

Policy Paper

The Blocked, The Obstructed:

Intersectionality Study on the Protection
of Indonesian Migrant Workers
and Rights of Persons with Disabilities



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Foreword

When the invitation from OHANA Indonesia came to write an Intersection Study on Migrant Workers and the Rights of Disabilities, this invitation actually made Migrant CARE realize that the perspective of persons with disabilities is often forgotten in the advocating scheme of the protection of Indonesian migrant workers. In fact, in almost every case of violence experienced by Indonesian migrant workers, it is not impossible that they will become persons with disabilities.

This study is divided into five chapters. The first part contains an introduction that provides context on the urgency of discussing the intersectionality of the issue of migrant workers and people with disabilities. The second part provides a further description of the intersectionality approach in human rights. Furthermore, the third part discusses the normative framework that examines policy milestones accompanied by critical notes. The fourth section is sharpened by statistical and casuistic data analysis accompanied by Migrant CARE, there are also sections that discuss the themes that are in the spotlight. The final section of this study contains conclusions and recommendations.

During the writing of this policy paper, such become as a moment of reflection, evaluation and even self-criticism of the “hidden” perspective of protecting disability rights in the protection of migrant workers and labor migration governance.

The writing of this policy review would not have been possible without the support from OHANA Indonesia and the Disability Rights Fund. The writing process begins with a multi-stakeholder workshop attended by various groups of civil society, academics, ministries/institutions and organizations of persons with disabilities. Refining the discourses was also carried out through Focus Group Discussions with the Legal Aid Division of Migrant CARE and Migrant CARE Malaysia, Indramayu, Banyuwangi and Jember.

The authors also thanks Mr. Fajri Nursyamsi and Ms. Wike Devi Erianti who are willing to be critical readers of this manuscript. Also to friends from OHANA Indonesia, Mrs. Risnawati, Mrs. Nuning and Mr. Buyung R. Tanjung who became discussion partners in drafting this policy paper. Thanks are also conveyed to Mr. Bambang Teguh Karyanto (Migrant CARE Jember) who gave an introduction to deliver this policy paper.

There is no ivory that is not cracked, this study certainly has many shortcomings here and there. Critics and suggestions are welcome for the improvement of this policy paper.

Authors Team



Acknowledgment

Living in prosperity is everyone's right, as well as to access decent work. Many ways are taken to make these two things happen, including by becoming a migrant worker - migrating to work abroad. Becoming a migrant worker is mostly pursued by Indonesian citizens for various reasons. Success stories by working in overseas lands are still become strong magnet for anyone to risks their life. The bitter reality and sad stories about the various incidents that have befallen Indonesian migrant workers have not stopped their steps. The bad and inhuman treatment received by Indonesian migrant workers has further consequences, one of which is the presence of migrant workers who become persons with disabilities.

Meanwhile, being a person with a disability is a sad thing in this country. In addition to the low appreciation and protection of persons with disabilities, the government's handling of people with disabilities still has a charitable perspective, has not yet touched and restored the dignity of life and human rights. Even though the Indonesian government has ratified the UN convention on the protection of the rights of persons with disabilities and the UN Convention on the protection of migrant workers and their family members, moreover these 2 conventions have been spelled out in national laws or laws, but the issue of their implementation is still not effective yet.

Integration and unanimity of steps between the national, regional and village governments is a necessity that cannot be abandoned in providing complete social protection for migrant workers, including those who are forced to become persons with new disabilities. In addition to being an obligation of the Government, social protection for migrant workers with disabilities is also an obligation to restore the participation, dignity and dignity of persons with disabilities in social life. In this understanding of these life, there is no distinction and exception for anyone to be able to contribute and improve their own life and livelihood as well as the life and livelihoods of others; family, relatives and friends.

At last, I appreciate the initiative of Migrant CARE and OHANA Indonesia to publish a policy paper on the intersectionality of protection of migrant workers and the rights of persons with disabilities. This study would be very useful for advocacy for the implementation of policies on the protection of migrant workers and the rights of persons with disabilities as an inseparable unit.

Bambang Teguh Karyanto

(Disability Rights Activist, Coordinator Migrant CARE Jember & Australia Awards Indonesia Short Term Awards Alumni - Role of Disabled People's Organizations in the Implementation of Policy Reform, 2020)

The Blocked, The Obstructed:

Intersectionality Study on the Protection of Indonesian Migrant Workers and Rights of Persons with Disabilities

I. Introduction

“After working as an Indonesian migrant worker (TKI) in Singapore, SG (49) returned home in a poor condition. Apart from the scars all over their body due to the torture by her employer, SG is also left permanently blind. Nowadays, SG can only walk if guided by their family. The condition, which left them blind as a result of being tortured by their employer, made her unable to walk on their own. SG went to Singapore to become a migrant worker in 2015. Based on the information obtained from the Embassy of the Republic of Indonesia (KBRI) in Singapore, SG departed via Batam, Riau Islands, using a direct hiring process. Direct hiring is way to make the process easier for informal sector workers to return to work without going through recruitment agencies or recruitment services in Indonesia.”¹

Violence against Indonesian migrant workers continues. Throughout 2018, Migrant CARE recorded at least 178 cases of violence against migrant workers, including verbal, sexual, physical, and other dimensions of violence.² Meanwhile, during 2019-2020, based on the Indonesian Migrant Workers Protection Agency (BP2MI) data, at least 700 cases of violence ended by the death of migrant workers abroad.³ This is an iceberg phenomenon, it can be estimated that the number of cases of violence that befell migrant workers is much greater than reported. One simple indication is the continued coverage of violence against Indonesian migrant workers in the mainstream media. Some circles even said that the community has experienced banality, or being accustomed to news about violence, especially related to migrant workers. On the other hand, by using statistical data, the officials often deny the reality of violence experienced by Indonesian migrant workers by stating that cases of violence that occur are no more than zero percent of the total number of migrant workers.

The phenomenon of violence that befell migrant workers, such as happened to SG, is oftenly seen with a single dimension, which is from the aspect of violating guarantees of protection of migrant workers' rights, or even only seen and handled as cases of post-migration disability. In many cases, post-migration disability experienced by migrant workers is handled as a charitable social problem, that is, it is seen as a form of bad luck or disadvantage. The case is tend to handled only through social assistance mechanisms, such as health insurance and cash transfers

1 Sugiyem TKI asal Pati yang Disiksa Majikan di Singapura Sehingga Alami Luka dan Buta” <https://daerah.sindonews.com/read/230068/707/sugiyem-tki-asal-pati-yang-disiksa-majikan-di-singapura-sehingga-alami-luka-dan-buta-1605190316>.

2 Migrant CARE. 2018. Statistik Pendampingan Kasus Migrant CARE 2010 - 2018, <https://migrantcare.net/2019/01/data-pendampingan-kasus-migrant-care-2010-2018/>.

3 Agus Warsudi, 2019-2020, 700 Pekerja Migran Indonesia Pulang dalam Keadaan Meninggal <https://jabar.inews.id/berita/2019-2020-700-pekerja-migran-indonesia-pulang-dalam-keadaan-meninggal>.

(BLT) for the poor. In fact, the cases like happened to SG has illustrates multiple rights violations stemming from the intersection of discrimination and her identity as a woman which results in new violations. Thus, the case-handling processes should involve a multidimensional approach contained in several human rights instruments at once.

As a migrant domestic worker, SG is kept away from access to protection and vulnerable to gender-based violence which results in them experiencing blindness and wounds all over their body. However, because of their position who is categorized as an undocumented migrant worker (through direct hiring), they have difficulty getting legal assistance, access to health services, and protection from the state. Various rights violations and injustices that befall SG as a migrant domestic worker also have implications for their disability condition. After becoming a person with a disability, SG experienced many obstacles and lost, especially, the right to live independently. This case shows that without an intersectional approach, we cannot see the multiple vulnerabilities experienced by migrant workers.

Departing from the SG case, this policy paper aims to demonstrate the importance of the intersectional approach in seeing and handling cases of people with disabilities after migration, which experienced by many migrant workers from Indonesia. This approach is expected to become a new approach for policymakers as part of the execution of the Indonesian Government's commitment to the implementation of the Convention on the Rights of Persons with Disabilities (UN CRPD) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (UN CMW).

This paper provides an understanding framework in the form of a description of the problems and recommendations regarding the interrelation of the issues of Indonesian migrant workers and disabilities. The preparation of this policy paper is based on a literature review process, data, information, and experiences in assisting cases of Indonesian migrant workers. This policy paper is also deepened through workshops attended by parties and stakeholders related to issues of migrant workers and disabilities in Indonesia. Reviews and studies are carried out by bringing the crossings between the two issues, basing analysis in a normative framework on policy aspects, as well as case studies on the advocacy experiences of Indonesian migrant workers.

This policy paper begins by explaining the intersectionality approach within the framework of human rights, then continues with a discussion of the interconnection between Law Number 8 of 2016 concerning Persons with Disabilities (Law 8/2016) and Law Number 18 of 2017 concerning Protection on Indonesian Migrant Workers (Law 18/2017). The third part of this policy paper discusses cases that befall migrant workers using an intersectional perspective, then ends with conclusions and recommendations.

