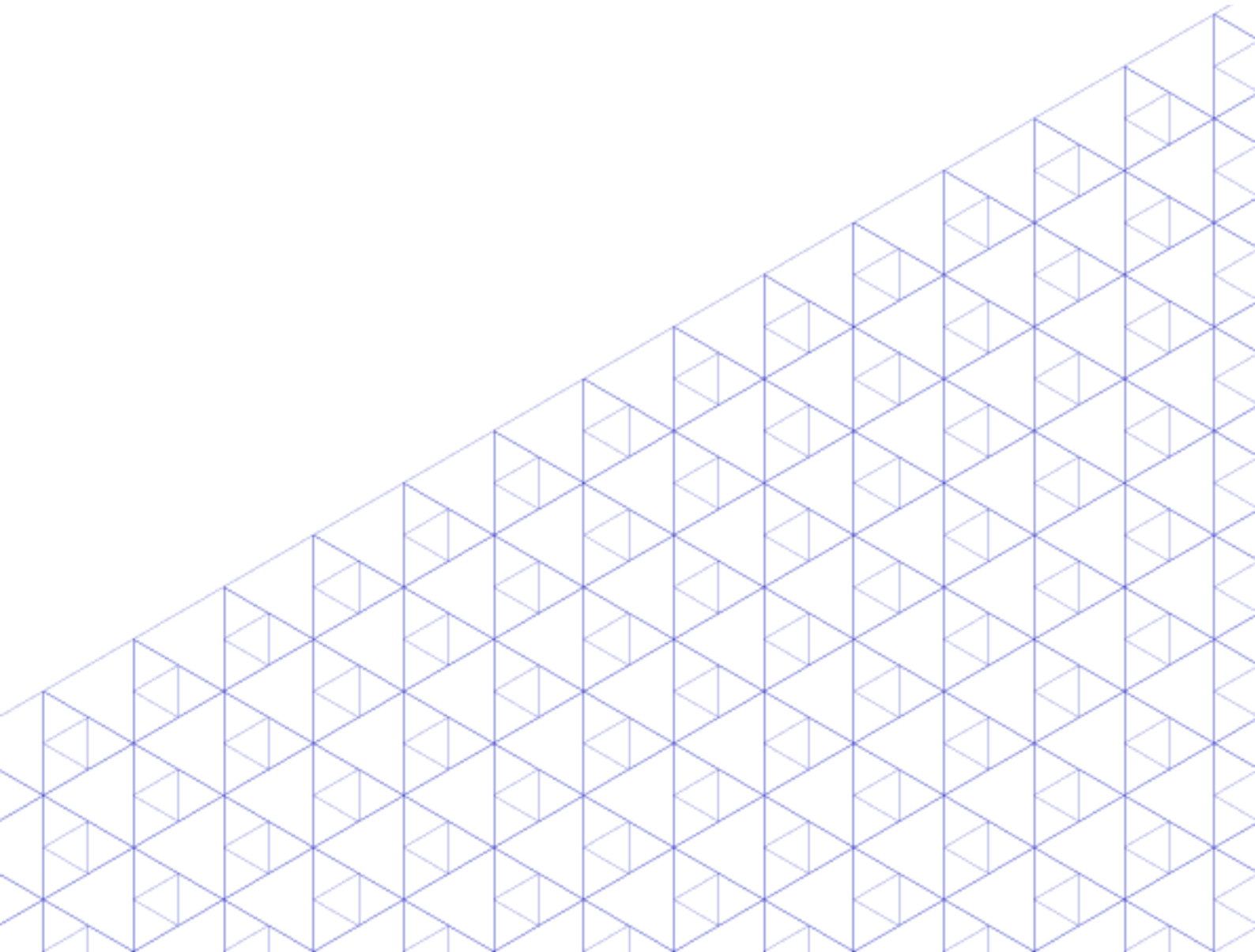




► Study on the recruitment and placement of migrant fishers from Indonesia



► ILO working paper:

Study on the recruitment and placement of migrant fishers from Indonesia

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► Executive summary

This study is based on research was commissioned to address one of the key concerns of the Indonesian Government and stakeholders: the protection of Indonesian migrant fishers. Under the Indonesian Medium-Term Development Plan 2015–2019, a recruitment and placement system that protects migrant workers, particularly for those with skills in areas with market demand, is to be prioritized.

Indonesia has a long history of labour migration and is one of the largest providers of migrant workers in South-East Asia. Labour migration can be beneficial to workers, their families and the Indonesian economy. However, many migrant workers are exposed to decent work deficits. Migrant fishers may face additional challenges because of their unique on/offshore status, falling through protection gaps in the laws, regulations and measures that countries have established to protect land-based workers.

Fishers are often employed by third parties, such as Private Employment Agencies (PrEAs), rather than directly by the fishing vessel owner. Lack of transparency regarding the recruitment process increases the risk of harm to the migrant fisher abroad. Illegal and fraudulent recruitment and placement practices may also lead to human trafficking and forced labour.

Main findings

The Ministry of Manpower (MoM) is the institution responsible for labour affairs in Indonesia under the labour law. It is mandated to manage overseas labour migration, including the provision of licences and oversight to PrEAs in the fisheries sector.

In 2017, the Indonesia Government enacted the Law on the Protection of Migrant Workers (Law 18/2017), which sets the regulatory framework for migrant workers, including migrant fishers, under Indonesian jurisdiction. The development of implementing regulations is currently under way. Under Law 18/2017, the charging of migrant workers for recruitment services is prohibited, prospective migrant fishers must receive relevant vocational training and an increased guarantee deposit is payable by PrEAs. In addition to the recruitment procedures and protection during placement, Law 18/2017 sets out the protection requirements after placement, supported by the issuing of new and stricter licences (SIP2MI and SIP3MI). While PrEAs retain protection responsibilities under the Law, oversight now lies more firmly with the Indonesian Government and its representatives. A new coordinating agency is to be established by and accountable to the President to implement the protection policy.

Law 18/2017 addresses inconsistencies in the law that previously governed this area, Law 39/2004 Concerning the Placement and Protection of Indonesian Overseas Workers. Previously, PrEAs were required to obtain a Worker Placement Agency Permit (SIPPTKI) from the MoM, as well as a Worker Supply Permit (SIP). The National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) had a coordinating role under Law 39/2004, functioning with limited effectiveness as an interdepartmental taskforce comprised of representatives of all relevant government stakeholders in the recruitment and placement of migrant workers in overseas employment. Under Law 39/2004, all migrant fishers needed to register at the BNP2TKI office in addition to the local MoM department.

Parallel to the licensing system under the MoM, the Ministry of Transport (MoT) enacted Law 17/2008 on Shipping, which set up a regulatory system for the recruitment and placement of Indonesian workers in sea-based employment. Many PrEAs that recruit seafarers for merchant shipping also recruit fishers for foreign-flag vessels. Despite the requirement that PrEA's register with the MoM, many operated under a SIUPPAK licence issued by the MoT. The conflicting regulatory regime was officially abandoned in late 2017, when the MoT acknowledged the MoM's authority in the regulating recruitment and placement of migrant fishers.

However, while many licensed PrEAs provide work agreements according to either the MoM or MoT regulations, there are reports of unlicensed recruiters signing work agreements under false names and failing to give a copy of the agreement to worker, thus making it impossible for the worker to know their rights under the agreement or verify its terms and conditions. As a result, many migrant workers still leave Indonesia through irregular channels.

The majority of migrant fishers from Indonesia are recruited through PrEAs, which often have long-term partnerships with selected employers in destination countries. Experienced migrant fishers may approach established and licensed PrEA directly, while inexperienced fishers are often recruited through (local) intermediaries. As a result of a lack of knowledge of the official recruitment process and their trust in their recruiter, who may be a family member, friend or neighbour, migrant fishers can end up in trafficking situations.

Law 18/2017 prescribes that migrant workers may only be placed in countries that have legislation to protect foreign workers, a written agreement with the Indonesian Government or a social security and/or insurance system which protects foreign workers. Sub-national authorities are required to establish one-stop service centres to improve the effective implementation of placement and protection services, increase efficiency and transparency in terms of arranging documents, while improving the overall quality of services. Once the migrant worker is abroad, the labour attaché, or designated Indonesian official overseas, is responsible for monitoring the employer, occupation and working conditions. The official is required to facilitate the settlement of labour disputes, provide consular services and legal assistance and facilitate repatriation, if necessary.

A work agreement may be extended with approval from both parties, however this needs to be arranged in the presence of an authorized official in the office of the Indonesian representative, for example the consulate or embassy in the destination country. The PrEA must report whether a contract was extended or whether the migrant worker was repatriated, to the Indonesian representative in the destination country for verification, and is subject to sanctions if they fail this reporting requirement. A migrant worker may be repatriated after the work agreement expires, if they or the employer terminate the contract, in case of an occupational accident or disease which renders them unable to perform their duty, abuse or other acts of violence, war, disaster or epidemic disease in the destination country, deportation by the host government or the death of the worker. The subnational central and local governments are responsible for post-employment protection, which includes facilitating repatriation to the area of origin.

The effectiveness of legal and policy frameworks depends on how well these are monitored and enforced. This study shows that PrEAs are currently only investigated following a complaint from a (prospective) migrant worker, rather than through regular audits and inspections. Key informants expressed their concern that the regulations are rarely enforced; there is no data available on effectiveness criteria and/or impact of the regulatory framework. Enforcement of regulations is further complicated by the lack of coherent legislative requirements and licensing systems.

The MoM Labour Inspection Directorate is responsible for inspecting PrEAs. The Directorate receives about 1,000 complaints per year, very few of which are related to fishers. In addition, in 2017 the MoM Labour Inspection Directorate received around 200 complaints through Indonesian representatives abroad concerning migrant workers, filed either by the migrant worker directly or local police. The most common complaints are unpaid salaries.

The MoM Inspections and Migrant Worker Protection departments may be involved in solving migrant workers' cases, supporting coordination with the police, local governments and/or the Ministry of Foreign Affairs (MoFA), which is tasked with checking regulations in countries that have not signed a Memorandum of Understanding (MoU) regarding migrant workers with Indonesia. Under Law 18/2017, MoFA is responsible for registering and supporting Indonesian workers in the destination country as part of its official duties to protect overseas Indonesian citizens.

MoFA has set up "hotspots" to provide services in areas where most protection cases involving Indonesian migrant fishers occur, based in main overseas ports and staffed by a local consular officer. Activities conducted in these "hotspots" include language training, providing information and informal conversations with fishers (and seafarers) to uncover any labour violations. In some destinations (such as Las Palmas, Palau and Cape Town) Indonesian resident volunteers provide food and shelter to fishers. Ministerial Regulation No. 42/2016 on Fishers' Work Agreements specifically mandates the Indonesian Embassy or consulate in flag States, port and coastal States, as well as the State where the headquarters of the fisheries operators are located, with the power to check and monitor Indonesian migrant fishers' working agreements on foreign-flag vessels.

Disputes between migrant workers and PrEA may be settled through mediation or prosecuted in court. Either party may request dispute resolution assistance from central, provincial and district/municipal MoM offices. If

these negotiations are unsuccessful, either party to the conflict may bring the case before a court. Sanctions which may be imposed on a PrEA under Law 18/2017 include a written reprimand, fines, temporary termination of a part or all worker placement activities and full permit revocation.

International standards

Indonesia has ratified the eight core ILO Conventions but it is not a signatory to the Conventions addressing migrant workers or working conditions for fisheries, including the Migration for Employment Convention, 1949 (Convention No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (Convention No. 143); the Private Employment Agencies Convention, 1997 (Convention No. 181); and the Work in Fishing Convention, 2007 (Convention No. 188).

Indonesia is a member of the Global Forum for Migration and Development, the Ministerial Consultations for Asian Labour Sending Countries (the Colombo Process) and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

Convention No. 181 was designed to improve flexibility and the functioning of labour markets, protect workers against abuses, provide for the freedom of association and promote collective bargaining and social dialogue. The Convention calls on signatories to determine the legal status of PrEAs in consultation with the most representative employers' and workers' organizations, which has been done in Indonesia to a limited extent in the development of Law 18/2017. It also calls for members to ensure that workers recruited by PrEAs have freedom of association and the right to collective bargaining and to take measures against discrimination, while assisting the most disadvantaged workers.

ILO Convention No. 188 sets minimum requirements for decent working conditions on board commercial fishing vessels. It provides standards for fishers' work agreements (FWAs) and fishers' living and working conditions on board and calls for the designation of a competent authority and the establishment of a coordination mechanism among relevant authorities, at both national and local levels, to define responsibilities. It requires States to ensure that fishers are paid regularly and have the means to transmit payments to their families for free and to establish an effective mechanism to inspect conditions on board, including foreign vessels under port State control. The Convention entered into force in November 2017, however Indonesia is not a signatory.

Indonesia has signed and ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted in 1990 (United Nations General Assembly resolution 45/158). This Convention seeks to protect workers employed in countries other than their own and considers fishers as "seafarers": migrant workers employed on board a vessel registered in a State of which they are not a national. However, "seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment" are not covered by the Convention, even though a migrant fisher normally would work on a working visa. It sets out the right of migrant workers and their families to leave any State, as well as enter and remain in their State of origin.

The ILO General Principles and Operational Guidelines on Fair Recruitment (Principles and Guidelines), based on ILO standards and instruments, were drafted in 2016. These support the ILO Fair Recruitment Initiative, which aims to prevent human trafficking and forced labour as well as protect the rights of migrant workers during the entire recruitment process. The Principles and Guidelines, which are non-binding, are applicable to all workers, including migrant workers recruited directly or indirectly through a PrEA, and cover all sectors of the economy.

The Principles and Guidelines state that recruitment should respect and protect human rights, in particular the rights to freedom of association and collective bargaining, and contribute to preventing and eliminating forced labour, child labour and discrimination; they are the basis on which Law 18/2017 was drafted. In line with the Principles and Guidelines, the Indonesian Government developed policies on employment and recruitment applying to all workers and recruiters, covering the role of the labour inspectorate, licensing and sanctions. The Principles and Guidelines state that a worker's employment conditions, including the location, requirements and tasks, should be voluntary and made clear to the worker, preferably through a written contract, which needs to be in the worker's language and provided before departure; this is reflected in Law 18/2017. The Principles and Guidelines are clear that no recruitment fees or related costs should be paid by workers or jobseekers; this is a provision in Law 18/2017.

The Principles and Guidelines put the final responsibility on governments to enforce the laws and regulations and ensure compliance, and calls on governments to ratify any relevant international instruments. To prevent human rights abuses in the recruitment process, governments are called on to take appropriate steps to prevent, investigate, punish and redress abuses through policies and legislation. This includes the development of an effective labour inspectorate, which may inspect and intervene at all recruitment stages, as well as monitor the operations of all recruiters.

This study is based on a qualitative methodology, including a desk-based literature review and primary data collection through interviews in Jakarta with key informants. Researchers collected qualitative data to assess the existing recruitment and placement practices, regulatory regimes and enforcement mechanisms. Based on these findings, the report sets out recommendations regarding the changes in law and practices needed to promote fair recruitment of migrant fishers in line with

It aims to provide qualitative data on the existing recruitment practices of migrant fishers from Indonesia and to assess and recommend necessary changes in law and practice to promote fair recruitment of migrant fishers in line with the Principles and Guidelines and relevant international labour standards, including the Convention No. 181 and Convention No. 188). The research is contextualized within the broader business practices of the fishing sector in South-East Asia.

Main recommendations

The following key recommendations, primarily directed at the Government of Indonesia, seek to ensure the strong enforcement of labour laws.

