions and organizations who work on closing the loopholes in current protection frameworks.

Figure 12: Access to unions/associations



Despite the significance of migrant unions, however, the right to union and collective bargaining is still largely constrained in a wide range of destination countries. In Malaysia, the largest destination country for Indonesian migrant workers, freedom to join or form migrant unions is limited, particularly for migrant domestic workers. Attempts at forming an

association of migrant domestic workers have been futile as they were rejected by the Registrar of Societies, a regulatory department under Malaysia Ministry of Home Affairs.<sup>45</sup> In Saudi Arabia, another largest destination for Indonesian migrants, freedom to form or join unions is absent not only for migrants but also for locals. In fact, any workers insisting on establishing workers’ unions risk employment termination or imprisonment and, in the case of migrant workers, deportation. These restrictions are not peculiarly Malaysian or Saudi Arabian; they can be observed in many other destination countries, such as Singapore. It did not come as a surprise, thus, that reviews collected for this study demonstrate that 8 out of 10 migrants reported having no knowledge of and access to trade unions (see Figure 12).

The right to union and collective bargaining is stipulated in a variety of international norms. For instance, it is enshrined in Goal 6 of the Global Compact for Safe, Orderly, and Regular Migration; Article 26 of Part III and Article 40 of Part IV in the UN Convention on the Protection of the Rights of All Migrant Workers and Their Families; Criterion A. 4 of IRIS Ethical Recruitment Standards; ILO General Principles and Operational Guidelines on Fair Recruitment; Goal 8 of 2030 Sustainable Development Goals (SDGs); ILO Convention No. 189 on Decent Work for Domestic Workers; and Chapter IV No. 2 of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. Considering the key role

<sup>44</sup> Serikat Buruh Migran Indonesia. (2021). *Evaluasi Respons dan Tanggung Jawab Perwakilan RI dalam Melindungi Pekerja Migran Indonesia dari Dampak Pandemi COVID-19*. <https://bit.ly/3IroLA7>

<sup>45</sup> ITUC. (2021). *Spotlight interview with Pari Mose*. <https://bit.ly/3iOAoVi>

of trade/migrant unions in the protection of migrant workers, steps should be taken to ensure the enjoyment of freedom of union and collective bargaining, as stipulated in the above-mentioned international and regional norms.

## 2.7 Non-inclusive recruitment

### 2.7.1 The need for gender-responsive recruitment

Despite its urgency, perhaps one of the most neglected aspects of fair recruitment is the question of inclusivity and gender responsiveness.<sup>46</sup> In fact, the ILO General Principles and Operational Guidelines and IOM IRIS Ethical Recruitment Standards do not stipulate any provisions that explicitly address the problem of discrimination on the grounds of gender. Instead, principles of gender equity in the context of fair recruitment are mostly drawn from other instruments or norms, including CEDAW General Recommendation No. 26 on Women Migrant Workers, ILO Convention No. 189 on Domestic Workers, and UN Women's Standard Terms of Employment. That those two documents on fair recruitment do not address issues of gender equity leaves a big question mark.

Indonesian women migrants are exposed to many forms of vulnerability throughout their migration cycle. In 2018, for instance, the Indonesian Ministry of Women Empowerment and Child Protection found that the large majority (70%) of reported cases of trafficking in persons (TIP) comprised women, of which 6% were girls.<sup>47</sup> This is not an unfortunate happenstance. In fact, cases of TIP increased by 62.5% during the COVID-19 pandemic, in which women and girls made up the largest proportion.<sup>48</sup> This issue now begs the question: why have women and girls constituted the largest group of trafficked people?

It would be difficult to comprehend the depth and breadth of this problem without a careful reading of local contexts in which women are positioned. In many cultural groups in Indonesia, unmarried women are subsumed under the auspices of their fathers *or* older male members of their extended family, whose consent is mandatory for decisions having to do with important events such as schooling, marriage, and migration. This guardianship expires upon marriage of the woman, which routinely entails a compulsory payment of *belis* or bride price by the groom. In some cultures, this bride price signifies a transfer of power, or rather—ownership, from a woman's father to her husband, after which all decisions pertaining

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<sup>46</sup> Gender responsiveness is freely translated to paying attention to the specific/unique needs of certain gender groups that have been historically and systemically disenfranchised.