II. Intersectionality Approach in Human Rights

The intersectional approach in the application of human rights instruments is not something new. The idea of intersectionality was born as a part of the long history of the women's movement and the struggle for anti-discrimination. Starting from a critical analysis of discrimination, this conceptual framework develops further and evolves as a part of the movement for gender equality and women's rights. In simple terms, the idea of intersectionality was first formulated by Kimberlee Crenshaw, Professor of Law from Columbia University, the United States of America to criticize the anti-discrimination law which failed to consider the situation of discrimination experienced by black women in America. Before it went viral, Crenshaw initially developed this idea in 1989 in a publication issued in the journal called the University of Chicago Legal Forum.⁴ As Crenshaw expressed in one of the interviews, intersectionality is a tool to see the dynamics in discrimination law on black women in the United States are the same discrimination experienced by all other women, therefore it is difficult to see the reality of the discrimination experienced by black women or other colored women as a different experience.⁵

This idea encourages the law to consider the reality of the multiple identities inherent in one individual which is the source of rights violation practices. Through this analysis, the incidents experienced by migrant workers, such as happened to SG, stem not only from their social identity as migrant workers but also their identity as a woman. The practical implication involves reading a more comprehensive context, including using more than one instrumentation and reference to human rights standards in deciphering the rights violations that have occurred to SG as a female migrant worker.

At the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa in 2001, the concept of intersectionality was used by academics to discuss inequality and violations of women's rights. This supports the promotion and protection of political, economic, social, and women's rights at the global level following the adoption of the Universal Decade of Human Rights (1948) and the UN Decade for Women (1975-1985).⁶ The intersectionality approach has also begun to be used in several UN agencies, such as the Committee on the Elimination of Racial Discrimination (CERD)⁷, and the Committee on the Elimination of Discrimination against Women (CEDAW) to assess compliance the state parties in implementing the convention. In 2009, the CERD has implemented intersectionality as a standard to assess the existence of multiple-source discrimination practices, such as discrimination based on religion and gender. The standard is set forth in General Recommendation Number 32 paragraph 7:

⁴ See, Crenshaw, Kimberle, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, (1989), 1 *University of Chicago Legal Forum* 8, 139, 139-67 can be accessed on <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>

⁵ See, Jane Coaston, *The intersectionality wars*, the Highlight by Vox, 28/5/2019, can be accessed on <https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination>

⁶ See, Abigail B. Bakan, "Intersectionality and the United Nations World Conference Against Racism", dapat diakses pada <https://core.ac.uk/download/pdf/322498601.pdf>

⁷ Indonesia has been a party to the CERD since 1999 through the enactment of Law No. 29/1999 concerning the Ratification of the International Convention on The Elimination of All Forms of Racial Discrimination 1965. This ratification is the basis for the enforcement of Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.

“... The “grounds” of discrimination are extended in practice by the notion of “intersectionality” whereby the Committee addresses situations of double or multiple discrimination - such as discrimination on grounds of gender or religion – when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention...”⁸

Furthermore, these approaches and standards have been used in the work of the Committee on the Elimination of Discrimination against Women in handling individual complaints under the optional protocol mechanism for the Convention on the Elimination of Discrimination against Women (CEDAW).⁹ In addition, the intersectionality approach has been applied in several UN treaty bodies and been used in the application of several human rights conventions.¹⁰ The intersectionality approach is also explicitly found in the Convention on the Rights of Persons with Disabilities (CRPD) which forms the basis of the work of the Committee on the Rights of Persons with Disabilities (CRPD) in assessing discriminatory practices associated with groups of disabilities, as stated in the General Commentary on article 6 regarding women with disabilities. The Committee on the Rights of Persons with Disabilities states that an intersectionality is a diverse form of discrimination, in which women experience various discrimination that originates or correlates with different identities, and can further result in other form of discrimination that is specific and cannot be properly understood other than seeing the discrimination as a form of multiple discriminations.¹¹

Based on this approach and understanding of intersectionality, this policy paper will use an intersectionality approach in viewing violence against migrant workers as an offense rooted in intersectional discrimination. This policy paper, particularly, will discuss how discriminatory practices against migrant workers with an intersectional dimension, rising new discrimination related to their identity as women with disabilities.

The use of the intersectionality approach in analyzing disabilities among post-migration migrant workers is intended as a criticism of the discussion of disability issues which are still dominated by social and charitable approaches. Ratification of the CRPD in 2011 and the enactment of Law number 8 of 2016 is an official marker of the shift in the disability policy paradigm from a social-charitable to a rights-based approach, but the implementation of human rights in Indonesia is still dominated by a social-charitable approach in responding to disability issues, which reduces the basis and perspective of fulfilling human rights. Although there has been a paradigm shift towards a discourse of inclusiveness (an inclusive attitude), the discourse on the relationship between disability issues and issues in the spectrum and other socio-political dynamics has not been widely understood and has not received significant recognition. This includes issues related to Indonesian migrant workers and disabilities.

In the framework of international policy and compliance, Indonesia has actually ratified two major UN conventions that underlie the interests of migrant workers and with disabilities. First, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW), which was ratified through Law number 6 of 2012. Second, the CRPD which is more previously ratified through Law number 19 of 2011.

⁸ See, CERD, General recommendation No. 32 The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination, para 7, CERD/C/GC/32, can be accessed on https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f32&Lang=en

⁹ For a discussion of illustrative cases under the CEDAW Committee see, Ivona Truscan and Joanna Bourke-Martignoni, ‘International Human Rights Law and Intersectional Discrimination’ on *The Equal Rights Review*, Vol XVI (2016), 111

¹⁰ Ibid, 110

¹¹ See, Committee on the Rights of Persons with Disabilities, General Comment on Article 6: Women with disabilities, CRPD/C/14/R.1 (8, 17) dapat diakses pada <https://www.refworld.org/pdfid/55d332b44.pdf>

However, the implementation and quality of it in the two agendas, the law and its relationship to one another, are important and interesting issues to observe. A study on the dynamics of disability interests in the national legal framework has been carried out by the Center for Law and Policy Studies (PSHK). The results show that the vulnerability of disability-related laws and regulations is trapped in the old paradigm that positions the persons with disabilities as a disadvantaged group and is considered to have no competence and competitiveness in the labor market.¹²

¹² Nursyamsi, Fajri. dkk. 2015. *Kerangka Hukum Disabilitas di Indonesia: Menuju Indonesia Ramah Disabilitas*. Pusat Studi Hukum dan Kebijakan Indonesia (PSHK).

III. Identification of the Normative Framework

Entering the Reformation era, the Government of Indonesia became very intensive in ratifying international instruments, both in the UN and ILO mechanisms. Apart from responding to international demands, the road map for the ratification of these international instruments was also included in the National Action Plan (RAN) for Human Rights (RANHAM) which was published in 1998-2003, 2004-2009, and 2010-2015 periods respectively. During the New Order era, Indonesia only ratified the Convention on the Elimination of Violence against Women (CEDAW) through Law number 7 of 1984 and the Convention on the Rights of the Child (CRC) through Presidential Decree number 36 in 1990.

In the Reformation era, after the fall of Soeharto, the Government of Indonesia has ratified two Basic Human Rights Covenants of the United Nations, which are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention Against Racial Discrimination (CERD), the International Convention Against Torture (CAT), the International Convention Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) ; and the Convention on the Rights of Persons with Disabilities (CRPD). In addition, the government has ratified the International Labor Organization's (ILO) seven core labor standards to restore freedom of association for workers, to fight wage discrimination, and to combat child labor.

Unlike other international human rights instruments, the Government of Indonesia did not take a long time to ratify the CRPD. After being ratified, the CRPD then became the basis for legal reforms regarding persons with disabilities. When compared with other conventions, the CRPD does not have many political tendencies or consequences which often become obstacles to its ratification. However, it turns out that implementing the CRPD requires infrastructure readiness and a radical change of perspective.

Two main UN covenants, including the ICCPR and the ICESCR, which were ratified by the UN General Assembly in 1966, were only ratified by the Government of Indonesia in 2005. The Convention on the Protection of Migrant Workers and Members of Their Families was ratified by the UN General Assembly in 1990 and signed in 2004, however, was only ratified by the government in 2012.

In its history, the formation of the CRPD was initiated with Resolution 61/106 on December 13, 2006, by the General Assembly of the United Nations and was openly signed by member states starting March 30, 2007. Indonesia was among the countries that signed the Convention since the beginning, it was without reservation. However, the Government of Indonesia did not immediately sign the optional protocol. The signing step is the starting point of the ratification process of the Convention.

Six years later, to be precise on October 18, 2011, the President of the Republic of Indonesia enacted the ratification of the CRPD with Law Number 19 of 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities. The ratification of the Convention was then followed by changes to legislative rules at the national level as a form of adjustment to the previous rules, by changing Law Number 4 of 1997 concerning Persons with Handicapped to Law Number 8 of 2016 on Persons with Disabilities.