- Continue the process of ratifying ILO Conventions No. 181 and No. 188.
- Prioritize the drafting, implementation and enforcement of regulations in support of Law 18/2017.
- Include recruitment in Law 18/2017 and develop a regulation to provide for sanctions for unregistered and unlicensed PrEAs who recruit or place migrant fishers.
- Establish legally binding bilateral agreements with port and flag States receiving migrant fishers.
- Establish a coordinating agency to increase cooperation between stakeholders.
- Establish a public database of reliable PrEAs to simplify the screening of applications for new licences.
- Increase the capacity of labour inspectors to conduct inspections of PrEAs recruiting migrant fishers.
- Disseminate comprehensive information on labour markets, rights and access to justice to prospective migrant fishers.
- Accelerate and streamline the documentation process to reduce migration costs and subsequently encourage workers to migrate through safer formal channels.
- Establish a complaints mechanism accessible to migrant fishers and their families.
- Appoint labour attachés in all key overseas Indonesian representations (embassies and consulates) and consider seconding staff members to informal service points established by the MoFA.
- Improve the reporting lines from Indonesian representations to the MoM Migrant Worker Department, with standardized protocols on follow up. Enhance cooperation with local non-governmental and other civil society organizations.
- Establish and/or improve monitoring at different stages of the recruitment and placement process.

► Abbreviations

ASEAN	Association of Southeast Asian Nations
BNP2TKI	National Agency for the Placement and Protection of Indonesian Migrant Workers (<i>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia</i>)
BNP3TKI	Service Centre on the Placement and Protection of Indonesian Migrant Workers (<i>Balai Pelayanan Penempatan dan Perlindungan Tenaga Kerja Indonesia</i>)
BP2MI	Protection Agency for Indonesian Migrant Workers (<i>Badan Perlindungan Pekerja Migran Indonesia</i> , previously known as BNP2TKI)
FWA	Fishers' works agreements
GDP	Gross Domestic Product
GT	Gross Tonnage
IDR	Indonesian rupiah
ILO	International Labour Organization
IMO	International Maritime Organization
IOM	International Organization for Migration
ISMAA	Indonesia Ship Manning Agents Association
KII BNP2TKI	Guidelines for implementing a Public Service Unit at the National Agency for the Placement and Protection of Indonesian Workers
MMAF	Ministry of Marine Affairs and Fisheries
MoFA	Ministry of Foreign Affairs
MoM	Ministry of Manpower
MoT	Ministry of Transportation
MoU	Memorandum of Understanding
PrEA	Private Employment Agency
Principles and Guidelines	ILO General Principles and Operational Guidelines on Fair Recruitment
SEACOM	Directorate General for Sea Communications at the Ministry of Communications
SBMI	Serikat Buruh Migran Indonesia, an non-governmental organization
SIP	Workers' supply permit (<i>Surat Izin Perusahaan Penempatan Pekerja</i>)
SIP2MI	Licence for Recruitment of Indonesian Migrant Work (<i>Surat Izin Perekrutan Pekerja Migran Indonesia</i>)
SIP3MI	Licence for Placement of Indonesian Migrant Workers (<i>Surat Izin Perusahaan Penempatan Pekerja Migran Indonesia</i>)
SIPPTKI	Worker Placement Agency Permit (<i>Surat Izin Pelaksana Penempatan Tenaga Kerja Indonesia</i>)
SIUPPAK	Recruitment and Placement Seafarers Agency's Licence (<i>Surat Izin Usaha Perekrutan dan Penempatan Awak Kapal</i>)
USA	United States of America
USD	US dollars
WB	World Bank

► Introduction

Indonesia has a long history of labour migration and is one of the largest providers of migrant workers in South-East Asia. In 2014 around 430,000 migrant workers were placed abroad, bringing the total number of Indonesian workers living outside the country to 6 million.¹ Around 9 million Indonesian workers, including undocumented migrants, were estimated to be working abroad in 2016, according to the World Bank.² Unemployment levels are particularly high in Java and Sumatra,³ which has led to them becoming areas of origin for many migrant workers, including fishers.

While most migrant workers originating from Indonesia are in land-based occupations, such as domestic work and construction, substantial numbers of Indonesian migrant fishers are recruited, through both formal and informal channels, to work on vessels flagged to other countries and in foreign waters.

Labour migration can be beneficial to the workers, their families, and the Indonesian economy through acquired skills and remittances, which totalled over 8 billion US dollars (USD) in 2016, around 1 per cent of the country's gross domestic product (GDP). (See Figure 1).⁴

Figure 1: Indonesia remittances (Source: World Bank, 2017)



However, many migrant workers work in low-skilled jobs and are vulnerable to decent work deficits. They are often recruited under temporary migration schemes, with little information about the nature of the work, contract conditions or the laws and requirements of destination countries. Migrant workers may borrow money to pay placement fees to employment agencies for services,⁵ including for documentation and training from the private employment agency (PrEA), which may not be adequate or indeed delivered at all.⁶

¹ ILO, 2016, *Decent work for Indonesian migrant workers*

² World Bank (WB), 2017, *Indonesia's global workers – juggling opportunities and risks*.

³ BPS, <<https://www.bps.go.id/pressrelease/2019/05/06/1564/februari-2019--tingkat-pengangguran-terbuka--tpt--sebesar-5-01-persen.html>>, 2019.

⁴ WB, 2017, op. cit.

⁵ ILO, 2017, op. cit.

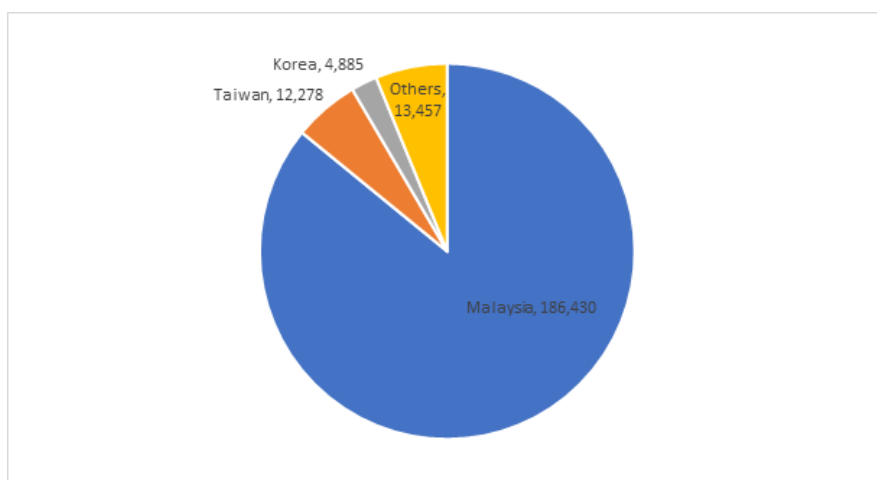
⁶ ILO, 2016, op. cit.

In 2017, the Indonesian Government enacted the Law on the Protection of Migrant Workers (Law 18/2017), increasing the protections for migrant workers and expressly including migrant fishers within its coverage. The draft implementing regulations under the Law had yet to be finalized as at 9 June 2020.

Migrant fishers may face challenges in accessing social protection including health care and social security due to their unique status as off-shore workers, falling through protection gaps in the laws, regulations and measures that countries have established to protect land-based workers.⁷ In addition, restrictions on fishers' freedom of association and collective bargaining; forced labour; unpaid wages; unsafe work conditions; inadequate rest; inhumane housing conditions; fundamental changes in the nature or conditions of work; confiscation of workers' identity documents by employers; and even physical abuse have been reported.⁸ Upon return to Indonesia they may face challenges accessing insurance payments and finding job opportunities. Between 2018 and May 2020, the Protection Agency for Indonesian Migrant Workers (BP2MI) received 489 complaints from Indonesian migrant fishers.⁹

Reliable statistics for the number of outbound migrant fishers from Indonesia are difficult to obtain. Official data may be inaccurate due to the lack of comprehensive legislation, competing jurisdictions and a lack of oversight and enforcement of international recruitment regulations. However, Indonesian official recruitment data show that since the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) introduced a moratorium on the recruitment of migrant fishers in 2015, international recruitment into the sector through official channels has declined from around 75,000 to 23,000 fishers annually, with most of those employed by Malaysian, Taiwanese and Korean vessels (see Figure 2). The moratorium was intended to address concerns about the lack of protection of Indonesian migrant fishers abroad.¹⁰ However, it may have the unintended consequence of increasing undocumented migration.¹¹

Figure 2: Number and destination of migrant fishers 2014-2018 (BNP2TKI data)



Through better regulatory frameworks and enforcement, the percentage of migrant workers employed in the informal sector has decreased in the past 15 years.¹² However, despite improvements, irregular labour migration is still widespread, including in the fisheries sector.

⁷ ILO, 2017, op. cit.

⁸ International Organization for Migration (IOM), 2015, Recruitment Monitoring & Migrant Welfare Assistance: What Works?

⁹ Merdeka News, 10 May 2020 <<https://www.merdeka.com/peristiwa/bp2mi-terima-389-aduan-dari-abk-sejak-2018-paling-banyak-tak-dibayar.html>>

¹⁰ BNP2TKI Circular Letter No. 1 of 2015.

¹¹ WB, 2017, op. cit.

¹² ILO, 2016, op. cit.

► Methodology

The qualitative methodology adopted for this study included a desk-based literature review of information on recruitment and placement processes in Indonesia and the region. This included unpublished data, grey literature, published secondary data, materials on current practice and legislation, conventions and international guidelines, with a focus on migrant fishers. In addition, a desk review of existing data based on fieldwork already conducted in Jakarta and location(s) in Central Java and primary data collected through interviews in Jakarta with key informants were consulted.

Interviews were held with representatives of government institutions involved in the protection of Indonesian migrant fishers – including the Ministry of Manpower (MoM), the Ministry of Transportation (MoT), the Ministry of Foreign Affairs (MoFA), the Ministry of Marine Affairs and Fisheries (MMAF) and the National Agency for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI). The interviews, which took place between 16 and 20 July 2018 in Jakarta, were aimed at supplementing the desk review. Input was also sought from representatives of these and other bodies, including Indonesia Ship Manning Agents Association, the non-governmental organization (NGO) *Serikat Buruh Migran Indonesia (SBMI)*, Consortium of Indonesian Manning Agents (CIMA) and the *Kesatuan Pelaut Indonesia* trade union, through an online questionnaire. Responses from stakeholders were triangulated with the information collected during the desk review and other interviews.

Formal and informal recruitment processes were analysed to identify actors in the recruitment process in Indonesia and its partners abroad and current recruitment and placement regulatory regimes and enforcement mechanisms. An analysis was conducted on whether and how Conventions No. 181 and No. 188 and the ILO Principles and Guidelines are reflected in existing laws, regulations, and practice in Indonesia and identify risks and challenges. Through this, changes to law and practice are proposed to ensure compliance with ILO Convention No. 181 and No. 188 and ILO Principles and Guidelines and to minimize the risks of trafficking and forced labour among migrant fishers. In addition, areas and strategies for improved coordination between Indonesia and other States are identified, in particular to identify ways in which labour sending States in the South-East Asia region can coordinate their approaches and align their strategies.

► Chapter 1: Regulatory regime governing migrant fishers from Indonesia

Although the Law Concerning the Placement and Protection of Migrant Workers (Law 39/2004)¹³ was repealed by the promulgation of Law 18/2017, the practices of recruitment and placement of migrant fishers that developed under the previous regime persists to the present day. This is partly due to the lack of detailed implementing regulations under Law 18/2017 and also to the changes in function among relevant ministries which have led to confusion. This chapter first reviews the previous regime to provide context and then details the challenges and opportunities regarding the implementation of Law 18/2017.

1.1. Regulation and practices before 2017

1.1.1 Ministry of Manpower licensing regime

The MoM is responsible for labour affairs in Indonesia under the Labour Law (Law No. 13/2003). In 2004, the MoM enacted the Law Concerning the Placement and Protection of Indonesian Overseas Workers (Law No. 39/2004), which set out the regulatory framework that governed Indonesian labour migration until November 2017. This covered licensing requirements for PrEAs, administrative requirements for travel and pre-departure processes.¹⁴ While Law 39/2004 provided for protection before, during and after placement,¹⁵ it focused mainly on the technicalities of recruitment and placement procedures, with limited specific protection provisions.¹⁶ A number of implementing regulations¹⁷, Presidential Instructions¹⁸ and local regulations¹⁹ were also developed to support implementation of the Law.

To operate legally as a recruitment agency, PrEAs were required to obtain a Worker Placement Agency Permit (SIPPTKI) from the MoM. The agency needed to be established as a limited liability company with a minimum of 3 billion Indonesian rupiah (IDR) deposited capital and an extra IDR500 million deposit. In addition, the PrEA was required to show its migrant worker placement and protection scheme for the previous three years and provide training units as well as placement facilities.²⁰ In addition, a PrEA needed to have a Worker Supply Permit (SIP), for which several documents were required, including a labour demand letter from the employer, the draft placement agreement and a draft employment contract.²¹

Under Law 39/2004, a minimum age of 18 was set for migrant workers employed in sectors other than domestic work;²² the charging of migrant workers for recruitment services other than those expressly listed was prohibited;²³ vocational training was to be provided by PrEAs;²⁴ and a guarantee deposit, payable to Indonesian migrant

13 IOM, 2010, *Labour Migration from Indonesia*.

14 Open Society Foundations, 2013, *Migrant Workers' Access to Justice at Home: Indonesia*.

15 Law 39/2004, art. 77 (2).

16 SMERU, 2011, *The Governance of Indonesian Overseas Employment in the Context of Decentralization*.

17 Regulation No. 7/2010 on Insurance for Migrant Workers; Regulation No. 14/2010 on the Implementation of Placement and Protection of Migrant Workers; and Regulation No. 12/2011 on Labor Attaches Overseas.

18 Presidential Instruction No. 6/2006, which outlined the main reforms to be undertaken by government institutions under the overall coordination of the Ministry of Economic Affairs; Presidential Regulation No. 81/2006, which established the National Agency for the Placement and Protection of Indonesian Workers Overseas (BNP2TKI); and Government Regulation No. 3/2013 regarding the Protection of Indonesian Migrant Workers Abroad.

19 Local regulations may be passed by any of the 34 provinces, 400 regencies and 100 cities, remaining subordinate to national legislation.

20 Law 39/2004, art. 13 (1).

21 Law 39/2004, art. 32 (2).

22 Law 39/2004, art. 35.

23 Law 39/2004, arts 39 and 76.

24 Law 39/2004, arts 42-45.

workers whose employers failed to fulfil obligations stipulated in employment contracts, was required.²⁵ The law recognized and regulated PrEAs as providers of services to migrants, such as recruitment, information, skills training, placement and assistance in obtaining documentation.²⁶ The Government, through the BNP2TKI, was responsible for pre-departure orientation seminars,²⁷ and for services such as legal assistance from Indonesian representative offices under the MoFA in receiving countries.²⁸

1.1.2 National Agency for the Placement and Protection of Indonesian Migrant Workers

The BNP2TKI, now named the Protection Agency for Indonesian Migrant Workers (BP2MI),²⁹ was established by Law 39/2004 as an implementing body to provide integrated services, including policy development and the placement of migrant workers under the government-to-government placement scheme, and to open Service Centre on the Placement and Protection of Indonesian Migrant Workers (BNP3TKI) offices at the provincial level.³⁰ A 2006 Presidential Decree (No. 81/2006) established its working procedures and it became operational that year.³¹

After the establishment of the BNP2TKI, the Directorate General of Placement and Protection in the MoM was disbanded and its role transferred to the BNP2TKI.³² The BNP2TKI established a regulatory regime to register all recruiters, including those licensed by the MoM and the MoT. Licensed PrEAs are required to report to the BNP2TKI every three months.³³

The BNP2TKI functions as an interdepartmental taskforce and is composed of representatives of all government stakeholders relevant to the recruitment and placement of migrant workers in overseas employment.³⁴ Reporting directly to its Chairman are the departments of placement, of protection and of international cooperation and promotion, which has established Memoranda of Understanding (MoUs) with a number of States, including Japan, Jordan, Kuwait, Malaysia, Qatar, South Korea, Taiwan, Timor-Leste and the United Arab Emirates, as well as with companies in Penang and New Zealand.