<sup>47</sup> Indonesian Ministry of Women Empowerment and Child Protection. (2019). *Sinergi seluruh elemen untuk bersama berantas TPPO*. <https://bit.ly/3OIYQoT>

<sup>48</sup> Wahidin, KP. (2021). *Perdagangan orang dalam angka*. <https://bit.ly/3OK5Y15>

to the woman's well-being are to be consented by him. It is against this cultural background, for instance, that Article 13 of Law No. 18/2017 requires all outbound migrants to obtain the authorization of a (male) guardian or a spouse, without which they will not be cleared for migrating by their village heads. In other words, women maintain drastically limited control over their own life decisions.

This particular social arrangement is problematic especially amid the increasing use of cultural practices to entice prospective migrant workers. To understand this trend, let us look at the case of *oko mama*, a form of local wisdom in East Nusa Tenggara. *Oko mama* literally translates to 'a place or container for betel nuts'. It bears enormous cultural significance to the lives of East Nusa Tenggara communities for its use in a wide range of cultural events, such as engagements, marriage, and conflict resolution. *Oko mama* is often presented to guests to represent good hospitality, friendship, and respect.<sup>49</sup> Conversely, guests routinely convey it as a gift during a visit to signify their respect to the host and their own trustworthiness. It is this cultural meaning that is abused by illegal brokers to lure new recruits. There are numerous instances in which illegal brokers misuse *oko mama*, often with an addition of a handsome amount of money, to convince parents or guardians to let their children, mostly women, go abroad for work. Given the asymmetrical power structure explained earlier, women are often left without any option but to bow to the pressures of their parents or guardians.

This illegal recruitment has placed women in a vulnerable situation even at the onset of their migration journey. Many have become victims of TIP and various forms of violence, such as forced contraception. To date, however, there have not been any significant attempts at GBV handling throughout the recruitment processes. No mechanisms of grievance have been established to address the unique challenges faced by women migrant workers.

### **2.7.2 Recruitment and disability rights**

Another issue that is left entirely untouched in regard to fair recruitment concerns the rights of persons with disabilities (PWDs). In Indonesia, there has been very limited discourse on the intersection between labor migration and disability rights. If any, these discussions mostly revolve around issues of post-migration disabilities; that is, when migrants have become 'disabled' as a result of workplace injuries during their employment abroad.<sup>50</sup> Rarely are these discussions directed at the question of systemic barriers that restrain PWDs from accessing the international job market. For instance, Article 5 of Law No. 18/2017 concerning the

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<sup>49</sup> Kamengon DG, Engel, JD, and Kristinawati W. (2020). *Oko Mama: Tanda pemaafan yang berbasis kearifan lokal Timor. Jurnal Ilmu Sosial dan Humaniora*, Vol 9 No. 2. DOI: <https://doi.org/10.23887/jisb-undiksha.v9i2.22331>

<sup>50</sup> Migrant CARE. (2021). *Intersectionality Study on the Protection of Indonesian Migrant Workers and the Rights of Persons with Disabilities*. <https://bit.ly/3BneMdD>



Protection of Indonesian Migrant Workers sets out a range of requirements to be eligible for recruitment, one of which states “*sehat jasmani dan rohani*” or literally translates to “physically and mentally fit”. Fitness in this case, however, is often narrowly interpreted as having no disabilities. Such a requirement is imposed not only on overseas placement but also on recruitment for domestic deployment, placing a huge barrier in accessing both local and international job markets for PWDs. It is also worth noting that at present, there is no mechanism of data collection on migrants who have become disabled as a result of workplace accidents.<sup>51</sup>

Discrimination on the basis of ability is lamentable, particularly since Indonesia and many of the largest destinations for Indonesian migrant workers have ratified the UN Convention on the Rights of Persons with Disabilities (UN-CRPD), such as Singapore (2013), Malaysia (2010), South Korea (2008), Japan (2014), Saudi Arabia (2008), Brunei Darussalam (2016), Qatar (2008), Hong Kong (2008), Macau (2008), United Arab Emirates (2010), Poland (2012), Turkey (2009), Germany (2009), and Kuwait (2013).<sup>52</sup> Under the UN-CRPD, issues of work and employment are discussed specifically. In relation to fair recruitment, Article 27 stipulates provisions to:

- “Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- Enable persons with disabilities to have effective access to general technical and vocational guidance, programmes, placement services and vocational and continuing training; and
- Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.”<sup>53</sup>

The convention encourages state parties to take affirmative measures to ensure PWDs’ access to the private sector. As such, steps should be taken by Indonesia and countries of destination to remove all barriers hindering PWDs from enjoying the right to work, including in the international job market, and create an inclusive/enabling environment for the full

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<sup>51</sup> Shared by participants in the workshop organized on August 4, 2022 in Jakarta.