In this context, the use of the term persons with disabilities in Law Number 8 of 2016 has also become one of the turning points for the recognition and fulfillment of the rights of persons with disabilities in the national policy structure. Law Number 8 of 2016 also provides a basis for the perspective of disability rights in employment issues and shows, that so far, the statutory provisions in the field of employment have not included the rights of persons with disabilities. In Chapter III Article 5 paragraph 1 letter F of Law Number 8 of 2016, it is stated that persons with disabilities have the right to work, entrepreneurship, and cooperatives, which are elaborated in more detail in Article 11. To ensure the fulfillment of these rights, according to Article 55 the Indonesian Government is obliged to establish a Disability Service Unit (ULD) in the labor sector. However, Law 8 of 2016 and its derivative regulations have not provided specific rules regarding persons with disabilities and migrant workers.

The CRPD is an international human rights instrument that complements and strengthens a number of conventions that have been ratified by the Indonesian Government and serves as a guide for efforts to harmonize national regulations based on international human rights standards. The CRPD is at the same time the basis for the use of human rights standards in national law. The ratification of the CRPD is a commitment of the Government of Indonesia in recognizing, respecting, fulfilling, and protecting human rights in Indonesia. For the government, the ratification of the CRPD means providing a constitutional mandate and changing the paradigm of regulations and policies regarding persons with disabilities. A paradigm shift that shifts the perspective of compassion (charity-based) and social welfare (social-based) to a perspective of non-discrimination based on the fulfillment of rights (rights-based approach).

What is interesting about the CRPD is the mandate of intersectionality between disability issues and other issues. The message regarding intersectionality can be read in the opening part of paragraph C that reads,

“Reaffirming the universality, inseparability, interrelation of all human rights and fundamental freedoms, as well as the need for persons with disabilities to be guaranteed the fulfillment of their rights without discrimination.”¹³

Meanwhile, paragraph D of the CRPD is also an integral part and is increasingly complementing the previous international human rights instruments, which state that,

“Recalling the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Treatment or other Punishment that are Cruel, Inhuman or Degrading; the Convention on the Rights of the Child; and the International Convention Concerning the Protection of the Rights of Migrant Workers and Members of Their Families.”¹⁴

These verses show the important emphasis on the existence of intersectionality between the issue of disability and other human rights issues, including the rights of migrant workers. In that position, the CRPD is indeed an international human rights instrument that requires an intersection approach in all sectors, with the aim of making the perspective of its protection more inclusive and complete.

¹³ See the Preamble section (c) of the UN CRPD

¹⁴ See the Preamble section (d) of the UN CRPD

However, until now there have not been any significant efforts to carry out the intersection mandate in the CRPD, especially to complement the perspective of protecting the rights of persons with disabilities that are not yet included in the Migrant Workers Convention which has also been ratified by the Government of Indonesia.

The implementation, institutionalization, and execution of international commitments have indeed become a classic problem when questioning the compliance of the government in carrying out international commitments that have been adopted and ratified. It also occurs and arises when questioning the issue of intersectionality in CEDAW, CRC, and all other UN conventions.

The issue of migrant workers is one of the issues that is closely discussed and fulfills the protection of the rights of persons with disabilities. This is caused by the vulnerability, physical/psychological violence, and work accidents experienced by migrant workers. Such situations have the potential to cause or lead to the reduction or even loss of vital functions, motoric, and mobility of the parts or organs of the body resulting in disabilities. In addition, the dominant paradigm in the labor economy (human resource economy) is influenced by the perspective of liberalism, which considers people with disabilities to be unproductive groups. This closes job opportunities for groups of people with disabilities to enter the national and international labor market/labor market. Whereas in reality, persons with disabilities can have skills/expertise that meet the competency standards required in the labor market.

Economic development which refers to growth in employment/labor often applies the terminology of human resources with all the prerequisites, among others; productivity, effectiveness, and efficiency. This view is what causes society to give the title of persons with disabilities as individuals who are not productive, effective, and efficient. In addition, persons with disabilities are considered weak and have low mobility.¹⁵

In this regard, reports of public complaints that have been submitted to institutions include public services (the Republic of Indonesia's Ombudsman) and human rights institutions (Komnas HAM), as well as demands through online petitions (change.org), show that the requirement of "being physically and mentally healthy" is the main obstacle for persons with disabilities to enter the world of education and employment.

Although Article 2 letter G of Law Number 18 of 2017 mandates the principle of non-discrimination, and Article 3 letter A guarantees the fulfillment and enforcement of human rights as citizens and migrant workers, this law has not explicitly guaranteed the guarantee and protection of the rights of persons with disabilities in labor migration. In fact, Article 5 letter C regarding the requirements for being physically and mentally healthy, has also become a major obstacle preventing prospective migrant workers, who have physical and mental disabilities, from entering the international labor market.

Given the limitations in the perspective of the rights of persons with disabilities, it is necessary to make a more serious effort or encouragement to ensure that disability rights are integrated into migrant worker protection policies. For example, by making derivative regulations related to protection mechanisms, employment social security, and governance of the placement and protection of migrant workers who must not ignore, let alone forget, the rights of persons with disabilities.

¹⁵ The introductory part written by Drs. Setia Adi Purwanto MPd (page xii) for Peter Coleridge's book, 1997, *Liberation and Development, The Struggle of Persons with Disabilities in Developing Countries*, Yogyakarta: Pustaka Pelajar

In Migrant CARE's critical views, Law Number 18 of 2017 already has several derivative regulations in the form of a Presidential Decree, Government Regulation, and Minister of Manpower Regulation. The most recent is Government Regulation Number 59 of 2021 concerning the Implementation of Protection of Indonesian Migrant Workers. However, most of these regulations are still focus on the institutionalization and regulation of labor migration. Meanwhile, derivative regulations that ensure protection guarantees for migrant workers and their family members are still not available. Minister of Manpower Regulation Number 18 of 2018 concerning the Social Security of Indonesian Migrant Workers (Permenaker 18/2018) which is a derivative regulation of Law Number 18 of 2017 still mentions the word disabled and has not integrated protection of the rights of persons with disabilities at all in the social security scheme in cases of work accidents.

Also, Government Regulation Number 59 of 2021 concerning the Implementation of Protection for Indonesian Migrant Workers still mentions the word disabled and does not at all refer to efforts to fulfill disability rights in the case handling mechanism or labor protection guarantees.

Although there has been progress in the data collection system for migrant worker mobility carried out by the government, until now there is no disaggregated data on Indonesian migrant workers who have new disabilities, either due to work accidents or cases of physical/psychological violence.

As previously explained, in addition to having ratified the CRPD in 2011, the Government of Indonesia has also ratified the Migrant Workers Convention in 2012. The two international commitments should become modalities and cover the weaknesses in Law Number 18 of 2017. In particular, for the availability of specific policies related to the protection of the rights of migrant workers and the rights of persons/workers with disabilities.

When compared with the CRPD ratification process, the ratification process for the Migrant Workers Convention (CMW) was seen in very heavy and winding. The long process of ratifying the Migrant Workers Convention shows how slow the Indonesian government is in adopting human rights principles in the governance of international labor migration. The Philippines, as the same majority country in sending migrant workers, is more proactive in responding to the international CMW instrument that was issued in 1990, because it signed it in 1993, and then ratified it in 1995. In 2004, Timor Leste, which was once Indonesia's 27th province, ratified the Migrant Workers Convention even earlier as the 20th country, thus making the Migrant Workers Convention take effect by marking the existence of a Committee on Migrant Workers mechanism.

In Indonesia, the urge to ratify the CMW Convention was only voiced by NGOs at the World Conference on Women in Beijing in 1995, without any support from the Indonesian Government. Indonesia's road map to ratify the Migrant Workers Convention was only seen in 2004 with the signing of the Convention as well as part of Indonesia's commitment to propose itself as a member of the UN Human Rights Council. Eight years later, in 2012 to be precise, Indonesia just ratified this Convention through Law Number 6 of 2012.

Indonesia, as a party to the CRPD Convention¹⁶ and the Migrant Workers Convention¹⁷,

16 For CRPD Indonesia's initial report, see here [Committee on the Rights of Persons with Disabilities Initial report submitted by Indonesia under article 35 of the Convention, due in 2013](#)

17 For CMW Indonesia's initial report, see here [Initial Report of the Republic of Indonesia on the Implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#)

has written an initial report to be submitted to the respective convention committees. This step deserves appreciation and shows its compliance, but in Migrant CARE's critical reading in the two initial reports, there is no writing about the intersectionality between the rights of migrant workers and the rights of persons with disabilities.

The ratification of the CRPD and its derivative regulatory tools in a national policy setting is a strategic modality for preparing a roadmap for fulfilling the rights of persons with disabilities in Indonesia. Referring to Government Regulation (PP) Number 70 of 2019 concerning Planning, Implementation, and Evaluation of the Respect, Protection, and Fulfillment of the Rights of Persons with Disabilities (PP 70/2019), in which the Master Plan for Persons with Disabilities is an inseparable attachment. Therefore, efforts to fulfill the rights of persons with disabilities and migrant workers can still be made possible by the issuance of derivative regulations that answer the need for the intersection between the rights of migrant workers and the rights of persons with disabilities.