Under Law 39/2004, all migrant fishers are required to register at the BNP2TKI office as well as the local MoM department. The BNP2TKI is responsible for registering migrant fishers and examining their documentation through provincial and district offices. Furthermore, the BNP2TKI is required to provide information about labour markets and jobs in destination countries and facilitate the processing of competency certificates to fishers.³⁵ Certification by training centres needs to be licensed by National Certification Agency.

In addition, the BNP2TKI is mandated to provide pre-departure and debriefing training under government-to-government agreements³⁶ and process departure and placement documents. It also recruits and places migrant fishers under the government-to-government scheme in Korea and Taiwan (known as “P2P”), through which 3,719 migrant fishers were placed in 2017.³⁷

In 2013, the BNP2TKI passed a regulation on the placement and protection of migrant fishers. This requires PrEAs to register lists of migrant fishers and vessels where they are appointed.³⁸ PrEAs are also required to register and report the departure or arrival of migrant fishers to the BNP2TKI.³⁹

²⁵ Law 39/2004, art. 52.

²⁶ Law 39/2004, arts 41, 43, 52-55, 57-58, 64-82.

²⁷ Law 39/2004, art. 69.

²⁸ Law 39/2004, arts 78-80.

²⁹ Presidential Regulation No. 90/2019.

³⁰ Law 39/2004, arts 94-98.

³¹ Although the BNP2TKI was established following the enactment of Law 39/2004 to implement its provisions, it has been involved in drafting regulations as well, including on the recruitment and placement of migrant workers for sea-based employment abroad. Other BNP2TKI regulations include 13/2012 on Standard of Protection Service, 28/2015 on Migrant Workers and Migrant Workers Recruit Case Resolution Procedures through Mediation and Advocacy, and 9/2016 on Guidelines for implementing a Public Service Unit at the National Agency for the Placement and Protection of Indonesian Workers (KII BNP2TKI).

³² <http://www.bn timer.go.id/>

³³ KII BNP2TKI.

³⁴ <http://www.bn timer.go.id/>

³⁵ ILO, 2014, *Work in fishing in the ASEAN region: Protecting the rights of migrant fishers*.

³⁶ IOM, 2015, *Recruitment Monitoring and Migrant Welfare Assistance, What Works?*

³⁷ KII BNP2TKI.

³⁸ BNP2TKI Regulation No. 03/KA/I/2013.

³⁹ Idem.

1.1.3 Ministry of Transport and the Recruitment and Placement Seafarers Agency License

In 2008, the MoT enacted Law 17/2008 on Shipping, which set up a regulatory system for the recruitment and placement of Indonesian workers on any vessels flagged to Indonesia and on any foreign vessels in Indonesian waters, including fishing vessels. This system runs concurrently with the MoM system.

Responsible for the governance and regulation of transport in Indonesia, the MoT is mandated to provide licences to vessels and develop transportation policies. Under this mandate, it licenses PrEAs that recruit and place seafarers with a Recruitment & Placement Seafarers Agency's License (SIUPPAK). The MoT also enacted Ministerial Regulation No. 84/2013 on the Recruitment and Placement of Seafarers in 2013, which further detailed licensing requirements for PrEAs.

To obtain a SIUPPAK from the MoT, a PrEA needs to be a registered company in Indonesia and provide documents, such as its database of crew placed; manning agreements between vessel owners/operators and the PrEA; the "letter of appointment", which appoints the PrEA as the Indonesian representative of the company; collective bargaining agreements with any trade unions; and proof of offices, equipment and infrastructure. Regulation No. 84/2013 further provides for a complaints mechanism, repatriation, and overtime procedures.⁴⁰ The PrEA is required to recruit workers with certificates in freight or fisheries.⁴¹ The seafarer's work agreement needs to include details of the seafarer's identity⁴² and the seafarer's book needs to be validated by the MoT.⁴³ The SIUPPAK does not limit the agency to the recruitment of one category of workers and licence holders can recruit both seafarers and/or fishers.

Under Regulation No. 84/2013, recruitment and placement on board a foreign-flag fishing vessel was to be governed by a separate regulation of the Director General, which had not yet been issued at the time this research was conducted.⁴⁴ The MoT's Directorate General for Sea Communications at the Ministry of Communications (SEACOM) enforces the protection of vessel crews and does not discriminate between recruitment for fishing or shipping vessels. Of the 109 SIUPPAK-licensed PrEAs, most recruit for both, with approximately 20 to 30 agencies focusing solely on recruitment for fishing vessels.⁴⁵

The MoT's SEACOM Directorate priorities in terms of migrant seafarer protection include capacity training of new fishers and seafarers, improving law enforcement to investigate (individual) unlicensed recruiters, and enhancing data collection on the number of workers that migrate without a seafarer's certificate. The MoT provides training in pre-approved training centres for fishers, including basic safety training, which is required for seafarers to be registered, competency training, and annual training for PrEAs who want to obtain a SIUPPAK. Trade unions at provincial level receive capacity building regarding seafarers' books.⁴⁶

Although MoT jurisdiction only extends to Indonesian-flag vessels and foreign-flag vessels in Indonesian waters, in practice many of the PrEAs that operated under the SIUPPAK recruited workers – seafarers and fishers – for foreign-flag vessels regardless of whether they operated outside Indonesian waters. The SIUPPAK licensing regime is widely known and appreciated: the MoT and the Indonesia Ship Manning Agents Association (ISMAA) consider it a comprehensive and effective system for the protection of all migrant workers employed at sea. They also report that overseas companies sometimes request Indonesian PrEAs to obtain a SIUPPAK licence as a condition of doing business with them.⁴⁷

1.1.4. Mandate confusion

For a recruitment agency involved in the recruitment and placement of Indonesian fishers and seafarers, therefore, two licensing regimes applied in practice: the MoM and the MoT systems.

⁴⁰ KII MoT SEACOM.

⁴¹ Law 84/2013, art. 3.

⁴² Law 84/2013, art. 21.

⁴³ Law 84/2013, art. 25.

⁴⁴ Law 84/2013, art. 37.

⁴⁵ KII MoT SEACOM.

⁴⁶ KII MoT SEACOM.

⁴⁷ KII MoT SEACOM and ISMAA.

While the creation of the BNP2TKI was meant to improve coordination, its functions were effectively limited in relation to the recruitment of sea-based workers which were taking place through the MoT channels. In 2015, the BNP2TKI issued “Circular Letter No. 1 concerning moratorium of the service and placement of Indonesian migrant fishers”, effectively removing themselves, at least temporarily, from the regulation of the recruitment and placement of migrant fishers from Indonesia. It also had the effect of reducing the relevance of the MoM regime, as BNP2TKI functions were linked to MoM’s regulations and the registration of migrant fishers with the BNP2TKI were a part of MoM requirements. The recruitment and placement of migrant fishers continued under the parallel MoT regulatory framework.

Despite the enactment of Law 18/2017, these concurrent regulatory regimes continue to cast a shadow over the implementation of the new law and its interpretation.

1.2 Law on the Protection of Migrant Workers 18/2017

Law 18/2017 brought in a new regime of protection for migrant workers. Concerning the fisheries sector, the most important addition in the law is the express inclusion of “seafarers and fishers” in the definition of migrant worker.⁴⁸

Law 18/2017 has regulated the recruitment and placement of fishers⁴⁹ since mid-2018. It also elaborates on the protection requirements before and after placement.⁵⁰ While PrEAs retain some of their protection responsibilities under the new law, oversight now lies more firmly with the Indonesian Government and its representatives, with the possibility of imposing sanctions.⁵¹

The Migrant Worker Protection Department – a policy making department within the MoM – is currently drafting implementing regulations, in coordination with other government departments.⁵² The three priorities addressed by the regulations in relation to the protection of migrant fishers will be: 1) competency (through vocational training); 2) ease of access to services (the process for agents to receive licences and the one-stop service for migrant workers); and 3) community empowerment (providing information on safe migration).⁵³ At the time this research was undertaken, stakeholder workshops were being organized to develop the implementing regulations, with the MoT actively involved, and with separate regulations for seafarers and fishers being recommended.⁵⁴

Pending the implementing regulations for Law 18/2017, PrEAs continue doing business under their existing MoM licences SIPPTKI/SIP or MoT SIUPPAK licences. PrEAs which successfully obtain both MoM SIPPTKI/SIP licences and MoT SIUPPAK licences were directed by MoM labour inspectors to choose to operate under one or the other, but not both, to prevent violation of regulations.⁵⁵

Although the MoM remains responsible for providing oversight regarding the protection of migrant workers, it has limited oversight and enforcement capacity. While many licensed PrEAs provide work agreements according to current regulations, there are reports of unlicensed recruiters signing work agreements under false names and failing to give workers a copy of the, thus making it impossible for workers to know their rights under the agreement or verify the terms and conditions.⁵⁶ Many migrant workers, therefore, still leave Indonesia through informal channels.

A previous study found that many victims of trafficking were recruited through illegal agents, bypassing the official systems put in place by Law 39/2004.⁵⁷ It also found that embassies and consulates had only limited resources to provide the services needed by Indonesian migrant workers.⁵⁸

48 Law 18/2017, art. 4 (1c).

49 Law 18/2017, art. 64

50 Law 18/2017, arts 8-28.

51 Law 18/2017, art. 25 (3).

52 KII MoM Migrant Worker Protection Office.

53 KII MoM Migrant Worker Protection Department.

54 KII MoT SEACOM.

55 KII MoM Labour Inspectors

56 KII SBMI.

57 IOM, 2010, op. cit.

58 ILO, 2016, *Decent work for Indonesian migrant workers*.

Under Law 18/2017, the MoM is mandated to manage overseas labour migration, including the provision of PrEA licences and oversight in the fisheries sector. The MoM has offices within local government administrations, at both provincial and district level, providing information and screening potential migrant workers, although currently not all district offices keep a registry or database on how many migrant fishers are recruited as there is some unclarity about their mandate regarding regulating PrEAs.⁵⁹

Law 18/2017 addresses inconsistencies in Law 39/2004, including the responsibilities of the central government versus local authorities for migrant worker placement and protection;⁶⁰ Law 39/2004 did not clarify the division of responsibilities between them⁶¹ and left the composition of the BNP2TKI to a separate Presidential Decree.⁶² Moreover, Law 39/2004 stated that the Indonesian representative abroad would provide protection during placement,⁶³ while the PrEA remained responsible.⁶⁴ Article 86 reiterated that the government would develop and conduct the activities regarding migrant worker placement and protection abroad⁶⁵ for which the PrEA was responsible.⁶⁶ In addition, the return of migrant workers was also the responsibility of the PrEA.⁶⁷

Under Law 18/2017 the MoM is responsible for developing policy standards regarding migrant workers and overseeing and evaluating their implementation; coordinating with other ministries; stopping and/or banning placement in certain countries and/or professions; issuing and revoking licences; and appointing labour attachés.⁶⁸

Under Presidential Regulation No. 90/2019, the BNP2TKI is reconfigured as the BP2MI,⁶⁹ accountable to the President through the MoM, and charged with implementing the protection policy.⁷⁰ The BP2MI will issue and revoke manning agency permits, establish placement services, verify the documents of migrant workers and oversee the implementation of social security services. It will also facilitate cooperation between the Indonesian Government and the government of the destination country and provide protection during employment by coordinating with the Indonesian representative in the destination country. The BP2MI can propose the revocation of a PrEA's License for Placement of Indonesian Migrant Workers (SIP3MI) to the Minister and facilitate migrant workers' rehabilitation and reintegration through social and economic empowerment.⁷¹

Central and local governments are required to provide social and economic protection, according to their respective authority,⁷² the details of which require another government regulation.⁷³ Some provisions of Law 18/2017 aim to clarify the role of the different levels of government further.⁷⁴ The responsibilities of central government include: guaranteeing the rights and protection of migrant workers and their families; managing and monitoring the administration of placement services; developing an information system; coordinating collaboration between agencies with regard to complaints and handling cases; ensuring rights in the destination country; and arranging repatriation.⁷⁵

Central government is required to provide training to prospective migrant workers and designate officials to be posted in Indonesian representative offices (embassies and consulates) as labour attachés.⁷⁶ Provincial governments also have a role in organizing education and job training by accredited government or private training institutions.

59 2017 interview MoM Tegal District.

60 Law 39/2004, art. 5 (2).

61 Law 39/2004, art. 92 (1).

62 Law 39/2004, art. 79.

63 Law 39/2004, art. 78 (2).

64 Law 39/2004, art. 82.

65 Law 39/2004, art. 86 (1).

66 Law 39/2004, art. 86 (2).

67 Law 39/2004, art. 78 (1).

68 Law 18/2017, art. 45.

69 Presidential Regulation No. 90/2019.

70 Law 18/2017, art. 46 and Presidential Regulation No. 90/2019, art. 3.

71 Law 18/2017, art. 47.

72 Law 18/2017, arts 34-35.

73 Law 18/2017, art. 36.

74 Law 18/2017, arts 40-42.

75 Law 18/2017, art. 39.

76 Law 18/2017, art. 39.

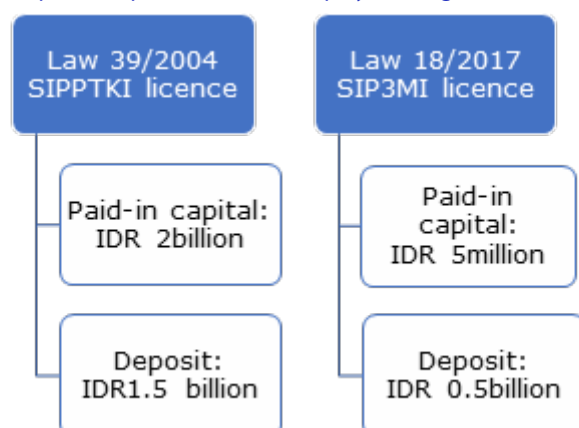
While it is central government that issues and revokes SIP3MI licences and Licences for Recruitment of Indonesian Migrant Work (SIP2MI) to PrEAs, provincial governments can issue permits for PrEA branch offices. They may establish and administer the one-stop service centre, as part of their duties to provide protection to migrant workers before and after employment and by arranging the repatriation of migrant workers.⁷⁷

District/city authorities are responsible for awareness raising among migrant workers, creating a database of migrant workers, evaluating PrEAs and reporting the results to the provincial government.⁷⁸ They are also responsible for arranging repatriation, reintegration and providing protection before and after employment at the local level. They are also required to provide education and employment training through accredited government or private training institutions, and may establish a one-stop service, while administering migrant worker placement.⁷⁹ Village administrations are required to receive and provide information on labour opportunities to prospective migrant workers. In addition, they must facilitate the documentation required by migrant workers, monitor their departure and repatriation and empower migrant workers and their families.⁸⁰

1.3. Licensing

While Law 39/2004 required PrEAs to obtain a SIPPTKI licence, Law 18/2017 requires all PrEAs to obtain a SIP3MI permit from the MoM.⁸¹ The conditions for the SIP3MI licence are stricter than those required for the previous SIPPTKI. The PrEA needs to deposit at least IDR5 billion as paid-in capital in the deed of establishment, an increase of IDR2 billion compared to the requirements under SIPPTKI, and another IDR1.5 billion as deposit into a government bank as a guarantee that it will meet its protection obligations, as opposed to the IDR0.5 billion required under Law 39/2004 (see Figure 3).⁸² In addition, a PrEA needs to show a three-year plan for the placement and protection of migrant workers and have facilities and infrastructure for migrant worker placement.⁸³ The training units set out in Law 39/2004 are no longer a requirement however, in practice many PrEAs never established their own training units.⁸⁴

Figure 3: Deposits required of Private Employment Agencies (PrEAs)



⁷⁷ Law 18/2017, art. 40.