<sup>52</sup> OHCHR. *Ratification status by country*. <https://bit.ly/3OGNzp1>

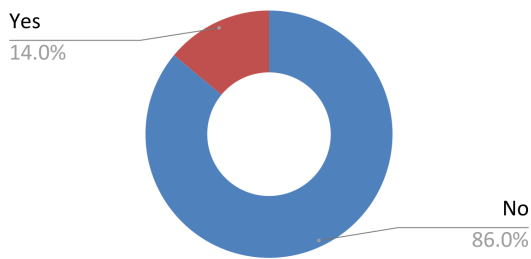
<sup>53</sup> Convention on the Rights of Persons with Disabilities. [https://www.ohchr.org/sites/default/files/Ch\\_IV\\_15.pdf](https://www.ohchr.org/sites/default/files/Ch_IV_15.pdf)

enjoyment of such rights—in line with these governments’ own commitments to the UN-CRPD.

## 2.8 Rating of agencies

Reviewers in this study were asked whether or not they would use the same agency again to find employment abroad. An overwhelming 86% of reviewers shared that they would not use the same employment agencies in the future.

Figure 13: Willingness to use the same agency in the future

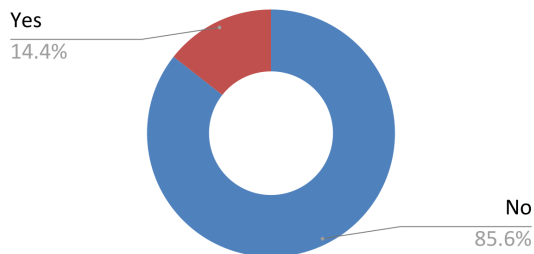


This is rather unsurprising because, as this study has found, many respondents reported a wide range of unpleasant experiences, notably confiscation of legal documents by employment agencies. Further comments provided by respondents also shed light on various unscrupulous recruitment practices perpetrated by employment agencies,

such as overcharging, prolonged duration of salary deduction, indifference toward the plights of migrants, and general irresponsibility. Also important to note, however, is that some positive feedback was provided. In fact, 14% of respondents would not mind returning to the same agencies. Additional comments from reviewers have also brought to the fore some laudable practices, such as employment agencies providing free-of-charge accommodation during visa processing, assisting migrants in case of trouble, and abolishing salary deductions. Steps could be taken to upscale these ethical practices, for which further research should be done to

understand how principles of ethical recruitment promote sustainability of business in the context of Indonesia.

Figure 14: Willingness to return to the same employer in the future

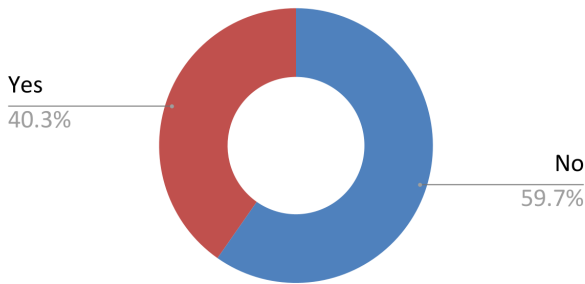


Additionally, on being asked whether they would return to the same employers, a large number (85.6%) of respondents expressed their reluctance to do so. It may be due to the fact that many of the respondents

experienced deception. Indeed, 33.7% of reviewers reported discrepancies between the jobs promised and their actual jobs, and 45.1% admitted that they received less wages than previously promised. Another notable reason for the reluctance to return to the same

employers might be inflexible resignation. In fact, this study found that 85.5% of respondents were unable to terminate their contracts prematurely, and they were not accorded the right to freedom of mobility (including returning to Indonesia during the contract period). Further comments provided by reviewers

Figure 15: Willingness to return to the same destination country



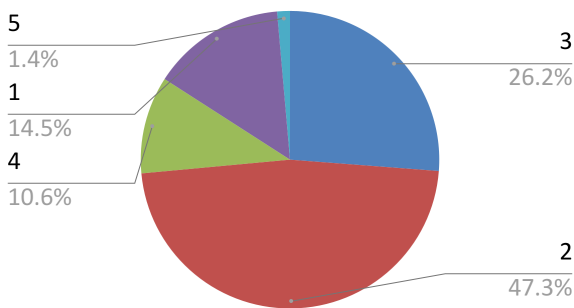
showed that there were instances in which migrants were not permitted to attend the funeral of a beloved family member back in Indonesia. Additionally, prohibition was imposed on communication with migrants' own children and family members, which occasionally leads to ruptures in family relations. It seems, at this point, that

negative experiences with employment agencies are factored into the unpleasant experiences of migrants with their employers. In other words, practices of unethical recruitment at home tend to shape the outcomes of migrants' experiences abroad.