In the Table of Strategic Targets of the Master Plan for Persons with Disabilities, especially in the section on Creating an Inclusive Economy for Persons with Disabilities, there are wide opportunities for more concrete elaboration/exploration with policies that respond to the intersectional needs of migrant workers and persons with disabilities. In Strategic Target number five, which is the realization of an inclusive economy for persons with disabilities, there are several policy proposals that are highly relevant to linking the issues of migrant workers and persons with disabilities.

These proposals are first to strengthen the understanding of inclusive employment in ministries/agencies, State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), and the private sector. This has become a mainstream modality in disability issues in the labor sector, including issues of migrant workers. Secondly, strengthening access to employment for persons with disabilities to improve economic welfare. This can be done by developing Standard Operating Procedures (SOPs) that are accessible and disability-friendly, strengthening skills, and training capacities for persons with disabilities, opening opportunities for persons with disabilities to access the People's Business Credit (Kredit Usaha Rakyat/KUR) scheme, also include health and employment insurance coverage for workers who have not and have experienced disabilities due to work accidents. This is crucially needed by migrant workers with new disabilities for their survival and opportunities to return to work.

In the 2020-2024 National Medium-Term Development Plan (RPJMN) document, the issue of disability is included in Chapter IV on the topic "Increasing Quality and Competitive Human Resources." In the document, the agenda related to disability is also included in the cluster "Social Protection for All Population" on the basis of the problem that social protection and welfare have not fully taken sides with special groups, including persons with disabilities, as well as the vulnerable and poor elderly population. A critical reading related to the agenda is that the interests of persons with disabilities are still attached to the context of social assistance, poverty alleviation, and social rehabilitation, but not yet comprehensive in fulfilling and protecting the rights of persons with disabilities. Unfortunately, the policy proposals that have been included in the 2019 Master Plan for Persons with Disabilities, especially the employment sector, are not much of a reference in this planning document.

Capturing the Inter-Census Population Survey (SUPAS) 2015, the data shows that there are 8.5% or around 21.84 million people with disabilities, even 48.5% of them are people with multiple disabilities. Persons with disabilities are also indicated to have low levels of participation in various fields such as education and employment. In addition, they lack access to public facilities and services, which causes people with disabilities to have a higher risk of living below the poverty line.¹⁸

In this context, the principles of fulfilling the rights of persons with disabilities cannot be separated from interventions to fulfill their social welfare, so that disability issues do not continue to be trapped in a charitable paradigm that positions persons with disabilities as “other” group. The principle of “No One Left Behind” which is the basis of the Sustainable Development Goals (SDGs) must also serve as a guideline to ensure that policies on employment and disabilities do not leave migrant workers and their family members.

On the other hand, the aspect of participation in the education and employment sectors is an integral component in fulfilling the rights of persons with disabilities. In a normative framework, recognition of the participation of persons with disabilities has been guaranteed in Law Number 8 of 2016 which mandates minimum participation of two percent for persons with disabilities in the work environment of government, BUMN, and BUMD; and a minimum of one percent in the work environment of private companies calculated from the total number of workers.

In addition, what should be appreciated in the 2020-2024 RPJMN is the existence of a policy roadmap for the implementation of Law Number 8 of 2016, which is to form a Disability Service Unit (ULD). There have been Government Regulation Number 60 of 2020 concerning the Disability Service Unit in the Manpower Sector and Regulation of the Minister of Manpower Number 21 of 2020 concerning the Implementation of the Disability Service Unit in the Labor Sector. The two regulations can be a starting point for reaffirming the guarantee, protection, and fulfillment of the rights of persons with disabilities to be able to work abroad. In particular, the fulfillment of disability rights for migrant workers who experience disabilities and want to return to work.

International migration is a transnational activity, so international diplomacy to urge the urgency of the intersection between the issue of migration and disability is absolutely necessary. Within the framework of international cooperation, Southeast Asia should be a relatively good area to initiate regional cooperation initiatives related to the intersection of migration and disability issues. All member countries of the Association of Southeast Asian Nations (ASEAN) have become parties to the CRPD, CEDAW, and CRC.

Within the framework of international instruments, the CRPD convention has a specific character, which is that its rights are complementary to other conventions and have eight guiding principles. In addition, CMW’s general comments together with CRC No. 3 and 4 of 2017 underline that children of migrant workers, including those with disabilities, have the right to obtain proper education in the destination country. Likewise with CRPD General Comment No. 3, 5, and 6, concerning Women and Girls with Disabilities, the Right to Live Independently, and Equality & Non-Discrimination recognize the existence of multi-dimensional rights between migrant workers and persons with disabilities.

¹⁸ “Berapa Banyak Penyandang Disabilitas di Indonesia? Simak Data Ini”. 2019, *Tempo.co*, 1 November 2019 diakses 1 April 2021, <https://difabel.tempco.co/read/1266832/berapa-banyak-penyandang-disabilitas-di-indonesia-simak-data-ini>

In addition, ASEAN has an instrument related to migrant workers and people with disabilities called “ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities” which is adopted by all ASEAN member countries, through signatures by the head of state and head of government on November 14, 2017, and November 15, 2018. However, the two ASEAN regulations have not specifically discussed and regulated the relationship between migrant workers and persons with disabilities.

With this modality, Indonesia can take a progressive step by proposing points for regional cooperation regarding the protection of migrant workers’ rights from the perspective of the rights of persons with disabilities. Especially in the proposed renewal of the Memorandum of Understanding (MoU) for the protection of Indonesian migrant workers from three destination countries in ASEAN, such as Brunei Darussalam, Malaysia, and Singapore.

IV. Cases Occurring Indonesian Migrant Workers

Departing from the convention’s mandate, we can see the various vulnerabilities of migrant workers to become new persons with disabilities in more depth from the data on cases that occur in the field. From the results of documenting cases handled by Migrant CARE, there are situations that expose Indonesian migrant workers to the conditions with disabilities or becoming persons with new disabilities. This situation is inherent in cases and acts of injustice that migrant workers facing in every phase of migration. Especially in the destination country, for example, among others; physical violence, sexual violence, to the minimum guarantee of work safety, and the lack of adequate access to health. This can be demonstrated based on trends in the types of cases documented in Migrant CARE’s legal aid services during 2010 – 2019.

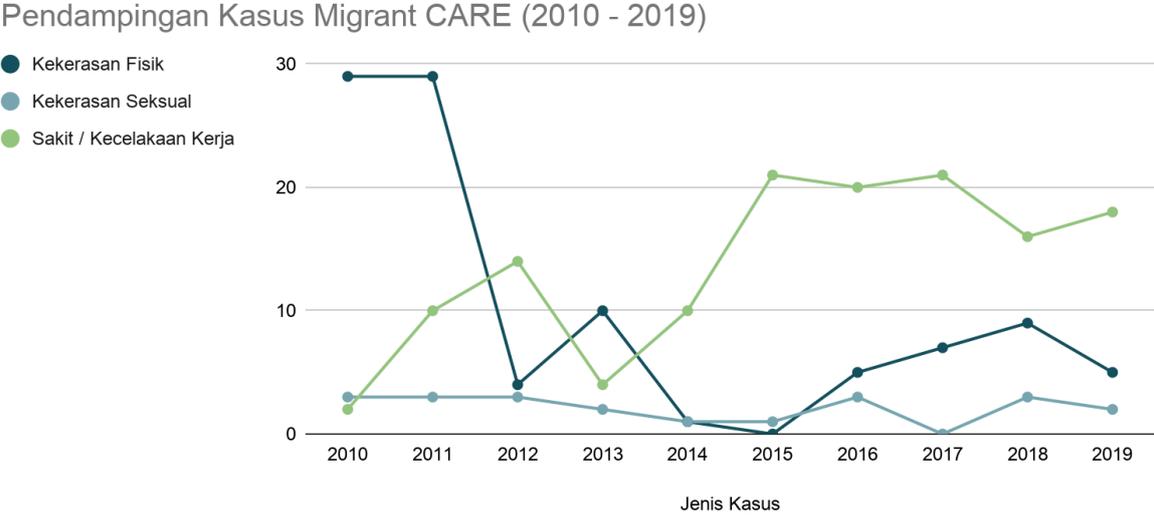
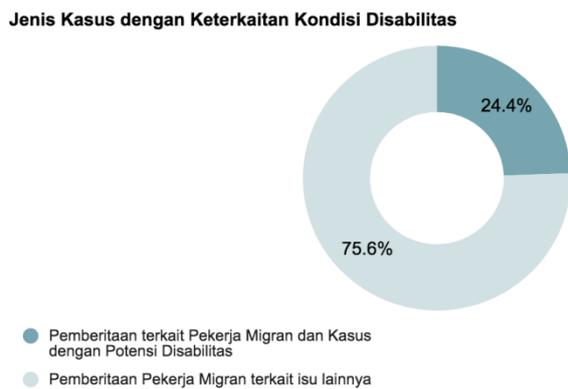


Figure 1. Migrant CARE Case Assistance Data 2010 - 2020

As illustrated in the figure above, physical violence has become a trend problem that has been inherent with migrant workers for a long time and fluctuates by time. The form of cases that occur generally relates to conflicts with employers which are triggered by the lack of access to protection and the right to information for migrant workers. Apart from physical violence, this situation exposes migrant workers to multidimensional violence. Among them are sexual violence and poor working conditions that lead to discharge due to illness and work accidents, or stress that threatens mental health. Even violence against migrant workers can end tragically in death.