⁷⁸ Law 18/2017, art. 41.

⁷⁹ Law 18/2017, art. 41.

⁸⁰ Law 18/2017, art. 42.

⁸¹ Law 18/2017, art. 51.

⁸² Law 18/2017, art. 54 and Law 39/2004, art. 13 (b, c).

⁸³ Law 18/2017, art. 54.

⁸⁴ Law 39/2004, art. 13 (a).

The SIP3MI, like its predecessor the SIPPTKI, is granted for five years and may be renewed every five years as per the recommendation of the – still to be established – government agency responsible for migrant worker placement and protection. The SIP3MI is extended when the PrEA has provided regular reports to the Minister as prescribed and has implemented at least 75 per cent of planned placement since obtaining the SIP3MI. Among other documentation, the PrEA needs to show an official balance sheet without any losses, audited by a public accountant.⁸⁵

The deposit is returned if the SIP3MI expires, is not renewed or is revoked. The SIP3MI may be revoked if the PrEA can no longer abide by the minimum deposit rules or does not perform according to its responsibilities and restrictions as set out in law. However, even if the licence is revoked, the placement agency will still be responsible for its migrant workers already abroad.⁸⁶

In addition to the SIP3MI, each PrEA must have a SIP2MI licence. This can be obtained by producing a placement cooperation agreement, a letter of demand for Indonesian migrant workers from the employer, the draft placement agreement and the draft work agreement,⁸⁷ which is similar to the previous procedure to obtain an SIP licence under Law 39/2004.⁸⁸

The MoM has developed an app to check SIPPTKI licences for PrEAs of land-based workers which will be replicated for PrEAs recruiting fishers and seafarers.⁸⁹ MoM inspectors found that under Law 39/2004, some PrEAs recruiting fishers as well as seafarers acquired both licences under the MoM as well as MoT regulations. After receiving the recommendation to choose one to avoid increasing the risk of violating either one, PrEAs preferred the MoT SIUPPAK licence, partly because this covers both fishers and seafarers.⁹⁰ Even under Law 18/2017 there is no incentive for PrEAs to be registered with the MoM, although the MoM intends to make the registration process for PrEAs that already hold an MoT-issued SIUPPAK easier.⁹¹ The MoM plans to enforce the regulations more strictly, including through an MoU with the Immigration Department regarding the issuing of work visas and requesting that local manpower offices provide recommendations as to whether to provide migrant workers with a passport.⁹²

⁸⁵ Law 18/2017, art. 57.

⁸⁶ Law 18/2017, art. 58.

⁸⁷ Law 18/2017, art. 59.

⁸⁸ Law 39/2004, art. 32.

⁸⁹ KII MoM Migrant Workers Protection Department.

⁹⁰ KII MoM Labour Inspection.

⁹¹ KII MoM.

⁹² KII MoM Migrant Workers Protection Department.

► Chapter 2: Practices

2.1 Recruitment practices

Under Law 18/2017, migrant fishers may be recruited through government-to-government schemes, through PrEAs or directly by the employer.⁹³ A company recruiting migrant workers without the use of a government recruitment scheme or PrEA is directly responsible for their protection. There are, however, no clear guidelines available as to the procedures and sanctions that follow if migrant workers are not sufficiently protected by their employers.⁹⁴ Independent migrant workers are responsible for their own protection and have to inform the Indonesian representative abroad of their status.⁹⁵

During recruitment and placement, PrEAs and informal recruiters or intermediaries may charge excessive fees leading to debt bondage, or use false or deceptive agreements in languages the worker does not understand. Migrant fishers may find it challenging to review and sign employment contracts and arrange a remittance scheme.⁹⁶ The lack of transparency and inadequate information provided to migrant fishers regarding the recruitment process increases their vulnerability to forced labour and human trafficking.⁹⁷

In 2018, there were an estimated 522 MoM-licensed PrEAs operating in the country,⁹⁸ in addition to the PrEAs for sea-based workers licensed by the MoT. Furthermore, there are agencies operating overseas recruitment businesses which are registered with the Ministry of Trade or local governments, that are either unaware of their illegal status or unwilling to obtain an official licence due to the lengthy processes and costs.⁹⁹ A major issue is that most recruitment agencies in areas such as Central Java, where many migrant fishers originate, are unlicensed and operating illegally.¹⁰⁰ Migrant fishers who are recruited illegally are more likely to lack correct identification and immigration papers and work agreements, to have less access to social services and legal support and to be more vulnerable to exploitation.

Experienced migrant fishers may approach established and licensed PrEAs directly, while inexperienced fishers are often recruited through local intermediaries. Due to a lack of knowledge of the official recruitment process and trust in their recruiter – who may be a family member, friend or neighbour – migrant workers may end up in trafficking situations.¹⁰¹ Families may be persuaded to send a family member to work as a migrant fisher in exchange for a one-off payment, or the promise of remittances. Cases have been reported of unregistered recruiters approaching prospective migrant fishers and their families with false information regarding the recruitment conditions or the destination. A study conducted in 2007 showed that over 40 per cent of documents were falsified in some districts in Java and Sumatra, including the use of different names, ages and addresses.¹⁰² Under the law, individuals are not allowed to place migrant workers overseas,¹⁰³ and can face up to 10 years' imprisonment or a fine of IDR15 billion if found doing so.¹⁰⁴

Migrant fishers end up in illegal recruitment and placement processes for a variety of reasons. Prospective migrant workers sometimes find the legal channels of recruitment too expensive, complicated or slow. A prospective

93 Law 18/2017, arts 49 and 50. Law 39/2004 did not contain provision for direct recruitment by an employer (Law 39/2004, art. 10), although it did have a provision for private companies to send migrant workers abroad with a written permit from the Minister (Law 39/2004, art. 26).

94 Law 18/2017, arts 61, 62.

95 Law 18/2017, art. 63.

96 ILO, 2017, *Decent work for migrant fishers*.

97 IOM, 2015, (IOM), 2015, *Recruitment Monitoring & Migrant Welfare Assistance: What Works?*

98 <http://pptkln.kemnaker.go.id/apptkln/?page=pptkis&hal=1>

99 KII ISMAA.

100 Mission Report Among

101 IOM, 2015, op. cit.

102 IOM, 2015, op. cit.

103 Law 18/2017, art. 69.

104 Law 18/2017, art. 81.

fisher who is not successful in migrating through official channels may resort to illegal recruitment.¹⁰⁵ Even if recruited legally, there are situations where a migrant worker may lose their official status in the destination country, for instance after overstaying their visa, taking up a different form of employment to the one specified on the visa, or leaving their employer without permission.¹⁰⁶

Illegal recruitments often involve deceptive and fraudulent practices that put the prospective migrant fisher at risk. For example, migrant fishers may incur debts if they have to fund their own travel expenses, the cost of acquiring the necessary documentation and the cost of accommodation before departure. Prospective fishers may also not be clear whether the accommodation is owned and run by the fishing vessel owner or a third party.¹⁰⁷ To increase the protection of migrant fishers, the MoM is implementing training programmes to improve prospective fishers' knowledge about formal recruitment procedures.

Formal recruitment and pre-placement processes

Under Law 18/2017, prospective migrant fishers need to prepare a number of documents to be placed overseas, including documentation of marital status; a consent letter from family members or a guardian, acknowledged by the village chief; a certificate of occupational competence; a medical certificate; a passport; a work visa; a migrant worker agreement of placement; and the work agreement.¹⁰⁸ Prospective migrant fishers are either responsible for collecting this documentation themselves,¹⁰⁹ or pay the employment agency fees to organize them.

Law 18/2017 prohibits the charging of placement fees to migrant workers.¹¹⁰ This is a significant improvement compared to Law 39/2004 under which jobseekers were obliged to pay a "placement fee" to cover identity documents, health and psychological examinations, training and competence certificates.¹¹¹ In practice, however, placement fees can often be high and include additional fees from the recruiter that do not reflect the costs of obtaining the necessary documents. This is often not contested by jobseekers, who feel they paid for a service rather than reimbursing recruiters for cost of obtaining the required papers.

To finance illegally charged recruitment and employment fees, many migrant workers borrow from their relatives, neighbours, recruitment agencies or loan sharks before their departure.¹¹² In 2015, to prevent exploitation, the Indonesian Government established sponsored loans called the People's Business Credit (Kredit Usaha Rakyat) for prospective migrant workers to finance placement fees at an interest rate of 9 per cent instead of the usual 33 per cent, without the need for any collateral. However, signing up to the scheme requires complicated procedures with banks.¹¹³

As most PrEAs are located in Jakarta, the costs of recruitment and placement are considerable for jobseekers paying for transport and lodging in the capital during the recruitment process. Under Law 39/2004, the PrEA could accommodate the migrant worker "in humane conditions" while preparing for departure, without defining what these conditions were.¹¹⁴ Key informants mentioned that prospective migrant fishers were often required to live near the port of departure and had to pay for their own accommodation. Law 18/2017 does not contain specific provisions on the accommodation of the migrant worker in articles regarding technical and administrative protection during pre-placement;¹¹⁵ a further ministerial regulation is set to provide the details and procedures for this.¹¹⁶

105 KII MoM Labour Inspection.

106 IOM, 2015, op. cit.

107 KII MoM Labour Inspection.

108 Law 18/2017, art. 13.

109 KII PT Harini.

110 Law 18/2017, art. 30.

111 Law 39/2004, arts 9 (c) and 76.

112 IOM, 2015, op. cit.

113 WB, 2017, *Indonesia's global workers – juggling opportunities and risks*.

114 Law 39/2004, art. 70.

115 Law 18/2017, arts 8 and 19.

116 Law 18/2017, art. 20.

Under Law 39/2004 employment contracts needed to be signed before a MoM official.¹¹⁷ The length of a working agreement was a maximum of two years and could be extended for a further two years, depending on the type of work.¹¹⁸ Law 18/2017, abolishes the two-year limit. Under article 14(1) of Ministerial Regulation No. 42/2016 on Fishers' Work Agreements, three type of agreements are permitted: limited duration agreements; single-trip agreements;¹¹⁹ and unlimited duration agreements. However, in practice, fishers' working agreements are rarely for more than two years.

Under Law 18/2017, the work agreement between the employer and the worker must include the full name and address of both parties, the profile of the employer, the occupation and type of work of the migrant worker, the rights and obligations of the parties, and the employment terms and conditions, including working hours, wages, payment arrangements, leave and rest time, facilities, social security and insurance, the duration of the agreement and safety and security guarantees for the migrant worker during employment.¹²⁰

Under Law 39/2004, the PrEA was responsible for providing pre-departure training on customs in the destination country and on work agreements.¹²¹ Training was often conducted in Jakarta. However, many migrant workers did not receive adequate training, if any at all, because of the lack of clear guidelines for the training content.¹²²

The government's responsibility under Law 39/2004 was to develop and establish vocational training, as well as provide language courses for migrant workers.¹²³ This has been expanded in Law 18/2017 under which the national and subnational (provincial and district) governments are responsible for providing social protection for migrant workers by improving the quality of education and job training, increasing the role of accreditation and certifying institutions, providing competent educators and trainers and providing social reintegration by improving the skills of both migrant workers and their families. In addition, they are to provide focused protection policies for women and children and establish migrant workers' protection centres in destination countries.¹²⁴ To improve protection for migrant workers, the MoM Labour Inspection Directorate has provided workshops to prospective migrant workers (although currently focusing on domestic workers only), their village community and village officials, who authorize migrant workers' departure.¹²⁵

Under Law 18/2017, central government, through the Social Security Administering Body, provides social security for migrant workers and their families as part of the National Social Security System.¹²⁶ Meanwhile, economic protection is provided through remittance management by involving banking and other financial institutions in both the countries of origin and destination, financial education for migrant workers and their families and entrepreneurship training.¹²⁷ This is highly relevant, as remittance funds are mainly used to fund the daily expenses of migrant workers and their families, including living expenses, education and housing, rather than investing in productive long-term businesses which could provide the migrant worker with work on their return.¹²⁸

The exact pre-employment procedure is still to be elaborated by a regulation from the head of the (not yet functional) agency.¹²⁹

117 Law 39/2004, art. 55 (3).

118 Law 39/2004, art. 56 (1).

119 Defined as starting from the vessel leaving the port and ending when the vessels arrives at the destination port and the fish have been unloaded (art. 14(3) and MMAF Ministerial Regulation No. 42/2016).

120 Law 18/2017, art. 15.

121 Law 39/2004, art. 69.

122 IOM, 2015, op. cit.

123 Law 39/2004, art. 89.

124 Law 18/2017, art. 34.

125 KII MoM Labour Inspection

126 Law 18/2017, art. 29.

127 Law 18/2017, art. 36.

128 IOM, 2015, op. cit.

129 Law 18/2017, art. 12.

Case study: PrEA recruitment of migrant fishers¹³⁰

A well-established SIUPPAK licensed PrEA recruits around 150 migrant fishers a year to business partners in the USA and Spain. The US-flag vessels sail in Hawaii, while Spanish-flag vessels operate in Uruguay and the Falkland Islands. The PrEA is paid between USD40 per month (Spain) and USD500 per year, per crew. Around 90 per cent of migrant fisher recruits come from Java, experienced fishers who know how to find the office in Jakarta.

The prospective migrant fishers provide their own (full) documentation, including passport, seaman's book, police record and health certificate. Not all fishers have competency certificates, mainly because vessel owners do not request these. Captains and engineers, however, must obtain a certificate from the MoT via licensed training agencies. For fishers, basic safety proficiency training is a requirement before the seaman's book can be issued. The MoT provides annual (quota limited) International Maritime Organization (IMO) standard basic safety training for free. The PrEA in this case also provides IMO standard eight-day basic safety training on location. All migrant fishers become members of a seamen's union, for which they have to pay a fee, even though under the MoT SIUPPAK there is no obligation to join a union.¹³¹

The PrEA and the vessel owners have manning agreements in place, validated by the relevant embassy, and renewed and re-validated when they expire. The length of work agreements between migrant fishers and vessels owner ranges depending on the flag State: for example, Spanish vessels tend to contract fishers for one year at a time; US vessels for two years. The work agreements include insurance. If the vessel is sold, the fishers need to sign a new work agreement with the new owner. However, Ministerial Regulation No. 42/2016 on Fishers Work Agreements (article 38(2.e)) states that the work agreement is deemed void if the vessel is sold legally to another owner.¹³²

Fishers are paid at most once a month. Although the salary on Spanish-flag vessels is lower than that on US-flag vessels (USD400 per month plus a USD400 bonus, compared to USD1,500 per month including bonus), fishers may choose to work on the Spanish vessels as these have shorter waiting times before deployment.

In almost three decades of operation, the PrEA had few major labour incidents. One of these involved a Japanese-flag vessel sailing in the Solomon Islands which withheld salaries of USD950,000 from its fishers. As salaries were paid directly to family members as remittance, the PrEA was alerted by worried family members when no money was received. With the help of an Australian lawyer, the PrEA filed a court case in the Solomon Islands, resulting in payment by the Japanese company after four months. As a result of this case, the PrEA changed its payment procedures: current migrant fishers receive their salaries directly from the owner of the vessel.