Interestingly, despite the hesitation to return to the same agencies and employers, many of the reviewers (40.3%) expressed the willingness to return to their respective destination countries. However, there are inconsistencies in the responses provided by reviewers. A careful reading of review data demonstrates that, for example, there are migrants who experienced deception about wages and job responsibilities but still expressed the interest to use the same employment agencies and/or employers again in the future. Conversely, other migrants reported having rather positive experiences with their agencies, employers, and destination country but did not intend to return any of them. Though the number of these cases is small, it indicates the presence of various factors that lie beyond the scope of the survey questions, for

which more qualitative research is necessary to understand it more sufficiently.

Figure 16: Employment agency ratings



In order to understand the reviewers' perception of the levels of compliance of their recruitment agencies, they were asked to rate their agencies' performance on a scale of 1-5, in which 1 represents the poorest performance and 5, commendable. It is not surprising that a vast number of

recruitment agencies (47.3%) received a rating of 2, while 14.5% of agencies obtained a rating of

1. If we use 4 as a minimum standard for compliance, thus, only 12% of agencies would qualify as law-abiding, whereas a staggering 88% of employment agencies fall short of labor standards. This rating reflects the many forms of unethical recruitment practices explained in earlier chapters, which continue to characterize labor recruitment in Indonesia.

## 2.9 Additional findings

Aside from the close-ended questions, the questionnaire used in this survey also allowed migrant respondents to provide elaborate comments. Some of these descriptive comments give us insights into various issues that have not been dealt with in the above sub-chapters.

The problem of delayed or failed departure featured prominently in these comments. Some reviewers reported paying excessive fees, ranging from IDR 30 million to a whopping IDR 75 million (USD 2,000-5,000), for promises of employment in Poland only to find that these were fictitious job opportunities. Additionally, there are instances in which respondents failed to depart due to premature and unilateral revocation of employment contracts. Most notable among these comments is the fact that there were cancellations of overseas placement due to confusion in legal frameworks pertaining to zero-cost placement; that is, regarding which party should bear the fees and costs of recruitment.

Another issue that is brought to the fore concerns access to communication during recruitment processes. Some reviewers note that confiscation of cell phones by recruitment agencies is commonplace in *penampungan*,<sup>54</sup> in which migrants are only permitted to make brief phone calls on Saturdays under constant surveillance of agency staff. Such restriction on communication access further exacerbates migrants' vulnerability, making it harder to seek immediate help in case of emergency.

Equally important to note is the problem of unpaid work that is disguised under the pretext of training. Some reviewers quoted examples in which they were made to perform household chores at the houses of their employment agency's staff members without supervision, evaluation, skills certification, or monetary benefits. Some other reviewers shared that they did not receive adequate food during training periods in the *penampungan*.

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<sup>54</sup> Temporary lodging provided to migrants, usually those wishing to work in the domestic sector, while they attend training sessions and await placement.

### 3. Conclusion

Indonesia's labor out-migration is slowly returning to normalcy as COVID-19 pandemic abates. Two important features arise from existing data, i.e. this outflow of workers is exceedingly *feminized* and *informalized*. Some steps have been taken by the Indonesian government to protect its migrant workers, including the establishment of one-stop service centers in places where labor out-migration intensifies. Another attempt, and indeed a commendable one, is the adoption of Law No. 18/2017 on the Protection of Indonesian Migrant Workers to replace the previous law, which was characterized by its rather business-centric approaches. One can argue that Indonesia's current legal framework on the protection of its migrants is robust to some extent. In fact, Law No. 18/2017 reflects some of the core principles of ethical recruitment. However, as this study demonstrates, some challenges hinder the full implementation of the law, including a lack of political will and legal inconsistencies. It is such limited political will and confusion in legal frameworks that have contributed to failures in realizing fair recruitment.