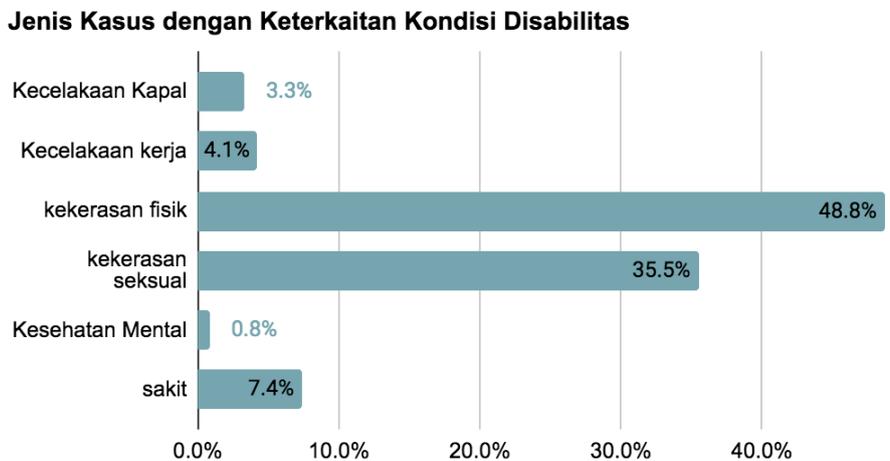
Figure 2. Types of Cases with Relation to Disability Conditions



In the mapping of segregation in the employment sector, the documentation also indicates four work sectors with vulnerable situations, which expose Indonesian migrant workers to conditions with disabilities. The four sectors of work are as follows: 1) Domestic Workers (34%), 2) Factory/Manufacturing (15%), 3) Fishing Ship Crew (12%), and 4) Construction (12%).

Based on the mapping of media monitoring results of a total of 856 online news on the internet carried out by Migrant CARE in 2019, confirmed the situation described in the case assistance documentation data above. The results of media monitoring conducted by Migrant Care showed that the majority of electronic media coverage of 75.6% related to migrant workers described situations with vulnerability to disability conditions, which include physical violence (48.8%), sexual violence (35.5%), illness (7.4%), work accidents (4.1%), boat accidents (3.3%), and mental health (0.8%).

Figure 3. Types of Cases with Relation to Disability Conditions



Apart from being related to limited access to protection, the multidimensional vulnerability faced by migrant workers is also inseparable from the imbalance of power relations which covers various aspects. This vulnerability is generally experienced by female migrant workers who work in the domestic sector in countries with social constructions and policies that positioning women as unequal and work at high levels of risk and vulnerability.

From Undecent Work to Gender-Based Violence

As a result of mistakenly drinking the fluids they got on the boat, RL (33) suffered damage to their internal organs. The incident also resulted in RL having to eat and drink using tool aids. RL has been working as a Ship Crew (ABK) since 2012 through a manning agency that departed via Singapore, then picked up by boat to the ship where RL worked. After briefly returning to Indonesia, they returned to work in 2015. In 2016, bad luck befell RL who was unconscious after drinking what they thought was mineral water. RL immediately passed out and was then taken to a hospital in Taiwan.¹⁹ At the hospital, in Taiwan, RL had to undergo surgery to remove their stomach and received treatment for one month in the hospital before being sent back to Indonesia.

RL has to go through a tedious process to get proper treatment. RL was constrained since the initial process when they were about to be referred to the Cipto Mangunkusumo Hospital (RSCM) in Jakarta because the company/agency where they worked had not yet provided a down payment to the hospital. The absence of certainty of security, both from a health and social perspective, often means that access to treatment and recovery for migrant workers must go through a long bureaucratic process and this exacerbates their physical condition. Without assistance from service institutions, victims will certainly find it very difficult to get sources of financing from private funds. In the case of RL, the operating and medical expenses were obtained after Migrant CARE conducted an audience with various parties, starting from the National Agency for the Placement and Protection of Indonesian Migrant Workers or BNP2TKI (now the Indonesian Migrant Workers Protection Agency or BP2MI); the Ministry of Manpower; Local Government of West Java and the West Java Provincial Manpower Office; the Regional Government and the Cirebon Regency Manpower Office, up to the hospital.

At the time by this document was being prepared, the Migrant CARE Legal Aid Team has continue to assist RL to receive medication, treatment, and undergo a series of operations in Jakarta.

DY (25) also experienced an accident on the boat. They were a ship crew (ABK) who had a work accident not long after the ship left the mainland. On the boat, DY worked more than 12 hours a day without adequate safety equipment but was only given a damaged worn-out jacket. They work as a crew member from 6 p.m. to 7 a.m., followed by moving the caught fish to the cooler from 1 p.m. to 4 p.m. DY only has 4 hours to sleep. Their bare hands had to come into contact with the cold icebox, which caused the fingers to often freeze.

Due to the negligence of the other crew members, DY fell along with an iron basket filled with seafood which they would transfer to the cooler. DY was only cared for and given permission to rest for one day. Bandaged on their hand, DY was forced to keep working. Two months after the incident, DY was sent home by the captain of the ship for no apparent reason. Their salary was never paid. DY never received proper treatment. When DY arrived in Indonesia, they suffered from hematuria (urinating blood). Six of their fingers suffered permanent muscle damage which required doctors to amputate the little finger.

¹⁹ "Cerita ABK WNI Salah Minum Cairan di Kapal Taiwan hingga Diantar Pulang BP2MI". 2020, Detiknews, 11 Agustus 2020 diakses 30 Maret 2021, <https://news.detik.com/berita/d-5129342/cerita-abk-wni-salah-minum-cairan-di-kapal-taiwan-hingga-diantar-pulang-bp2mi>

When the accident occurred in mid-August 2017, DY was only 21 years old. The company pays a salary not more than the fee DY paid to the sponsor when registering. There is no clarity about permanent disability insurance either. On the other hand, DY lost hope and confidence.

Female migrant workers experience a higher level of vulnerability. Gender-based violence and torture experienced by migrant domestic workers (PRT) often cause them to experience disabilities. The story of HY, who became blind due to torture by their employer in Saudi Arabia, is one of the many sad stories that have been successfully told.

“I was tortured almost every day, head, eyes, back, everything. My employer tortured me every day, when I wanted to iron the clothes they told me I did wrong, everything I did was wrong. This is the first time I have seen humans like them.”²⁰

The abomination that HY experienced happened the third time they worked in Saudi Arabia. The language barrier that is often blamed on migrant workers who experience torture is actually wrong because at that time HY was able to speak Arabic well. The violence they experienced stems from the violation of the work contract by their original employer. HY worked not for the employer stated in the work contract, but for the employer’s child (who abused her).

While working with the employer’s child, HY worked nearly 24 hours a day and was subjected to torture in the form of beatings and lashes, targeting HY’s head and eyes. One time, because HY brought the wrong blender that the employer asked for, HY’s head was smashed against the wall until they became blind. After one year of work, they were transferred to their original employer’s home, but the torture continued. Their reproductive organs have even been beaten with rattan. Without receiving proper treatment, HY was just returned to Indonesia in August 2010, even though the work contract stated their working period, from December 13, 2006, to December 13, 2008. HY repatriation was carried out by entrusting HY to other migrant workers who were going back to Indonesia.

“I was subjected to a lot of abuse, was tried to be killed, beaten with wood, and various other things, up to the point where my employer told me why can’t I just die. Even though I registered myself officially.”²¹

HY departed procedurally and was able to speak Arabic. They were tortured until they became permanently blind. Far from access to justice and fulfillment of their rights both as migrant workers and persons with disabilities.

Not only physically, disability conditions for migrant workers also occur psychologically. This condition is often missed in assessment, both before migrant workers leave and after returning to Indonesia. Rehabilitation efforts are often only accepted by those who are indicated as victims

²⁰Lagi, TKW disiksa sampai buta”.2010. Kabar24, 6 Desember 2010, accessed 29 Maret 2021, <https://kabar24.bisnis.com/read/20101206/79/19665/lagi-tkw-disiksa-sampai-buta>

²¹ HY Testimony in the National Meeting of Women Migrant Workers, Victims of TIP, Violence and Exploitation, Surabaya, 17-18 Desember 2019.

of trafficking in persons (trafficking). These services are provided by the Safe House and Trauma Center which is managed by the Ministry of Social Affairs. In fact, many women migrant workers experience sexual violence and experience deep trauma, so that they cannot continue their lives and are far from fulfilling their rights.