The PrEA faces individual issues with migrant fishers reluctant to finish their contracts, usually because of a conflict between crew members. They may request the manning agent for repatriation. However, if the migrant fisher chooses to do this before the end of their contract, they must bear the cost of the return flight themselves.¹³³

¹³⁰ KII ISMAA

¹³¹ KII MoT SEACOM

¹³² Under MMAF Regulation No. 42/2016 on Fishers' Work Agreements, a Fishing Vessel Seafarer Agent may be a company, school or government agency which recruits, prepares, deploys, assigns or hires fishers for both domestic and/or overseas fishing vessels. Among other things, agents needs to be registered with the Director General of the MMAF and have an MoM business licence, have a CBA and SOPs for placement. The regulation states that the agent is one of the parties who may sign the work agreement and is (partially) responsible for paying wages according to minimum wage or as agreed in the work agreement.

¹³³ Government Regulation No. 7/2000, art. 26(2).

2.2 Placement

Law 18/2017 prescribes that migrant workers may only be deployed to countries that have legislation to protect foreign workers; if there is a written agreement between the Indonesian Government and the government of the destination country; and/or there is a social security and/or insurance system which protects foreign workers.¹³⁴ The placement of Indonesian migrant workers to a specific destination may be banned or stopped if there are issues concerning security, the protection of human rights, distribution of employment opportunities and/or national labour supply needs.¹³⁵ This is a continuation of the “closed” country provisions under Law 39/2004 which included those destination countries with which the Indonesian Government did not have an agreement or that lacked regulations to protect foreign workers or where security was an issue.¹³⁶

Under Law 18/2017, even though PrEAs are not party to the work agreement between employers and migrant workers, they are responsible for placing the prospective migrant worker according to the occupation and type of work described in work agreement¹³⁷ and can face administrative sanctions if they fail to do so. Such administrative sanctions can consist of a written reminder, a partial or complete suspension of business activities, or the revocation of their licence(s).¹³⁸

To regularize processes to facilitate Indonesian labour migration, while improving coordination and integration of migrant worker placement and protection services, attempts were made to establish a comprehensive one-desk system for departing workers.¹³⁹ The integrated one-stop service centres (*Layanan Terpadu Satu Atap*) were introduced in 2017¹⁴⁰ to provide a more efficient and transparent placement process for prospective migrant workers. Under Law 18/2017, local governments both provincial and district are required to establish integrated one-stop service centres.¹⁴¹ According to the MoM Migrant Worker Protection Office, centres will include representatives of the labour, health, immigration and social security departments, as well as banking partners to streamline remittances. A helpdesk will be established in villages, as village officials have a role in verifying prospective migrant workers and are expected to capture data on departures and returns.¹⁴² As the centres are to be established by local governments, the service provided previously by the BNP3TKI at provincial level and the Workforce Placement and Protection Services Post (P4TKI) at district level will be integrated into one-stop service centres. However, the functions of the BNP2TKI are not affected at the central level.

To enable smooth emigration and immigration procedures for migrant workers, coordinated services were established at the ports of departure and special arrival desks to assist returnees with medical and legal needs and repatriate migrant workers.¹⁴³ Stakeholders reinforced the need for a departure/arrival desk for migrant workers at departure points,¹⁴⁴ ideally manned by both MoM and MoT representatives. Following the enactment of Law 18/2017, under which the MoM is the official PrEA licensing authority, migrant fishers recruited through SIUPPAK licensed PrEAs fall outside the legal regime.¹⁴⁵

Once abroad, Law 18/2017, following the procedures established under Law 39/2004,¹⁴⁶ provides for protection during employment through data collection and the registration of migrant workers by a labour attaché or designated Indonesian official overseas, who is responsible for monitoring the employer, occupation and working conditions, and determining whether the rights of migrant workers are respected. The official is required to facilitate the settlement of labour disputes, provide consular services and legal assistance, in accordance with the

¹³⁴ Law 18/2017, art. 31.

¹³⁵ Law 18/2017, art. 32.

¹³⁶ Law 39/2004, art. 27.

¹³⁷ Law 18/2017, art. 19.

¹³⁸ Law 18/2017, art. 37.

¹³⁹ IOM 2010, *Labour Migration from Indonesia*.

¹⁴⁰ <http://www.floresa.co/2017/09/03/layanan-terpadu-untuk-izin-tki-akan-diresmikan-di-kupang/>

¹⁴¹ Law 18/2017, art. 38 (2).

¹⁴² KII MoM Migrant Worker Protection Office

¹⁴³ IOM, 2015, op. cit.

¹⁴⁴ KII ISMAA

¹⁴⁵ KII ISMAA

¹⁴⁶ Law 39/2004, art. 80.

laws of the destination country, and facilitate repatriation, if required.¹⁴⁷ The Law also provides for legal protection for Indonesian migrant workers by central and local governments, depending on the laws of the destination country and international law and customs as well.¹⁴⁸

Any problems discovered during the verification process of the manning agency and work agreements in destination countries must be recorded by the Indonesian representative and a list of problematic business partners made publicly available. This information is subsequently used in the licensing process of PrEAs in Indonesia.¹⁴⁹ Although this is in line with the provisions in Law 39/2004, where the Indonesian representative in the destination country was responsible for assessing a PrEA's business partners and employers, Law 18/2017 further clarifies how their recommendation is to be used.¹⁵⁰ With only 12 labour attachés stationed in embassies globally, this means verification and reporting is often the responsibility of MoFA consular staff as part of their mandate to protect Indonesian citizens abroad. However, the MoFA has limited capacity and no specific mandate in relation to labour issues.¹⁵¹ Nevertheless, in practice, the MoFA is a key stakeholder in responding to cases where Indonesian workers are exploited abroad. The MoFA is currently in the process of establishing informal service centres staffed by local representatives in selected ports for reporting and solving protection issues.¹⁵²

A work agreement may be extended with approval from both parties, however this needs to be arranged in the presence of an authorized official in the office of the Indonesian representative, for example the consulate or embassy in the destination country.¹⁵³ The PrEAs must report contract extensions and repatriations to the Indonesian representative in the destination country for verification and are subject to sanctions if they omit this reporting requirement.¹⁵⁴

Under Law 39/2004, migrant workers directly employed by individual employers had to return to Indonesia between contracts.¹⁵⁵ If migrant workers extended their contracts independently of the PrEA, they lost the protection of the PrEA during the extension.¹⁵⁶ Workers changing their job during a contract had to sign a new contract.¹⁵⁷ In practice, most migrant fishers return home on unpaid leave at the end of a contract, while incentives may be offered to sign on for another contract with the same PrEA and/or company. Under the new law, there are no specific provisions on the requirement to return to Indonesia between contracts, contract extension with an employer (individual or company)¹⁵⁸ or the requirement to agree the extension in the presence of an authorized officer in the Indonesian representative's office abroad.¹⁵⁹ However the detail of the procedure will be regulated in separate government/ministerial regulation.¹⁶⁰

147 Law 18/2017, art. 21.

148 Law 18/2017, art. 33.

149 Law 18/2017, art. 10.

150 Law 39/2004, art. 25.

151 Law 18/2017, art. 9.

152 KII MoFA

153 Law 18/2017, art. 17.

154 Law 18/2017, art. 25.

155 Law 39/2004, art. 59.

156 Law 39/2004, art. 60.

157 Law 39/2004, art. 61.

158 Law 18/2017, art. 16.

159 Law 18/2017, art. 17.

160 Law 18/2017, art. 20.

Case study: Placement of migrant fishers on Japanese vessels¹⁶¹

The PrEA has recruited and placed migrant fishers for three decades, operating under an MoT SIUPPAK licence. It has two branches, including one in Central Java. The MoT conducts an annual audit of the agency, which submits quarterly reports, including statistics on all departing and returning fishers.

Annually, the PrEA recruits around 1,000 experienced migrant fishers onto Japanese-flag vessels, all members of the Japanese tuna long-line association and fishing around the globe. The frequency with which the vessels dock depends on their location. For example, in the Atlantic Ocean, the vessels dock every two to three months; in the Pacific Ocean, vessels are more likely to remain on the high seas for longer periods. Migrant fishers are recruited by word-of-mouth by former migrant fishers and provide their own documents, including their passport and seaman's book. Before departure they receive a medical examination at an official MoT clinic and can either apply for a competency certificate at a National Certification Agency approved training centre themselves or have the PrEA arrange this for them. The PrEA itself provides skills training (long-line, how to operate gear, engine maintenance) and language classes (Japanese) in their own training centre. Basic safety training is provided by an external training centre licensed by the MoT.

Prospective migrant fishers pay IDR5 million (around USD340 in September 2018) for accommodation, meals and uniforms. Depending on the demand from Japanese vessels, migrant fishers may have to wait in Jakarta for up to 30 days. Once they arrive at their destination, the PrEA's local agents deal with airport pick-up and the migrant fisher's registration at the Indonesian Embassy. All migrant fishers receive a contract in which 60 per cent of wages are paid directly to the family each month, the remaining 40 per cent plus any bonuses being paid after the contract is finished as a lump sum. Migrant fishers are insured under the Japanese company and this covers repatriation costs and health costs up to three months after return. After a contract, migrant fishers receive a flight home. If the Japanese company/vessel owner wants to extend the contract, up to 60 days of stand-by time in Indonesia is paid to the migrant fisher.

All fishers need to become a member of a Japanese Seafarers' Union; the fee is 3,000 Japanese yen (USD27 in September 2018) a month and is paid out of their wages. Any conflict between Japanese and Indonesian crew is taken care of through the Union, which also provides a collective bargaining agreement. The PrEA, through ILO Japan, is trying to change this regulation, as they believe it unfair that fishers pay the same contribution as (higher paid) seafarers.

The PrEA considers the current MoT SIUPPAK registration mechanism effective and believes the new MoM Regulation No. 18/2017 unfairly complicates regulations for licensed PrEAs, while the main issue is that currently both licensed and unlicensed PrEAs send migrant fishers abroad. The PrEA believes that control on PrEA business licence registration numbers should be stronger at the border instead.

161 KII PT Harini

2.3 Post-employment

A migrant worker may be repatriated after their work agreement expires; if they or the employer terminate the contract; in case of an occupational accident or disease which renders them unable to perform their duties; abuse or other acts of violence; war, disaster or epidemic disease in the destination country; deportation by the host government; or the death of the migrant worker.¹⁶²

Under Law 39/2004 the returning worker remained the responsibility of the PrEA. Under Law 18/2017, it is the central and local governments that are responsible for post-employment protection, which includes the facilitation of repatriation to the area of origin. Furthermore, they are responsible for looking after the settlement of the migrant worker's unfulfilled rights, social rehabilitation and reintegration, the repatriation of sick or dead migrant workers, and the empowerment of migrant workers and their family.¹⁶³

In case of a migrant worker's death, the Indonesian PrEA is responsible for notifying the family within 72 hours, seeking information about the cause of death and notifying the Indonesian representative in the destination country. The PrEA is responsible for repatriation costs of the body to the place of origin, as well as burial fees. A funeral may also be held in the destination country, with the consent of the migrant worker's family. In addition, the PrEA is responsible for protecting the migrant worker's property and arranging for the fulfilment of all entitlements.¹⁶⁴ The law does not distinguish between death by natural or other causes, increasing the financial risk on PrEAs, who are thereby motivated to ensure the good health of migrant workers.

While an insurance system was set up to guarantee assistance for loss, damage, violence or financial loss in cases of redundancy, work accidents, violence, illness or death, it is not as yet fully operational, mainly because of a lack of coordination between the Ministry of Finance, the MoM and the BNP2TKI. Furthermore, general conditions and coverage descriptions, as well as the process to submit claims and receive payments are complicated and lengthy and there is a lack of awareness among migrant workers of their insurance status. Responsibility for filing claims was transferred repeatedly between the BNP3TKI and the PrEA, before the migrant worker became the owner of the insurance policy.¹⁶⁵ The migrant workers' insurance scheme is now placed under the mandatory National Social Security System.¹⁶⁶

¹⁶² Law 18/2017, art. 27 (1)

¹⁶³ Law 18/2017, art. 24.

¹⁶⁴ Law 18/2017, art. 27 (2).

¹⁶⁵ IOM, 2015, op. cit.

¹⁶⁶ WB, 2017, op. cit.

Case study: Human trafficking of a fisher¹⁶⁷

Having been rejected from the police academy, migrant fisher Ali¹⁶⁸ was recruited at a local village event in rural Java during which six people signed up to become migrant workers. Borrowing money from his parents, he paid IDR5 million to the recruiter for the preparation of his documentation, including a passport and competency certificates, and spent another IDR6 million on PrEA placement fees in Jakarta.

The two-year contract – at a salary of US\$300 per month – was available in Chinese and Bahasa, however Ali's contract was not in his name – presumably because he was under age.¹⁶⁹ Although Ali did not attend safety training, he did receive a certificate in his name. A medical examination was conducted for the health certificate and insurance was included in the contract, although Ali never received a copy. To arrange all the documents and the medical, Ali had to travel to Jakarta several times. Just before departure, he stayed in Jakarta for two days before travelling to Libreville in Gabon, although initially he believed he would go to Taiwan. The six migrant fishers were joined at the airport by four fishers recruited by other PrEAs and divided into two groups of five.

After arrival at 2 a.m., they were picked up in Libreville by an Indonesian liaison person, who used to be a seafarer himself and acted as interpreter. All migrant fishers boarded the vessel the same afternoon and started work immediately. Beside the six Indonesian migrant fishers, there were 15 Chinese fishers and a Chinese captain on board. Food was provided three times a day, while rest and sleep depended on the amount of fish caught: during busy times no one got any rest. Once a month the vessel would dock to offload the fish, but the crew was not allowed ashore.

Ali experienced violence at the hands of the first mate and master fisher, including an incident where he was beaten with a steel chain, and was taken to a clinic in Libreville for treatment, paid for by the company. Salaries were paid after the migrant fishers requested the liaison person in Libreville to ask the PrEA to send money to their families in Indonesia. While some salary was paid by the fish collectors in Libreville, this was not the full USD300 promised, which was explained as a loss of value due to exchange rates. Bonuses were paid directly to the migrant fishers, depending on work performance (IDR500,000–600,000, equivalent to USD34–41), after the fish had been offloaded in port.

Eventually Ali spent 15 months out of his 24-month contract on the vessel. While he had wanted to leave early because of his personal insecurity, general safety issues on board, lack of salary payments and exhausting working hours, it took the support of the SBMI for him to be released.

Following a phone call from Ali to his family, his parents contacted the SBMI, which in turn complained to the BNP2TKI. As the PrEA was not registered, the SBMI coordinated directly with the Indonesian Embassy and the MoFA. By claiming that his parents were ill, Ali was allowed to leave the vessel in Libreville and the MoFA paid for his return flight. As no complaints were received from any of the other crew members, the SBMI and/or the MoFA could not assist them in any way. However, following this intervention by the Indonesian representative, the company now allows people to leave at will, although they have to pay for the return flight themselves.

167 KII SBMI

168 Name changed to protect confidentiality of the informant.

169 KII MoFA

► Chapter 3: Enforcement

The effectiveness of legal and policy frameworks in regulating international recruitment depends on how well laws and policies are monitored and enforced, both through self-reporting and inspections. The study shows that PrEAs are currently only investigated following a complaint from a (prospective) migrant worker, rather than through general audits and inspections. Key informants expressed their concern that the regulations are rarely enforced. There is no data available on effectiveness criteria and/or the impact of the regulatory framework.

Enforcement of regulations is further complicated by the lack of coherent legislative requirements and licensing systems. While the BNP2TKI is the authority responsible for the protection of migrant workers, for instance, they are not mandated to revoke PrEA licences.¹⁷⁰

Although under Law 39/2004 the Government could delegate authority to provincial and district governments, services remained centrally based because most PrEAs are based in Jakarta. Furthermore, provincial and district governments were not specifically required to implement the law or monitor the performance of local PrEAs. And while there are reporting requirements for PrEAs, lack of monitoring means that the MoM and the BNP2TKI are often unaware of PrEA activities and the numbers of migrant fishers recruited.