Indonesia's failures to live up to its commitments manifest in a wide range of rights violations. Evidence in this study shows that information on labor migration is limited and largely confined to urban centers, leaving those in rural Indonesia reliant upon brokers for information about employment abroad. This study also demonstrates that the discourse of zero-cost placement is more of a gimmick rather than a real commitment as migrant workers continue to pay large amounts of money to finance their recruitment. Additionally, although a vast number of respondents signed an employment contract prior to departure, many reported discrepancies between contractual terms and realities on the ground. Adding to this plight is the fact that access to freedom of movement, job-hopping, and union/collective bargaining is limited. Despite the overwhelmingly negative experience, however, some migrants shared a rather positive evaluation of their agencies' performance. Further research could be done to understand how to incentivize employment agencies to incorporate principles of fair recruitment in their business conduct.

Of particular note is that recruitment systems in Indonesia are still far from being inclusive, especially toward persons with disabilities. This is despite Indonesia's own commitment and that of many destination countries to the principle of non-discrimination as enshrined in the UN-CRPD. Another key next-step, thus, is to implement the principle of inclusivity throughout the whole systems of recruitment in order to ensure that both domestic and international labor markets are accessible to persons with disabilities.

## Annex I - Agency Review's Weighting System

### Weighting system for agency rating

This weighing system applies to all reviews posted on [www.recruitmentadvisor.org](http://www.recruitmentadvisor.org). With this weighing system, the user's response to questions for “review an agency” will automatically be calculated by the system according to the value defined for each question. Below are the details of the weighing system:

No.	Question section 1: Recruitment fees & related costs	Weight for Yes	Weight for No
1	I paid for the following costs during the recruitment process:  a) Recruitment fees b) Medical costs c) Insurance costs d) Costs for skills and qualification test e) Costs for orientation f) Equipment costs g) Travel and lodging costs h) Administrative costs i) Costs for special skills training j) Please specify other: _____	5 to be deducted by points from selected items  0.5 0.5 0.5 0.5 0.5 0.5 0.5 0.5 0.5 0.5	5
	<b>Total weight</b>	<b>If all items selected = 0</b>	<b>5</b>
	Question section 2: Pre-employment orientation	Weight for Yes	Weight for No
2	I received the following information during pre-employment orientation:  a) Information about my rights and obligations b) Information about what to do if I have a complaint c) Information about useful contacts & services at destination d) Please specify other: _____	1.25 1.25 1.25 1.25	0
	<b>Total weight</b>	<b>If all items selected = 5</b>	<b>0</b>
	Question section 3: Employment contract	Weight for Yes	Weight for No
3	I received contract before starting employment	1.5	0
4	The employment contract was in a language I can understand	1.5	0

5	The employment contract contains clear information about: a) Salary b) Job description c) Job location d) Working time e) Leave days f) Accommodation g) Health care coverage h) Please specify other: _____	0.25 0.25 0.25 0.25 0.25 0.25 0.25	0 0 0 0 0 0 0
	<b>Total weight</b>	<b>5</b>	<b>0</b>
	<b>Question section 4: Working conditions</b>	<b>Weight for Yes</b>	<b>Weight for No</b>
6	My agency sent me to work in _____(company name) My passport and other personal documents were taken by: a) My recruitment agency b) My employer c) Please specify other: _____	Not mandatory 0	1
7	I received the job I was promised	1	0
8	I received the salary I was promised	1	0
9	I could resign from employment freely with reasonable notice	1	0
10	There was a union or workers' association I could join	1	0
	<b>Total weight</b>	<b>5</b>	<b>0</b>
	<b>Question section 5: Workers' evaluation</b>	<b>Weight for Yes</b>	<b>Weight for No</b>
11	I would use the same agency again	2	0
12	I would return to the same employer	2	0
13	I would return to/stay in the same country for my future job	1	0
	<b>Total weight</b>	<b>5</b>	<b>0</b>

**After review is posted online:**

With the above weighting system, the rating and its weight will be as shown below:

General rating	Weight (total = 25)
★	≤ 5
★★	5.1 – 10
★★★	10.1 – 15
★★★★	15.1 – 20
★★★★★	20.1 – 25

**Descriptions of summary of agency review on an agency page:**

Current item	Change to	Definition
Recruitment Fees	Recruitment Fees & Related Costs ★★★★★	Higher rating indicates lower or zero fees & costs that workers have to pay for the recruitment
Pre-Departure Orientation	Pre-Employment Orientation ★★★★★	Higher rating indicates workers received necessary orientation
Employment contract	Employment contract ★★★★★	Higher rating indicates workers received contract that is understandable & contain clear info about workers' rights
Conditions in the Country of Destination	Working conditions ★★★★★	Higher rating indicates workers received the rights that were promised
On return	Worker's evaluation ★★★★★	Higher rating indicates workers are satisfied and willing to do recruitment again with this agency