One of the survivors of such a case is TN. After graduating from Junior High School (SMP) in 2001, they left for Abu Dhabi, the United Arab Emirates with a falsified age (5 years older than their original age) by the sponsor who took care of them. TN never got the opportunity to read the employment contract. In fact, they were threatened with paying a fine by the company that sent them if TN could not finish their work for two years. When TN arrived at the employer's house, they worked more than 8 hours each day without being given a proper meal. Their main work is washing the aviary and cleaning the toilet. Once, TN had itching on their hands as a result of washing bird droppings and human excrement. They also received verbal abuse in form of yelling and cursing. If TN made a mistake, their employer would not hesitate to push their head back. Not to mention the male employer who often sexually harassed TN.

“My male employer likes to teach how to make love, teach me dating. (He says) what does that lamp look like? Like my genitals.”²²

During their two years of work, TN never received their salary. The salary, which should have been received by their family in the village, never arrived. Until they reach their breaking point, TN went on a rampage by uprooting neighbors' plants. The incident made them shackled for 13 years (2004-2017) by their family. Through the presence of the Village Care for Migrant Workers (Desbumi), the community and assistance from Migrant CARE, TN can access mental health services and is free from lockup. TN started to recover and return to society.

TN experienced deep trauma after working abroad, their deteriorating mental health made them shackled for 13 years. With the presence of a community that cares for migrants, TN has found their “voice” again.

The issue of documents is also one of the obstacles in providing assistance to migrant workers who experience illness or work accidents. This delay in assistance results in migrant workers becoming persons with disabilities. The Dutch Indonesian Migrant Workers Union (IMWU) accompanied one of the cases in 2016. In that case, a migrant worker from Brebes – Central Java, who had been coming to the Netherlands since 2001, suddenly became ill and was paralyzed in October 2016. At that time, the Dutch IMWU took them to a hospital in Amsterdam, and later they were diagnosed with pulmonary tuberculosis.

After one month of treatment in Amsterdam, they were referred to Groningen for further treatment for 6 months, before being returned to Indonesia in a paralyzed condition. In that condition, it is certain that they will become a person with a disability. However, they did not get any help since they were sick in the Netherlands. The Dutch government also does not provide direct assistance because the migrant worker is undocumented, so they were considered an illegal citizen.

²² TN's statement in the Constitutional Court Trial on the Application for Judicial Review of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers on August 10, 2020, <https://www.youtube.com/watch?v=In-hsxsBFVs>

The effort made by the Dutch IMWU is to network with all Non-Government Organizations (NGOs) in the Netherlands to pay for their treatment, including returning them to Indonesia. After being returned to Indonesia, these migrant workers also do not have access to a decent life.

This case is distinctive from other cases involving documented migrant workers in the Netherlands. Documented migrant workers usually come from countries that already have an immigration relationship with the Dutch Government.

One case in point is a female migrant worker with a visual disability from Turkey who asked for a test to determine her position in a company using braille media, but the company does not have a mechanism to conduct a braille test. The migrant worker then reports her case to The Dutch Equal Treatment Commission, which is currently called the Netherlands Institute for Human Rights (NIHR) or the Dutch Institute of Human Rights. The NIHR then gave a recommendation to a human rights court in Europe which stated that the female migrant worker experienced discrimination because of the problem of intersectionality, disability, and race.²³

State Disregard to Rights: Stigma and Social Norms

In the initial discussion, it was mentioned the special norms and ideology of the CRPD were ratified by the Indonesian Government through Law Number 19 of 2011. The substance in the CRPD mandates a paradigm of inclusiveness by recognizing that the rights of persons with disabilities are universally interconnected with the spectrum of other human rights. However, this situation is still not reflected in the portrait of policies and service operations for Indonesian migrant workers.

Although many cases have proven the relationship between problems and vulnerabilities, between migrant workers and conditions with disabilities, various experiences have shown that services and protection for migrant workers are still vulnerable points for neglect and violations of rights.

The problems experienced by Indonesian migrant workers regarding their vulnerability and its implications for disability conditions show a cross-section in three aspects, including 1) Fulfilling the right to access to justice, 2) Fulfilling the right to health (physical and mental), and 3) Social security and social reintegration.

Problems in the aspect of fulfilling the right to access to justice can be reflected in the cases faced by Indonesian migrant workers, especially when facing problems such as work accidents, illness, to acts of violence in destination countries.

In that situation, ensuring access to protection in the form of services, legal aid, and emergency response needs to be ensured to avoid acts of discrimination or re-victimization of migrant workers who become victims and have the potential to experience disabilities.

²³ Unfavorable judicial trials in cases of blind migrant workers in the Netherlands. Test nadelig voor blinde vrouw van Turkse afkomst. Onderscheid op grond van handicap of chronische ziekte en ras. Intersectie.<https://mensenrechten.nl/nl/oordeel/2006-256>

This situation is also closely related to the existence of undocumented migration which has a great chance of making or causing undocumented migrant workers to become “other” lefted group, and immediately cutting off access to protection services for them.

Studies on the phenomenon of undocumented migration also tend to positioning migrant workers to feel guilty and as the bearer of the risk, not as victims. In fact, a more in-depth situation analysis shows that non-procedural migration is also constructed based on its relationship with policy implementation. One situation that can be used as an example is the implementation of a maid-online system and direct hiring in Malaysia which supposed makes the migration process easier for migrant workers to enter Malaysian territory as tourists, and then obtain work permits.

“So this has opened the facts about the management of our migrant workers to enter Malaysia because if they enter Malaysia they are considered tourists, not as domestic workers, and we cannot track their whereabouts, or are outside the control of the Indonesian Government.”²⁴

According to Migrant CARE’s observation, the patterns and mechanisms of the system intended to simplify the bureaucracy of placing migrant workers in fact open up potential vulnerabilities of migrant workers. In this context, victims are dominated by women in cases of human trafficking, work exploitation, and the loss of access to protection because they are potentially not included in the data collection.

This is at least a portrait of the urgency to integrate migrant worker protection services into consular functions in destination countries, as well as within the framework of a bilateral agreement or MoU between the two countries. The MoU should contain detailed and definite arrangements, including the roles and responsibilities of the country of destination, country of origin, and employer regarding migrant workers’ access to work safety.

Apart from the substance aspect, state compliance in implementing the MoU is also another aspect that affects protection performance. For example, in highlighting the MoU for Indonesia and Malaysia on the Placement and Protection of Domestic Sector Migrant Workers who have passed the expiration date since 2016.²⁵

“In one case of migrant workers in several sectors (one of which is the plantation sector) because they are bustling with the use of chemicals or toxins which are actually less physical, but more to their internal organs – the experience of assisting the case of Indonesian migrant workers who are diagnosed with tuberculosis.”²⁶

Occupational risks in sectors with close interactions between workers and machinery and chemicals need to be accompanied by the readiness of employers, together with the state and available service units, to provide mitigation of the risk of work accidents. Meanwhile, from the perspective of the disability needs, changes in physical conditions that occur suddenly will also influence the cumulative adjustment and condition of health and the environment. Some

24 Statement by Alex Ong’s, Country Representative Migrant CARE in Kuala Lumpur, conveyed in the Focus Group Discussion of CARE’s Migrant Legal Aid Division, on February 17, 2021

25 “RI Desak Malaysia Sepakati MoU Perlindungan TKI”.2020. CNN Indonesia, 3 Desember 2020, diakses 3 April 2021,<https://www.cnnindonesia.com/internasional/20201203134003-42-577539/ri-desak-malaysia-sepakati-mou-perlindungan-tki>

26 Statement by Nor Zana, Migrant CARE Program Officer in Kuala Lumpur, conveyed in the Focus Group Discussion of CARE’s Migrant Legal Aid Division, February 17, 2021

of them are triggered by comorbidities that can worsen the physical condition of persons with disabilities.

“Sometimes the disability has comorbidities. For example on a wheelchair user, because every time you want to work, want to walk, where you want to go, you need to sit all the time. It also affects the lungs. So the lungs, if the person always stoops, eventually their lungs are affected and shortness of breath often occurs.”²⁷

The sensitivity of inclusive services for migrant workers with disabilities in the process of returning home, or after migration, is still an issue that falls within the framework of providing medical services as an effort to fulfill the right to health. Medication services are attached to social reintegration efforts, which then intersect with the operationalization of policies and services for inclusiveness at the national, regional, and even village levels as a route to the return of migrant workers.

“Their condition was that they cannot walk because they have a problem in their back. During the trip from Malaysia to Jakarta, they only sat on the plane, from the airport to the hospital as well, until they arrived at the hospital where they did not get an inpatient room so they had to wait again at the emergency room, also while sitting down. In the ER, the counterpart team from BNP2TKI (now BP2MI) was being insensitive and there was no initiative to provide assistive facilities.”²⁸

In the experience of assisting cases of migrant workers as people with new disabilities, access to justice, access to health, and access to social reintegration into a cycle that should be synergized to support the survival of life according to specific barriers or needs. In the simple terms, sensitivity in that context can take the form of standard operating procedures or services to ensure the inclusivity.