Law 18/2017 provides opportunities for improved monitoring and enforcement, through its stricter licensing scheme. Decentralization means, however, that the adoption of the law throughout all provinces may take years and may be disrupted by events such as national or local elections.¹⁷¹

3.1 Laws and regulations

In Law 18/2017,¹⁷² the definitions of Indonesian migrant worker and prospective Indonesian migrant worker have been sharpened. An Indonesian migrant worker is a “qualified Indonesian worker who will or has completed work for which they received wages outside of Indonesia”, whereas a prospective Indonesian migrant worker now has to be “registered with a district/city government institution responsible for manpower affairs”.¹⁷³ Law 18/2017 excludes irregular migrant workers, regardless of whether they intentionally or unintentionally used unofficial channels to migrate.¹⁷⁴

The definitions of PrEA, business partner and employer did not change in the new law. The written agreement between the PrEA in Indonesia and foreign business partner or employer (the placement cooperation agreement), containing rights and obligation regarding the placement and protection of migrant workers in the destination country remains in place, as does the work agreement between the worker and employer containing the terms of employment, rights and obligations of each party, as well as security and safety guarantees during employment. The worker placement agreement between PrEA and the prospective worker, describes the rights and obligations of each party regarding the placement of the migrant worker in the destination country.¹⁷⁵

Law 18/2017 covers protection before, during and after employment abroad¹⁷⁶ and extends that protection to the families of migrant workers. The Law clarifies the different protection stages. Pre-employment protection is the overall activity to provide protection from registration to departure. Pre-employment protection consists of administrative and technical protection. Complete and valid documentation, as well as the determination of working terms and conditions, fall under administrative protection. Meanwhile, technical protection includes awareness raising and information dissemination, education and job training, social security, functionality of the

¹⁷⁰ KII SBMI

¹⁷¹ KII SBMI

¹⁷² <http://asean.org/indonesia-policy-repository-migrant-workers-legislation-practices-asean-member-states/>

¹⁷³ Law 18/2017, art. 1 (1-2).

¹⁷⁴ IOM, 2015, *Recruitment Monitoring & Migrant Welfare Assistance: What Works?*

¹⁷⁵ Law 18/2017, art. 1 (12-14) and Law 39/2004, art. 1 (8-10).

¹⁷⁶ Law 18/2017, art. 7.

employment service centre and a one-stop service for the placement and protection of migrant workers.¹⁷⁷ The protection stage during employment refers to the period when the migrant worker and members of their family are abroad. Post-employment protection is protection during the period between “debarkation of the migrant worker and family in Indonesia until they arrive back at their area of origin”, but also provides for follow-up services to ensure they become productive workers.¹⁷⁸

Under Law 39/2004, the government was to develop, implement and control the placement and protection of migrant workers and could delegate part of its authority to local administrations.¹⁷⁹ The government was responsible for ensuring compliance with migrant workers’ rights before, during and after placement abroad, including through diplomacy in the destination country; for supervising the implementation of migrant workers’ placement; and for establishing an information system.¹⁸⁰ Prospective migrant workers had to register with the district/city manpower authorities,¹⁸¹ which also needed to approve the placement agreement between the PrEA and prospective worker. Law 18/2017 adds social security and a social security administering body.¹⁸² It further defines the roles of different layers of government, both within and outside Indonesia.¹⁸³ Under Law 18/2017, private entities and Indonesian representatives abroad have a role in the protection of migrant workers, whereby the MoM effectively delegates authority outside its sphere of influence.

The PrEA is responsible for finding job opportunities, placing migrant workers and resolving any problems migrant workers may have.¹⁸⁴ While PrEAs are allowed to establish branch offices, these need to be registered with the provincial government and their activities remain the responsibility of the head office.¹⁸⁵ This is similar to Law 39/2004.¹⁸⁶ In addition, however, under Law 39/2004 a PrEA was obliged to have a representative in the destination country, who should be legally registered according to the regulations in the destination country.¹⁸⁷

Under Law 18/2017, a migrant worker needs to meet certain requirements. For example, they must be at least 18 years old, have the required job competencies, be physically and mentally fit, be registered and have obtained a social security membership number and have complete documentation.¹⁸⁸ Under Law 39/2004 regulations included a ban on placing pregnant women and a minimum education level of junior high school. Furthermore, migrant workers placed abroad directly by their employer had to be at least 21 years old.¹⁸⁹

Under 18/2017 it remains the responsibility of the migrant worker to report their arrival, presence and return to the Indonesian representative in the destination country.¹⁹⁰ Under Law 39/2004 the responsibility lay either with the PrEA or the worker, depending on the type of employment.¹⁹¹

Law 18/2017 elaborates further on the rights of prospective migrant workers as laid out in Law 39/2004.¹⁹² Under 18/2017 migrant workers have the right to gain employment abroad according to their competency, access to education and job training. Furthermore, they have the right to access information about labour markets, placement procedures and working conditions abroad, as well as professional, non-discriminatory treatment before, during and after employment. Wages must be in line with wage standards in the destination country, agreements between countries and/or the work agreement. The worker is entitled to protection and legal assistance if rights are breached either under Indonesian or the destination country’s laws. The worker must receive information on their rights and obligations under the work agreement, be allowed to keep travel documents during employment,

¹⁷⁷ Law 18/2017, art. 8.

¹⁷⁸ Law 18/2017, art. 1 (6-8).

¹⁷⁹ Law 39/2004, art. 5.

¹⁸⁰ Law 39/2004, art. 7.

¹⁸¹ Law 39/2004, art. 36.

¹⁸² Law 18/2017, art. 1 (18, 20).

¹⁸³ Law 18/2017, art. 1 (21-24).

¹⁸⁴ Law 18/2017, art. 52.

¹⁸⁵ Law 18/2017, art. 53.

¹⁸⁶ Law 39/2004, arts 22 and 23.

¹⁸⁷ Law 39/2004, arts 20 and 21.

¹⁸⁸ Law 18/2017, art. 5.

¹⁸⁹ Law 39/2004, art. 35.

¹⁹⁰ Law 18/2017, art. 6 (2) and Law 39/2004, art. 9 (d).

¹⁹¹ Law 39/2004, art. 71.

¹⁹² Law 39/2004, art. 8.

have access to work documents and agreements and receive insurance for repatriation to Indonesia. The right to organize in the destination country is foreseen under the destination country's laws.¹⁹³

The family of the migrant worker has the right to be informed of the conditions, problems and repatriation of the migrant worker, including copies of documents and work agreements.¹⁹⁴ All information regarding migrant workers is to be disseminated by the central government to the provincial governments, who pass it on to the district governments, who again forward the information on to village administration officials for wider dissemination within the community.¹⁹⁴

While under Law 39/2004 the SIPPTKI was the placement company's permit, provided by the Minister, under Law 18/2017 the PrEA needs a SIP3MI permit as the "written permission" granted by the Minister. In addition, a SIP2MI permit is required (replacing the "workers supply permit" SIP under Law 39/2004), which is now to be granted by the head of the agency; the agency was not established or functional at the time of writing.¹⁹⁶ The Indonesian Migrant Worker Card is no longer required under Law 18/2017.¹⁹⁷

Law 39/2004 gave more detail on precise procedures, whereas Law 18/2017 focuses more on the division of responsibilities. Under Law 39/2004, for example, the pre-placement procedure consisted of the SIP processing, recruitment and selection, education and training, health and psychological examination, document processing, competence assessment, pre-departure training and departure.¹⁹⁸ Under Law 18/2017, the pre-placement procedure is still to be drafted in a ministerial regulation.¹⁹⁹ In addition, Law 39/2004 describes the required data needed in the placement agreement, including the requirement of the agency to provide a guarantee to the prospective worker in case the employer did not fulfil their obligations to the worker according to the employment contract.²⁰⁰ These details still need to be worked out in the implementing regulations for Law 18/2017. On the other hand, the dispute settlement is elaborated in Law 18/2017.

At the request of the President's Office, the implementing regulation for article 64 of Law 18/2017 on seafarers and fishers is currently being formulated by the MoM; the MoT and the MMAF are providing input. The regulation will consist of two different chapters (seafarers and fishers). While the MoFA has not been able to influence this directly, it has organized a roundtable to collect input from NGOs, which were then shared with the MoM by the SBMI.²⁰¹

Other relevant legislation includes Law 21/2007 on Elimination of Human Trafficking Crimes. This aims to eradicate human trafficking through a combined effort by relevant government agencies to prevent human trafficking, provide protection to victims and punish perpetrators.²⁰² Human trafficking crimes include exploitation through forced labour and extortion. Law 21/2007 makes it an offence to recruit, transport, harbour, send, transfer or receive a person through the threat of force, deception, the abuse of authority, debt bondage or the giving of payment (etc.), for the purpose of exploiting the person within²⁰³ or outside the territory of the Republic of Indonesia.²⁰⁴

Law 21/2007 criminalizes trafficking in persons and guarantees comprehensive victim assistance and protection. Nonetheless, many victims of trafficking refuse to pursue their case with the authorities because of threats against them made by the people who trafficked them. Implementation of the law has been very limited; according to the International Organization for Migration (IOM), no more than ten cases resulted in convictions of perpetrators. Law enforcement and criminal justice actors seem to have limited knowledge of the provisions as dissemination of information and implementation have been minimal.²⁰⁵

¹⁹³ Law 18/2017, art. 6 (1).

¹⁹⁴ Law 18/2017, art. 6 (3).

¹⁹⁵ Law 18/2017, art. 11.

¹⁹⁶ Law 18/2017, art. 1 (16-17) and Law 39/2004, art. 1 (13-14).

¹⁹⁷ Law 39/2004, art. 1 (11).

¹⁹⁸ Law 39/2004, art. 31.

¹⁹⁹ Law 18/2017, art. 20.

²⁰⁰ Law 39/2004, art. 52 (f).

²⁰¹ KII MoM Migrant Worker Protection Department.

²⁰² IOM, 2015, op. cit.

²⁰³ Law 21/2007, art. 2 (1).

²⁰⁴ Law 21/2007, art. 4.

²⁰⁵ IOM, 2015, op. cit.

3.2 Inspections and complaints procedures

PrEAs are inspected by the Directorate of Placement and Protection of Migrant Workers as well as the Directorate of Working Norms and Social Security Supervision. Following decentralization, inspection services are divided between national, provincial and regency levels; inspectors at regency level report to the inspection services at provincial level. While at the provincial level regular inspections are conducted, inspections at national level only take place following a complaint.²⁰⁶

The MoM Directorate General of Labour Inspection receives about 1,000 complaints per year, however very few are related to fishers.²⁰⁷ In addition, in 2017 the MoM Directorate of Placement and Protection of Migrant Workers received around 200 complaints through the Indonesian representatives abroad concerning migrant workers, filed either by the migrant worker directly or local police – all cases are forwarded to the BNP2TKI.²⁰⁸ If a case is registered against a PrEA, the BNP2TKI checks their database and contacts the family of the migrant fishers involved. If a migrant fisher is repatriated, information is provided to the families and authorities and a BNP2TKI desk and health officer are made available to the returnee in the airport.²⁰⁹

The BNP2TKI has contact details for receiving complaints for migrant fishers placed under the government-to-government scheme, either by email, phone, or social media.²¹⁰ The most common complaints are unpaid salaries, which are forwarded to the MoM salary inspections department, which follows up with the PrEA. By inspecting work agreements, inspectors can determine whether unpaid salaries, exchange rates, or unclear conditions created a misunderstanding or there is an offence.²¹¹ Usually cases are reported through labour attachés, email, social media or an official letter from unions.

The MoM Directorate General of Labour Inspection and the Directorate of Placement and Protection of Migrant Worker may be involved in solving migrant workers' cases, supporting workers through coordination with the police, local governments and/or the MoFA, which is tasked with checking regulations in countries that have not signed an MoU with Indonesia regarding migrant workers. Under Law 18/2017, the MoFA is responsible for registering and supporting Indonesian workers in the destination country, as part of its official duties to protect overseas Indonesian citizens,²¹² thereby also providing support to migrant fishers who were recruited outside the formal system.

The MoFA has set up “hotspots” to provide services in areas where most cases involving Indonesian migrant fishers occur, including Cape Town’s seafarers’ society, while in Mauritius and Montevideo the MoFA is still negotiating with the authorities (in Montevideo via the honorary consul in Buenos Aires). The service desks are based in the port and staffed by one local consular officer. Activities conducted at this location include language training, information provision and informal conversations with fishers (and seafarers) to uncover any labour violations and support cases.²¹³

The MoFA plans to provide doctors (for mental and physical health), nurses, as well as consular officers, to support migrant fishers. In some destinations (Las Palmas, Palau and Cape Town) Indonesian resident volunteers provide food and shelter to fishers, independently of the authorities. Social media (WhatsApp) groups have been set up in some hotspot locations (Montevideo in 2017), whereby experienced migrant fishers provide advice, including on registration. Cases may be reported through the volunteers, for example if fishers fight, the local police may contact the local volunteer and report the fishers to immigration.²¹⁴

Currently the MoFA’s consular officers use a simplified standard United Nations Office on Drugs and Crime form to collect data and coordinate with the Attorney General and the police for follow up on suspected human trafficking

206 KII MoM.

207 KII MoM Labour Inspection

208 KII MoM Labour Inspection

209 KII MoFA

210 KII BNP2TKI

211 KII MoM Labour Inspection

212 Law 39/2004, art. 71 (a).

213 KII MoFA

214 KII MoFA

cases. In other cases, the consular officer will conduct an in-depth interview with the local agent/intermediary, or vessel owner and try to solve the problems in the destination country.²¹⁵

Currently there are only 13 MoM labour attachés in 12 countries, of which two are posted in Saudi Arabia and one in the Ministry of Trade office in Taiwan. The labour attachés can conduct joint inspections with MoFA staff at the Embassy and/or consulates, while the latter may conduct inspections by themselves as well,²¹⁶ coordinating with local authorities and the police in cases of human trafficking or other criminal offences.²¹⁷ Furthermore, at least one migrant fisher's case inspection in South Africa was conducted jointly by the MoFA and the MoT as the company had an MoT SIUPPAK licence.²¹⁸

Recruitment to Taiwanese-flag vessels

While Indonesia does not have diplomatic relations with Taiwan, there are substantial numbers of Indonesian fishers on board Taiwanese-flag fishing vessels, sent by Kantor Dagang dan Ekonomi Indonesia di Taipei, an economic and trade agency. Previous reports have uncovered several accounts (some anecdotal but most supported by empirical evidence) of Indonesian migrant workers who were abused during their employment at sea. These accounts suggest that the abuse commonly faced by workers include verbal assault, physical violence, unlawful confinement and the restriction of access to basic human necessities.²¹⁹

Indonesia's representation in Taipei includes seconded staff from the MoM and the BNP2TKI, including a labour section head, senior assistant and analyst to respond to demands of land and sea-based migrant workers from Indonesia. Over 4,300 migrant worker complaints were processed between 2014 and 2017. Common issues were the lack of work agreements and non-payment of wages.

There are two types of placement for Indonesian migrant fishers: 1) Official government-to-government placement through the BNP2TKI; and 2) Letter-guaranteed private-to-private entity placement.²²⁰ Indonesian migrant fishers working on domestic Taiwanese fleets are registered through the official placement and protected under Taiwanese law.²²¹ However, most migrant fishers operating outside Taiwanese waters fall under letter-guaranteed placement, which makes them more vulnerable to exploitation. Most of the Indonesian migrant fishers assisted by the IOM in Indonesia fall into this category.²²²

Embassies have telephone hotlines and social media accounts where migrant workers can file complaints, although most complaints are received through families and NGOs in Indonesia. Local authorities may also report cases to the consulate.²²³ Once the MoFA in Jakarta receives a complaint, the BNP2TKI, which has a staff officer embedded with MoFA, will consult the family and the PrEA to check its administration. A common issue is that PrEAs or individual recruiters only use a local trade licence, rather than the SIPPTKI or SIUPPAK required to provide recruitment and placement services.

The majority of complaints that MoFA receives from migrant fishers concern the non-payment of salaries. Other issues include forged documents, such as identity papers; lack of insurance; violations of labour conditions; and, in the worst cases, physical violence. Migrant fishers' documents are often held by the captain and fishers do not receive a copy of the work agreement and/or proof of payments.²²⁴

²¹⁵ KII MoFA

²¹⁶ KII MoM Migrant Worker Protection Department and KII MoM Labour Inspection

²¹⁷ KII MoFA

²¹⁸ KII MoT SEACOM

²¹⁹ EJF (2018), *Out of the shadows. Improving transparency in global fisheries to stop illegal, unreported and unregulated fishing*, p. 7; Greenpeace, 2018, *Misery at Sea, Human suffering in Taiwan's distant water fishing fleet*, pp.6, 19, 30-42, *Ibid*, also *supra* n.232

²²⁰ Greenpeace (2019), *Seabound: The Journey to Modern Slavery on the High Seas*, p.24

²²¹ *Ibid*.

²²² IOM, 2016, *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*.

²²³ KII MoFA

²²⁴ KII MoFA

Bankruptcy may be one of the reasons for companies to forego wages and confine fishers on board the vessel. The MoFA, in coordination with the local police, connects daily with fishers left on board these vessels to check the living conditions on the vessel. While it is usually difficult to find evidence of a lack of wages and/or food, if pictures of abuse are available, the consulate will request that the local authorities investigate on board.²²⁵

Regulation No. 42/2016 on Fishers' Work Agreements specifically authorizes the Indonesian Embassy or consulate in flag, port and coastal States, as well as the State where the headquarters of the fisheries operators is located, to check and monitor compliance with Indonesian migrant fishers' working agreements on foreign-flag vessels.²²⁶ It provides for similar fishers' reporting mechanisms at Indonesian representations abroad as Law 18/2017²²⁷ and contains similar provision on the termination of contracts,²²⁸ although it gives agents more opportunity to cancel an agreement in case of a fisher's misconduct.²²⁹

Conflict resolution under Law 42/2016 is by mediation by the harbourmaster or Indonesian representative in the destination country.²³⁰ The vessel owner, operator and/or agent are responsible for the repatriation of fishers without work agreements, after work agreements terminate, or if fishers' work is not according to the work agreement.²³¹ If agents do not comply, they may receive a warning or the MMAF may recommend that the MoM revoke their licence.²³²

While many provisions in MMAF's regulation correspond with the existing MoM and MoT regulations, it is more specific and provides more protection as well as responsibilities to all stakeholders involved. However, the MMAF has no authority to implement sanctions.

3.3 Disputes and sanctions

Disputes between migrant workers and PrEAs may be settled through mediation or prosecuted in court. Either party may request dispute resolution assistance from central, provincial and district/municipal manpower offices. If these negotiations are unsuccessful, either party to the conflict may bring the case before a court.²³³

Returned migrant workers may file complaints through the BNP2TKI Crisis Centre, under the Complaint Service Directorate. The Centre accepts complaints by phone (toll free in Indonesia), short message service (SMS), facsimile, email, mail and/or in person. For returned migrant workers, the Centre processes complaints for follow-up by the BNP2TKI and other administrative units. For example, the Mediation and Advocacy Directorate is tasked with handling complaints that have an international dimension, while the handling of other complaints is delegated to the BNP3TKI.

The BNP2TKI (or the BNP3TKI in case of subnational PrEAs) puts pressure on PrEAs to fulfil their obligations to provide wages and insurance. In one example fishers received 30 per cent of their wages following mediation. The Indonesian representative in the destination country may also mediate, for instance making a request to the vessel owner for a (part of) the money needed for a return flight ticket.²³⁴ The MoFA provides families with information on the process and documents they may need to solve a case.²³⁵

225 KII MoFA

226 Law 42/2016, arts 9–11.

227 Law 42/2016, art. 36 (3).

228 Law 42/2016, art. 37 (2).

229 Law 42/2016, art. 37 (3).

230 Law 42/2016, art. 40 (1).

231 Law 42/2016, art. 41 (2).

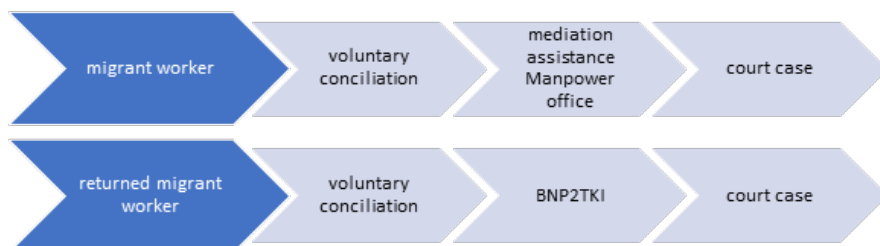
232 Law 42/2016, art. 48.

233 Law 18/2018, art. 77.

234 KII MoFA

235 KII MoFA

Figure 4: Formal dispute resolution mechanisms



Sanctions which may be imposed on a PrEA under Law 18/2017 include a written reprimand, temporary termination of part of or all worker placement activities and full permit revocation. Two sanctions in Law 39/2004 were removed in the new Law 18/2017 (prospective worker embarkation cancellation and/or returning the worker at the agencies' cost)²³⁶ as these had a major impact on individual migrant workers. The MoM handles about five cases a day, with not more than two licences revoked each year, although there is no specific data available regarding migrant fisher recruitment.²³⁷

Under Law 18/2017, falsification of migrant workers' documents is punishable by up to two years' imprisonment and a maximum fine of IDR200 million.²³⁸ A penalty of up to three years' imprisonment and a fine of up to IDR500 million may be imposed for knowingly placing an underage migrant worker.²³⁹ If a migrant worker is placed in an occupation and/or type of work that is not consistent with the work agreement, or against the law, the penalty may be up to a maximum ten years' imprisonment and a fine of up to IDR15 billion.²⁴⁰ A similar penalty may be given to anyone placing migrant workers that do not have the required competence (article 85 (b) – five years in prison and a IDR5 billion fine), are physically or mentally unhealthy, not registered with Social Security or do not have all required completed documents.²⁴¹

Transferring SIP3MI and SIP2MI between PrEAs is penalized by up to five years' imprisonment and a fine of up to IDR5 billion, whereas charging a migrant worker for employer's placement fees carries a penalty of up to five years in prison and a fine of up to IDR15 billion.²⁴² Similar penalties are levied for placing a migrant worker in a "closed" country, or placing a migrant worker without a SIP2MI.²⁴³ Government officials face penalties of a minimum of five years' imprisonment and a fine IDR1 billion for allowing the placement of migrant workers without the completed documents and a similar penalty if the migrant worker does have all documents but the official does not allow their departure.²⁴⁴

The BNP2TKI reported 4,473 migrant worker cases in 2017, of which 4,054 were resolved (see Figure 5). In 387 of these cases, migrant workers were undocumented; in 412 cases salaries were not paid; 442 migrant workers asked for repatriation; and 555 migrant workers died in the destination country. Other major issues included sickness (199); contract termination before the end date (232); and migrant workers refusing to leave (253) or overstaying their visas (246). In 166 cases, migrant workers were refused communication methods; in 142 too much was deducted from salaries; and in 138 the type of work did not match the contract.

²³⁶ Law 39/2004, art. 100 (2).

²³⁷ KII MoM Migrant Worker Protection Department

²³⁸ Law 18/2017, art. 79.

²³⁹ Law 18/2017, art. 80.

²⁴⁰ Law 18/2017, art. 82.

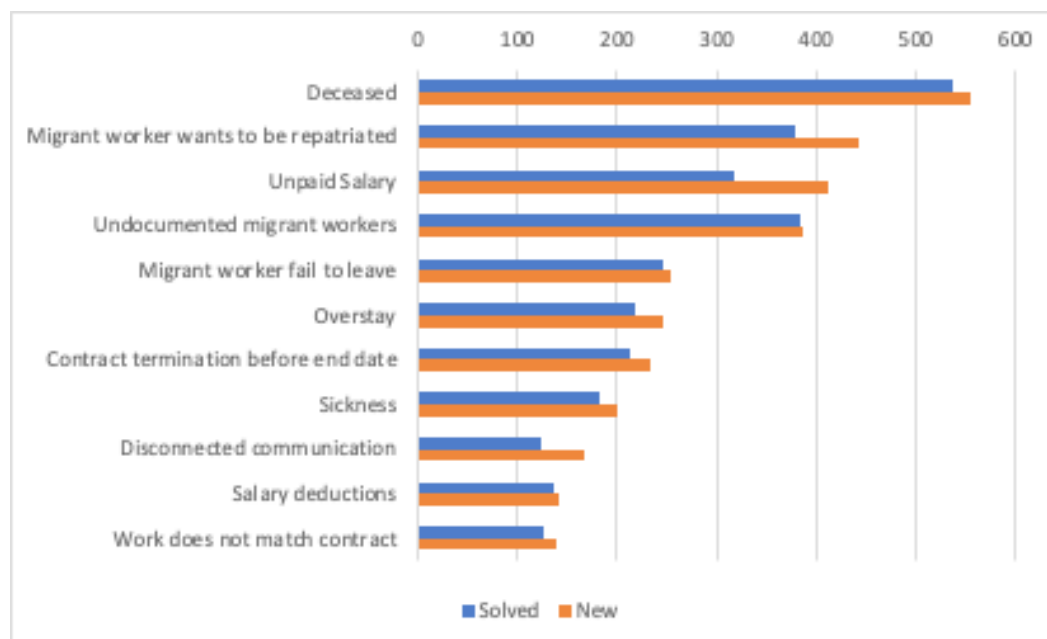
²⁴¹ Law 18/2017, art. 83.

²⁴² Law 18/2017, arts 85, 86.

²⁴³ Law 18/2017, art. 86 (c).

²⁴⁴ Law 18/2017, art. 84.

Figure 5: Cases concerning migrant workers (BNP2TKI, 2017)



While most reported cases are settled through mediation, either party may file a complaint with the court if remediation is not possible.²⁴⁵ The use of mediation has been criticized by the Open Society Foundations, which found that it is not often successful due a “lack of standardized procedures and unclear agency functions, lack of transparency, an unremedied power imbalance between workers and recruiters/insurers, untrained government mediators, and no appeals, complaints or enforcement procedures”. Migrant workers often have trouble accessing justice because of a lack of information about their rights and complaint procedures, both in the destination country and Indonesia. Furthermore, the lack of documentation and government oversight of regulations and the limited availability of legal assistance are further obstacles to access to justice.²⁴⁶

The NGO SBMI supports migrant fishers during disputes. In 2014, the SBMI supported 125 migrant fishers’, mostly through mediation. Very few cases are taken to court because of the high costs and the time, expertise and evidence required. The SBMI supports witnesses and victims, mitigating the power imbalance between fishers and PrEAs.²⁴⁷

Other reasons why migrant fishers may not file a case include fear of repercussions from their employer or PrEA; a lack of knowledge about how or who to report to; insufficient funds; and fear of embarrassment in front of their community. Once reported, many migrant workers’ cases are poorly handled because of legislative weaknesses, a lack of (local) legal aid services and poor coordination between central and local authorities, among other things.²⁴⁸

The dispute mechanisms for PrEAs with MoT SIUPPAK licences are similar to those licensed by the MoM. First, mediation is sought, and sanctions against a PrEA may include a warning, a temporary ban and eventually revocation of the licence, although only one or two licences are in fact revoked annually.²⁴⁹ Key informants’ interpretation of the different regulations indicate that if a complaint is made against an unlicensed PrEA, it is taken directly to court by the MoT, without mediation,²⁵⁰ whereas the MoM believes it has no jurisdiction over unlicensed PrEAs at all.²⁵¹

²⁴⁵ Law 18/2017, art. 77.

²⁴⁶ Open Society Foundations, 2013, *Migrant Workers Access to Justice at Home: Indonesia*.

²⁴⁷ KII SBMI

²⁴⁸ IOM, 2015, op. ci.

²⁴⁹ KII MoT SEACOM

²⁵⁰ KII MoT SEACOM

²⁵¹ KII MoM Labour Inspection

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. If a human trafficking case is found, criminal procedures are immediately started. In 2017, the BNP2TKI reported 70 such cases.²⁵²

Law 39/2004 on the Placement and Protection of Indonesian Workers Abroad and Law 21/2007 on the Elimination of Human Trafficking Crimes were successfully applied during the prosecution of at least one case concerning Indonesian fishers on an Indonesian-flag vessel owned by a Taiwanese national.²⁵³ If a (land-based) human trafficking case comes up, licences are directly revoked, although if the victim does not see themselves as victim, criminal proceedings are impossible to pursue.²⁵⁴

Under Law 18/2017, the police and appointed MoM civil servants at the central and local levels may conduct criminal investigations under the Criminal Procedure Law. They may examine reports on criminal offences related to labour, examine the defendant, collect information and evidence, seize materials and evidence, examine letters and other documents, request the assistance of experts and halt investigations where there is insufficient evidence.²⁵⁵ Initiating criminal proceedings depends on the available evidence, which is often limited in migrant fishers’ cases. If recruited informally, fishers may only have the first name and phone number of their recruitment agent, a challenge for collecting evidence. In addition, returned victims are often unwilling to follow up, facing a lack of funds and job prospects. In particular, in cases where the employer went bankrupt, retrieving unpaid salaries is a lengthy process. In cases of violence and/or death, the investigation must establish whether a criminal case needs to be filed.²⁵⁶

252 BNP2TKI, 2018, data obtained by the ILO.

253 Wayne Palmer, 2018, Bitung Case Notes.

254 KII MoM Labour Inspection

255 Law 18/2017, art. 78.

256 KII MoFA

► Chapter 4: International standards

Indonesia is a member of the Global Forum for Migration and Development, the Ministerial Consultations for Asian Labour Sending Countries (the Colombo Process) and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.²⁵⁷

Enterprises and employers' organizations have in the past decade started a number of self-regulating initiatives to support human rights in the fisheries sector and prevent human trafficking. The International Confederation of Private Employment Agencies is working with international organizations to improve the international industry and implemented a Code of Conduct which includes a clause on zero fees. Unfortunately, there are at present no members in Indonesia, where PrEAs are not likely to self-regulate or to comply with regulations in the absence of government monitoring and proactive enforcement of the regulations by the responsible government authorities.²⁵⁸

4.1. International Labour Organization

While Indonesia has ratified the eight core ILO Conventions, it is not a signatory to those addressing migrant workers or working conditions in fisheries, including the Migration for Employment Convention, 1949 (No. 97); the Migrant Workers Convention, 175 (No. 143); the Private Employment Agencies Convention, 1997 (No. 181); and the Work in Fishing Convention, 2007 (No. 188).

4.1.1 ILO General Principles and Operational Guidelines on Fair Recruitment

In 2016, ILO General Principles and Operational Guidelines on Fair Recruitment (Principles and Guidelines) were drafted, based on ILO standards and instruments, supporting the ILO Fair Recruitment Initiative, which aims to prevent human trafficking and forced labour as well as protect the rights of migrant workers during the entire recruitment process. The Principles and Guidelines provide non-binding guidelines to inform national legislature and other policy development, to governments, enterprises and public employment agencies, labour recruiters and employers. They note that business has a responsibility to respect human rights regardless of what national legal and policy frameworks say.