However, in Migrant CARE’s critical review, stigmatization and social norms still pose obstacles in constructing inclusive values in the structure and implementation of policies and social life in society. This is indicated by the existence of vulnerability and discriminatory practices, to social norms that position persons with disabilities as a marginal group and have no productivity or competitiveness.

In other specific conditions, the existence of stigma and social norms that have no perspective on human rights causes the inability of protection services to recognize and accommodate the needs of conditions for persons with disabilities that are triggered by non-physical symptoms or mental health. Furthermore, the discontinuity between service components is also a potential vulnerability that causes protection, medication, and social reintegration efforts to be unable to support their survival according to the needs of the disability conditions experienced by victims.

From a paradigm point of view, the existence of social stigma and norms is still become an obstacle that creates negative and discriminatory attitudes towards persons with disabilities in social life. In this context, the negative attitudes of society can become a space for discrimination for persons with disabilities in social, political, economic, and cultural participation.

²⁷ The experience of mentoring the needs of disabilities was conveyed in an FGD with OHANA Indonesia, 19 February 2021

²⁸ Statement by Nor Zana, Migrant CARE Program Officer in Kuala Lumpur, was conveyed in the Focus Group Discussion of CARE’s Migrant Legal Aid Division, February 17, 2021

One example is restriction or discrimination in the labor sector. Such discriminatory views and practices position persons with disabilities as a non-productive group, adhere to a charitable approach, and only get treatment needs, without considering the modalities and social roles of persons with disabilities. This means that persons with disabilities are seen as damaged individuals and must be repaired or rehabilitated in order to function and have normal productivity like individuals without disabilities.

In response to this, paradigm shift, the provision of equal opportunities, and decent work opportunities in accordance with the mandate of existing instruments and mechanisms are important issues to be criticized in order to encourage the participation of persons with disabilities in the labor sector. In addition, the mainstreaming of disability issues is also an urgency, including the context of labor migration governance to ensure access to protection, and at the same time, open opportunities for the participation of disabilities in the wider labor market such as in international coverage.

From (Un)Decent Work to Decent Life: Is There Social Protection?

In the case portraits and analysis of the responsiveness of labor migration services, has shown that there is a close relationship between the various problems faced by Indonesian migrant workers and the lack of quality social protection. In many experiences of advocacy for assistance, migrant workers who experience conditions with disabilities will be considered unproductive and unable to obtain job opportunities again. This discriminatory view is also prone to reducing the opportunities for migrant workers with disabilities to maximize the potential for “social remittance” that they have from their experience of migrating.

A review by the National Team for the Acceleration of Poverty Reduction (TNP2K) in 2019 showed that 94.5% of people with severe disabilities in Indonesia did not have access to government-provided social assistance and security schemes. Inequality in access is also seen as the weak capacity of existing regulations and service governance to document the number of people with disabilities. This is in line with the findings of the OHANA Indonesia survey in the Special Region of Yogyakarta, which shows that the majority of families with disabilities are not included as beneficiaries of the Covid-19 social safety net program.

In highlighting the implementation of social protection for migrant workers, the transfer of social protection security governance from the consortium to the Social Security Administration for Employment (BPJS) is a significant progress. However, the service operation and the paradigm foundation in the approach taken are also challenges that are still being faced today. This makes the position of Indonesian migrant workers who become people with new disabilities more vulnerable and marginalized from fulfillment and access to social protection.

Apart from accessibility, issues related to social protection also concern quality, methods, and approaches that still focus on the social or charitable paradigm, which positions persons with disabilities as a non-productive group, that they need to be rehabilitated and provided with social assistance. However, with the spirit of recognizing rights, it is necessary to position persons with disabilities as active subjects.

There are at least two social protection mechanisms that can be accessed by persons with disabilities in Indonesia, such as the National Social Security System (SJSN) through *BPJS Kesehatan* or *BPJS Ketenagakerjaan* and the Disability Social Protection Program. However, there are still many notes for implementation in the field.

The mandate of the CRPD places persons with disabilities as Contribution Assistance Recipients (PBI), but this has not happened in Presidential Decree Number 82 of 2018 concerning Health Insurance (Perpres 82/2018). In addition, Presidential Decree Number 82 of 2018 does not regulate assistive devices and early intervention for persons with disabilities.

Research conducted by OHANA, the National Team for the Acceleration of Poverty Reduction (TNP2K), and AUSAID in 2015, showed that the Hope Family Program (PKH) until 2015 did not even touch persons with disabilities.

This is also proven in a policy paper prepared by TNP2K in 2019 concerning Inclusive Social Protection for Persons with Disabilities in Indonesia, which shows that 94.5% of persons with severe disabilities do not get social security or social protection systems.²⁹ This condition also has the potential to deepen the inequality of access for persons with disabilities to social security and assistance during the Covid-19 pandemic.

In the Covid-19 pandemic situation, the Indonesian Government through Ministries/Agencies added social protection / safety net programs. There are at least seven social protection programs that can be accessed by the wider community. However, only a few of these programs are accessible or even specifically for persons with disabilities. OHANA's research with the Disability Rights Fund (DRF), published in December 2020, proved that people with severe disabilities in the Yogyakarta Special Region and Central Java Provinces were unable to reach social security during this pandemic.³⁰

“It also needs to be a concern that there is a necessity to map cash and non-cash assistance (in the form of concessions, from taxes, etc.) as well as services that exist today. The need for assistive devices also needs to be mapped, because not all persons with disabilities have the same needs. Wheelchairs, for example, is very individual. Everyone has different needs, different disabilities, or different congenital illnesses. This is what mapping should be for people with disabilities in Indonesia.”³¹

In ensuring the implementation of inclusive social protection, the CRPD can also become a reference for a multidisciplinary needs assessment related to health, education, employment, and adequate living standards for persons with disabilities in the framework of social protection and fulfillment of human rights.

Relying on the assessment of individual needs, social protection can take into account the differences and variety of needs that each person with disabilities has for obstacles to living their daily lives (Activities of Daily Living - ADLs) so that they can consider the incision of fulfilling the rights of migrant workers as new people with new disabilities. Social protection schemes in

29 Larasati, Dyah, dkk. 2019. Policy Brief: Inclusive Social Protection for Persons with Disability in Indonesia. TNP2K. diakses 20 Maret 2021. <http://www.tnp2k.go.id/download/65217190113-PB%20DisabilitiesEng-web.pdf>

30 Referring to a survey of families with persons with disabilities on 7 government programs established as a social safety net (Kartu Pra Kerja, Program Sembako, Program Keluarga Harapan, Banpres Sembako, Bantuan Sosial Tunai, Bantuan Listrik dan Bantuan Langsung Tunai), <https://books.google.co.id/books?id=dqMSEAAAQBAJ&pg=PA225&dq=ohana+indonesia&hl=id&sa=X&ved=2ahUKewib8-LWvaTuAhURg-YKHbJEAh0Q6AEwAXoECAMQAg#v=onepage&q=ohana%20indonesia&f=false>

31 Buyung Tanjung (2021), “Interseksionalitas Penyandang Disabilitas dan Pekerja Migran Indonesia: Sebuah Pemantik Diskusi interseksionalitas dalam UNCRPD dengan studi kasus PMI di Belanda” material for the Workshop on the Intersectionality of Migration and Disability Issues held by Migrant CARE with OHANA Indonesia, 20 January 2021..

the form of *BPJS Ketenagakerjaan* also need to be connected and complementary to the health insurance schemes in the form of *BPJS Kesehatan*.

From the policy aspect at the national level, there are opportunities to integrate social protection for migrant workers with disabilities through the implementation of Government Regulation Number 52 of 2019 concerning the Implementation of Social Welfare for Persons with Disabilities as (PP 52/2019). This regulation is one of the derivative rules of Law Number 8 of 2016, as well as Minister of Manpower Regulation Number 18 of 2018 as one of the derivative rules of Law Number 18 of 2017. The main opportunity is to strengthen the paradigm of the fulfillment of rights that enables the participation of persons with disabilities to be recognized and have an equal role with others in social life.

Along with regard to institutional functions, the implementation of social protection for persons with disabilities also mandates the role of local government elements. Thus, there are opportunities to integrate social protection frameworks for persons with disabilities in the context of upstream to downstream migration governance.

By involving the functions and services of the local government or village government as one of the reintegration options for persons with disabilities to live their social lives, up to the elements of the functions and services of the placement country to build a more inclusive ecosystem and labor market for migrant workers with disabilities.

Social Protection for Family Members

Disability does not only overlap with the situation of migrant workers as individuals, the complexity of the problems in it also relates to the community, including all family members of migrant workers. In a normative framework, the relationship of family members in the discourse of protection of labor migration should have been a consideration as outlined in the Convention on the Protection of Migrant Workers and Members of Their Families. However, discussions that recognize the specific interests of disabilities in the convention are not yet plural and real.

There are at least two conditions related to family: families left behind in their hometowns and families who join in to live abroad. Although the protection of all family members of migrant workers has been recognized, the position of the family in the two conditions is closely related.

First, the family as a support system or companion for people with disabilities to accommodate their needs according to the physical/non-physical obstacles they face. Second, the family as the party affected by the intersection of migration and conditions of disability. In that case, the family of migrant workers becomes a vulnerable party who experiences changes in physical and non-physical conditions due to extreme situations, for example in connection with inappropriate work situations, or changes in the roles/conditions of family members who become migrant workers in cases of violence or extreme punishment, like a death sentence.³²

³² Komnas Perempuan released a monitoring of the psychological condition of the families of women who are facing the death penalty. See Komnas Perempuan, 2018 *Laporan Pemantauan Kekerasan Terhadap Perempuan Dalam Pusan Migrasi, Perdagangan Manusia dan Narkoba, Inteseksi dan Penghukuman* https://komnasperempuan.go.id/uploadedFiles/webOld/file/pdf_file/2020/Publikasi%202019/Laporan%20Pemantauan%20Kekerasan%20Terhadap%20Perempuan%20dalam%20Pusaran%20Migrasi_Perdagangan%20Manusia%20dan%20Narkoba_Inteseksi%20dan%20Penghukuman.pdf

“There are migrant workers’ children aged 15 or 16 who are being treated intensively in a psychiatric hospital. Then, when we had a chance to talk with the child’s companion, it was indicated that this child was experiencing mental disorders because they missed their mother. So the mother lost contact and is also being advocated by the community because she lost contact while working in Malaysia.”³³

In this context, the existence of Government Regulation Number 52 of 2019 is an opportunity because it has recognized the role of the family as a subject and policy target. This regulation can also be used as a mechanism to seek a substitute family as the right of persons with disabilities to carry out social reintegration.

Another opportunity is the potential to synergize the context of family involvement/participation and protection in migration policies and governance that have not accommodated the interests of persons with disabilities. This is because a paradigm shift and increased participation of persons with disabilities come from adequate knowledge and support of family members for the rights of persons with disabilities in social life.

On the other hand, the readiness of communities and families in proper social protection schemes also has the opportunity to support the processes for enabling persons with disabilities to maximize their participation and social roles. For example, in the context of labor migration, community readiness will support the role of the state to interpret equal access and rights for every person with disabilities to be recognized for their potential and productivity to participate in the economic sector and human development.

From upstream to downstream, opportunities still exist. In fact, some good practices have been carried out by both the community and the government. However, to what extent are these opportunities and good practices welcomed?

Community-based intervention is one space that can be maximized to support social reintegration for migrant workers who become new persons with disabilities. One of the practices is carried out by the community along with the Desa Peduli Buruh Migran (Desbumi) in Gerunung Village, Central Lombok Regency, West Nusa Tenggara, which forms a community-based cooperative group.

“Since I came home from abroad, I worked as a driver here. Not long after I worked, I had an accident and couldn’t walk. About 2-3 years I can’t do anything at all. After that, I prayed to the Almighty for a job that I could do in this situation. After this cooperative existed, thank God it was able to help me, who was unable to do anything regarding my condition. I really thank this cooperative. It can also help people who can’t do anything, who don’t know the law at all, don’t know that, don’t know this, only know how to work to earn money, nothing else. Suddenly there is this cooperative that can help, thank God, it’s very helpful. I am very grateful.”³⁴

33 Experiences in assisting migrant worker communities in Wonosobo, interview with Sartini, Desbumi committee, Rogojati Village, 26 November 2019.

34 Story of J, ex-migrant worker, member of the Cerah Ceria Migran Cooperative, Desbumi Gerunung, Central Lombok Data on Village Assistance to Care for NTB Migrant Workers, Migrant CARE, interview, 17 July 2020.

In this context, the existence of community-based cooperatives is proven to help migrant workers who become persons with disabilities rise, not only from their group activities but also access to economic resources (business capital) that give them options/access to livelihoods.

Thus, in accordance with the CRPD framework, social protection schemes also need to support various possibilities and opportunities for persons with disabilities to maintain equal access to human rights and independence in living, working, and participating in the development and achieving prosperity.

V. Conclusions and Recommendations

Through intersectionality in the human rights approach, the interrelation between the issues of Indonesian migrant workers and people with disabilities has shown reading in the context of multi-dimensional issues through broader instrumentation. The linkage between migrant workers and persons with disabilities involves analysis on multi-dimensional issues including nationality, race, gender, and children as part of the families of migrant workers and persons with disabilities.

Furthermore, the discourse to provide equal opportunities and access for persons with disabilities to become migrant workers should also be pursued through the implementation of Law no. 8 of 2016 and Law no. 18 of 2017. And for sure, the discourse must be supported by the adjustments to implementing regulations, institutionalizing of authority, and changing paradigms in all sectors of government.

The reading of the issues of migrant workers who have become people with disability relies on the dynamics of intertwined problems, but which have not been handled properly in Indonesia. Meanwhile, in a normative framework, there are actually many policy modalities and agreements made by the Government of Indonesia at various levels that have mandated an inclusive discourse and the fulfillment of the rights of persons with disabilities.

This has become a strategic political modality to begin to base the interests of migrant workers with the fulfillment of disability rights based on their intersectionality mapping, which includes the performance and quality of state compliance as duty bearers and implementers of policies and services.

Inadequate working conditions, acts of violence, and the threat of work accidents are several forms of vulnerability faced by Indonesian migrant workers as persons with new disabilities. On the other hand, situations of vulnerability are not only experienced by migrant workers as individuals. This is also faced by the community and their families for the survival of persons with disabilities that they accompany.

Reflections on the advocacy experiences of cases experienced by Indonesian migrant workers regarding their vulnerability to conditions with disabilities show a cross between three aspects, including 1) Fulfilling the right to access to justice, 2) Fulfilling the right to health, both physically and mentally, and 3) Social security and social reintegration. However, there is still much that can be criticized regarding the performance of fulfilling the rights to these services at the level of implementing or implementing policies.

One of the main obstacles is the existence of social stigma and norms based on social and charitable paradigms that position persons with disabilities, including Indonesian migrant workers and their communities, as non-productive groups. Explicitly, this paradigm does not consider the potential and participation of persons with disabilities as a social modality.

Reflecting on this, the situation hinders the effectiveness of the various policy instruments and regulations that have been established to build an inclusive societal discourse. This includes synergizing the interests of migrant workers and persons with disabilities. Based on the reading of the problems that have been described, this policy paper focuses on recommendation points addressed to stakeholders to:

1. Conduct more comprehensive study or research related to intersectionality and the relations between the issues of Indonesian migrant workers and people with disabilities in the policy and implementation of migration governance.
2. Develop a roadmap at the national level related to the fulfillment of the rights of persons with disabilities by maximizing policy modalities, laws and regulations, development plans, regional and international compliance, and an intersectional approach.
3. Encouraging the role of ministries and institutions that have the responsibility regarding the protections of Indonesian migrant workers (Ministry of Manpower, Ministry of Foreign Affairs, Ministry of Social Affairs, BP2MI, BP Jamsostek) in mainstreaming and changing the paradigm of disability issues in all sectors of government to improve the quality of governance implementation and fulfillment of the rights of persons with disabilities, in mainstreaming the intersection of issues of migrant workers and disabilities.
4. Maximizing the role and implementation of the Disability Service Unit (ULD) in the Manpower Sector to create equal opportunities and space for participation of persons with disabilities in fulfilling the right to work, doing entrepreneurship, opening cooperatives, including becoming migrant workers and getting protection as Indonesian migrant workers.
5. Reinterpret the narrative and discourse on inclusiveness by recognizing the social model and participation of persons with disabilities in life. One of them is the interpretation of the term 'physically and mentally healthy' in various rules and practices in society, including article 5 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.
6. Improving the governance of disaggregated data on persons with disabilities by making it a separate data unit for the data collection on manpower and labor migration at the regional and national levels.
7. Improving the quality of the provision of social protection and security, for migrant workers and family members, as well as part of them with disabilities.
8. Promote an inclusive discourse and perspective in the governance of migration and protection of persons with disabilities in all sectors as a consideration in the formulation of a bilateral Memorandum of Understanding (MoU) of countries of origin and countries of placement of migrant workers, to ensure adequate accommodation for everyone who works abroad including persons with disabilities and their family members at all stages of migration.
9. Synergize the agenda and discourse on inclusiveness at the regional and international levels to open up employment opportunities and opportunities for persons with disabilities in the context of labor migration. Among other things, through the evaluation of the implementation of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers and the ASEAN Enabling Masterplan 2025: *Mainstreaming the Rights of People with Disabilities*, CMW, CRPD, SDGs, as well as related regional or international instruments.
10. Campaigning the values and its application of inclusiveness in labor migration to fight stigmatization and discriminatory perspectives against persons with disabilities at the level of policy implementation and community level.

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