The Principles and Guidelines cover all workers, including migrant workers recruited directly or indirectly through a PrEA and all sectors of the economy. Consultation between social partners and the government should precede implementation. The Operational Guidelines specifically address the responsibilities of recruitment actors. They state that recruitment should respect and protect human rights, in particular the right to freedom of association and collective bargaining, the prevention and elimination of forced labour, child labour and discrimination.

In line with the Principles and Guidelines, the Indonesian Government developed policies on employment and recruitment applying to all workers and recruiters, including the role of the labour inspectorate, licensing and sanctions.

The Principles and Guidelines state that a worker's employment conditions, including the location, requirements and tasks of the job, should be voluntary and made clear to the worker, preferably through a written contract, which needs to be in the worker's language and provided before departure; this is reflected in Law 18/2017 article 6.²⁵⁹ Law 18/2017 partially addresses Operational Guideline 7 by listing the required contents of the working agreement²⁶⁰ and the worker's right to receive an explanation of its contents.²⁶¹ Governments are requested to

²⁵⁷ IOM, 2015, *Recruitment Monitoring & Migrant Welfare Assistance: What Works?*

²⁵⁸ Idem.

²⁵⁹ Law 18/2017, art. 6 (1h and 1m).

²⁶⁰ Law 18/2017, art. 15 (2).

²⁶¹ Law 18/2017, art. 6 (h and m).

take measures to eliminate the charging of recruitment fees, as this may cause abuse of workers, debt bondage and coercion.²⁶² The Principles and Guidelines are clear that no recruitment fees or related costs should be paid by workers or jobseekers; this is a provision in Law 18/2017.²⁶³

The Principles and Guidelines put the final responsibility for advancing fair recruitment on governments, which should enforce the laws and regulations and ensure compliance. They also call on governments to ratify any relevant international instruments. To prevent human rights abuses in the recruitment process, governments are called on to take appropriate steps to prevent, investigate, punish and redress abuses through policies and legislation. This includes the development of an effective labour inspectorate, which may inspect and intervene at all recruitment stages, as well as monitor the operations of all recruiters.²⁶⁴ In accordance with the Principles and Guidelines, the Indonesian government drafted a law requiring recruitment agencies to respect human rights, while employers' and workers' organizations are involved in developing implementing policy.²⁶⁵

Law 18/2017 applies to all aspects of the recruitment process, as well as all workers, including fishers, (Operational Guideline 4.1). It also reflects Operational Guideline 4.2 which focuses on compliance with the laws and regulations, including through a public registration or licensing regime.²⁶⁶ However, Law 18/2017 lacks a provision to include all recruiters, including those operating outside of the legal framework, and in both the formal and informal economy.²⁶⁷

Operational Guideline 8 states that the government should ensure workers have access to grievance and dispute mechanisms; this is reflected in Law 18/2017 by the possibility of requesting assistance from the local manpower department.²⁶⁸ However, there may be considerable barriers to in accessing this. Furthermore, under the existing legislation, in the absence of bilateral or multilateral agreements,²⁶⁹ it would be difficult to follow Operational Guideline 8.1 and 8.2 to ensure that workers have access to these mechanisms after their return to Indonesia.

Part B of the Operational Guidelines focuses on the responsibility of recruitment agencies and employers to respect human rights, regardless of whether States are able or willing to fulfil their human rights obligations.²⁷⁰ Beside not charging workers for any recruitment related costs,²⁷¹ this includes not retaining workers' passports or contracts.²⁷²

The principles of freedom of movement – to leave a country as well as to terminate employment and return to one's country – are more difficult to enforce with migrant fishers, however. While the Principles and Guidelines state that a migrant worker should not require the employer's or recruiter's permission to change employer,²⁷³ this will in effect mean that they will have to return to Indonesia at their own cost, which may be prohibitively expensive. Law 18/2017 is unclear on repatriation if a fisher terminates their contract.

4.1.2 Private Employment Agencies Convention (No. 181)

Convention No. 181, was drafted to improve flexibility and the functioning of labour markets, protect workers against abuses and provide for the freedom of association, promoting collective bargaining and social dialogue.

Under Convention No. 181, a PrEA is any natural or legal person, independent of the public authorities, that provides services matching offers and applications for employment and does not become a party to the

²⁶² ILO Principles and Guidelines 2016, Operational Guideline 6.

²⁶³ Law 18/2018, art. 30 (1).

²⁶⁴ ILO Principles and Guidelines 2016, Operational Guideline 5.1.

²⁶⁵ ILO Principles and Guidelines 2016, Operational Guideline 3.1.

²⁶⁶ Law 18/2017, arts 54 and 59.

²⁶⁷ ILO Principles and Guidelines 2016, Operational Guideline 4.3.

²⁶⁸ Law 18/2017, art. 77 (2).

²⁶⁹ ILO Principles and Guidelines 2016, Operational Guideline 13.

²⁷⁰ ILO Principles and Guidelines 2016, Operational Guideline 15.1.

²⁷¹ ILO Principles and Guidelines 2016, Operational Guideline 17.

²⁷² ILO Principles and Guidelines 2016, Operational Guideline 18.

²⁷³ ILO Principles and Guidelines.

employment relationship; employs workers directly to make them available to a third party; or provides other services related to jobseeking.²⁷⁴ While Convention No. 181 does not apply to seafarers, it does apply to all other categories of workers, including fishers.²⁷⁵

Convention No. 181 calls for signatories to determine the legal status of PrEAs in consultation with the most representative employers' and workers' organizations.²⁷⁶ This has been done to a limited extent in the development of Law 18/2017.²⁷⁷ The SBMI provided input into the implementation regulation of the new law. Its input regarding decentralization of authority to the village government was accepted, resulting in data collection and empowerment at village level, as well as the inclusion of a one-stop service and free training by the MoM. Input that was not accepted, however, included the recommendation that insurance risk should be covered by the government and that women with children under two years old should not migrate.²⁷⁸

Importantly, Convention No. 181 calls for members to ensure that workers recruited by PrEAs are not denied freedom of association and the right to collective bargaining;²⁷⁹ to take measures against discrimination, while assisting the most disadvantaged workers;²⁸⁰ and to prevent child labour.²⁸¹ A complaints mechanism is to be developed by member States' competent authorities.²⁸² To ensure adequate protection, measures need to be taken to provide the freedom of association, minimum wages, working time and conditions, social security benefits, access to training, occupational safety and health, compensation in case of accidents or diseases and insolvency, parental protection and benefits.²⁸³

Law 18/2017 includes provisions addressing most of these, except parental protection and benefits. Furthermore, a complaints mechanism, besides bringing a case to court, has not been established. Under Convention No. 181 Article 12, the government is responsible for determining the extent to which PrEAs are responsible for these provisions, which according to Law 18/2017 are to be elaborated in the work agreement.²⁸⁴

Under Convention No. 181, a PrEA should not charge directly or indirectly, in whole or in part, any fees or costs to workers. However the national authorities may exempt certain categories of workers and/or specific types of services provided by PrEAs, following consultations with workers' and employers' organizations.²⁸⁵ Under Law 18/2017, workers may not be charged a placement fee²⁸⁶ (Law 39/2004 left room for the payment of placement fees, for identity documents, training and health tests).²⁸⁷

Convention No. 181 advises member States to arrange bilateral agreements if a worker is recruited in one country to work in another.²⁸⁸ During the IOM East Asia/Southeast Asia Regional Conference on Ethical Recruitment and Policy Harmonization in the Fishing Industry (Seoul, 2016), Indonesia and regional countries agreed to improve cooperation related to recruitment costs, countering illegal and unlicensed recruitment agents, training, labour contracts, wages and grievance mechanisms.²⁸⁹ In addition, Indonesia has signed non-binding MOUs with a number of destination countries and territories to increase protection and safeguard the rights of its migrant workers, including migrant fishers.²⁹⁰

274 ILO Convention No. 181, Art. 1 (1).

275 ILO Convention No. 181, Art. 2 (2).

276 ILO Convention No. 181, Art. 3 (1).

277 KII

278 KII SBMI

279 ILO Convention No. 181, Art. 4.

280 ILO Convention No. 181, Art. 5.

281 ILO Convention No. 181, Art. 9.

282 ILO Convention No. 181, Art. 10.

283 ILO Convention No. 181, Art. 11.

284 ILO Convention No. 181, Art. 12.

285 ILO Convention No. 181, Art. 7.

286 Law 18/2017, art. 30.

287 Law 39/2004, art. 52 (h).

288 ILO Convention No. 181, Art. 8 (2).

289 ILO, 2017, *Decent work for migrant fishers*.

290 ILO, 2014, *Work in fishing in the ASEAN region: Protecting the rights of migrant fishers*.

4.1.3 Work in Fishing Convention (No. 188)

Convention No. 188 sets minimum requirements for decent working conditions on board commercial fishing vessels. The Convention entered into force in November 2017, however Indonesia is not a signatory. Convention No. 188 was developed after the Maritime Labour Convention (2006), which excluded fishers from its scope, as the conditions of their labour and employment are unique and required a targeted convention.

Convention No. 188 provides standards for fishers' work agreements and covers fishers' living and working conditions on board. While member States have the flexibility to exempt certain types of vessels from its provisions, Conventions No. 188 applies to all fishing vessels that are over 24 metres in length, remain at sea for more than seven days in a row, navigate over 200 miles from the coastline of the flag state or beyond the outer edge of its continental shelf, or are subject to port State control.²⁹¹ As most Indonesian migrant fishers are employed on vessels navigating at a great distance from the flag State and remain at sea for weeks on end, Convention No. 188 is highly relevant. Under the Convention, the skipper is responsible for the safety of the fishers and the safe operation of the vessel, while the fishing vessel owner is responsible for providing the skipper with the necessary resources to do this.²⁹²

Convention No. 188 calls for the designation of a competent authority and the establishment of a coordination mechanism among relevant authorities, at both national and local levels, defining responsibilities.²⁹³ The Indonesian Government established the BNP2TKI coordination mechanism under Law 39/2004 and is planning to establish a new coordinating agency under Law 18/2017.

Convention No. 188 provides for a minimum age, which is below the standards currently set by Indonesia of 18 years, and requires fishers on a fishing vessel to have a medical certificate.²⁹⁴ While exemptions may be made for smaller vessels, on vessels over 24 meters in length, the medical certificate needs to show that the hearing and sight of a fisher are satisfactory for the duties required and that no medical conditions may be aggravated by being at sea.²⁹⁵

Each member State is required to adopt regulations to ensure all fishers have a fisher's work agreement signed by the fisher and vessel owner or their representative, which must be comprehensible to the fisher²⁹⁶ and available on board.²⁹⁷ States must ensure there are opportunities to review and request advice on the work agreement²⁹⁸ and that there is a complaints mechanism regarding the work agreement.²⁹⁹ Fishing vessels are required to be safe and minimum resting hours need to be provided to fishers on board.³⁰⁰ In addition, the fishing vessel must carry a crew list, to be provided to authorities before departure.³⁰¹

Under Convention No. 188, the member State is responsible for the repatriation of fishers to the member State of fishing vessels flying their flag if the fisher can no longer carry out the duties required under the work agreement,³⁰² with costs to be borne by the fishing vessel owner.³⁰³ However, there is no provision for fishers who are not citizens of the flag State itself, which is covered by Law 18/2017 by making the recruitment agency responsible in case of a fisher's death³⁰⁴ and the local governments in other scenarios.³⁰⁵

291 ILO No. 188, Art. 4 (2).

292 ILO No. 188, Art. 8.

293 ILO No. 188, Art. 7.

294 ILO No. 188, Art. 10 (1).

295 ILO No. 188, Art. 13 (1).

296 ILO No. 188, Art. 16.

297 ILO No. 188, Art. 18.

298 ILO No. 188, Art. 17 (a).

299 ILO No. 188, Art. 17 (c).

300 ILO No. 188, Art. 14.

301 ILO No. 188, Art. 15.

302 ILO No. 188, Art. 21 (1).

303 ILO No. 188, Art. 21 (2).

304 ILO No. 188, Art. 27.

305 Law 18/2017, arts 40-42.

Any private recruitment and placement services for fishers are to be operated according to a standardized system of licensing, to be established after consultation with employers' and workers' organizations.³⁰⁶ Convention No. 188 prohibits charging fishers fees for recruitment or placement directly or indirectly.³⁰⁷ It also provides that "a Member which has ratified the Private Employment Agencies Convention, 1997 (No. 181), may allocate certain responsibilities under this Convention to private employment agencies that provide the services referred to in paragraph 1(b) of article 1 of that Convention".³⁰⁸ Importantly, if the private employment agency defaults on its obligations, the fishing vessel owner remains ultimately responsible,³⁰⁹ in contrast to the provisions in Law 18/2017.³¹⁰

Member States are required to ensure that fishers are paid regularly and have the means to transmit payments to their families at no cost to the fisher or their family.³¹¹ Convention No. 188 requires States to establish an effective inspection mechanism of conditions on board, including for the inspection of foreign vessels under port State control. As member States are responsible for accommodation and food conditions, medical care, safety training and equipment, and social security on fishing vessels flying their flag³¹² as well as inspections,³¹³ it is important that the Indonesian Government establishes MoUs to ensure the protection of Indonesian migrant fishers.³¹⁴

Indonesia has ratified the Maritime Labour Convention, but not Convention No. 188, although both are being used by the Indonesian Government to draft the implementing regulation for Law 18/2017 article 64. These two international instruments will be used in the development of two separate chapters within the regulation, one on seafarers, the other on fishers, in coordination with ministries, employers' organizations, workers' unions and civil society organizations.³¹⁵

4.2 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Indonesia has signed and ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention), which entered into force in 2003. The Migrant Workers' Convention aimed to protect workers employed in countries other than their own, considering the rights of migrant workers, in particular undocumented and irregular migrants, had not been sufficiently recognized everywhere and acknowledged the ILO's expertise and experience to reach this objective.

The Migrant Workers' Convention considers fishers as "seafarers": a migrant worker employed on board a vessel registered in a State of which he or she is not a national.³¹⁶ However, "seafarers and workers on an offshore installation who have not been admitted to take up residence and engage in a remunerated activity in the State of employment" are not covered by the Migrant Workers' Convention,³¹⁷ even though a migrant fisher normally would work on a working visa.

The Migrant Workers' Convention provides migrant workers and their families with the right to leave any State, as well as enter and remain in their State of origin.³¹⁸

³⁰⁶ ILO No. 188, Art. 22 (2).

³⁰⁷ ILO No. 188, Art. 22 (3b).

³⁰⁸ ILO No. 188, Art. 22 (4).

³⁰⁹ ILO No. 188, Art. 22 (5).

³¹⁰ Law 18/2017, Art. 22

³¹¹ ILO No. 188, Arts 23-24.

³¹² ILO No. 188, Arts 25-35.

³¹³ ILO Convention No. 188, Arts 40-44.

³¹⁴ ILO Convention No. 188, Art. 36.

³¹⁵ KII MoM Migrant Worker Protection Office

³¹⁶ Migrant Workers' Convention, Art. 2 (2c).

³¹⁷ Migrant Workers' Convention, Art. 3 (f).

³¹⁸ Migrant Workers' Convention, Art. 8.

No migrant workers or members of their families are to be held in slavery or servitude, forced or compulsory labour.³¹⁹ Furthermore, the right to freedom of religion³²⁰ and expression and opinion³²¹ are upheld. Migrant workers and their families have the right to protection from interference with their correspondence and other communications³²² and shall not be deprived of property.³²³ They are also entitled to protection in case of violence, physical injury, threats or intimidation.³²⁴

Migrant workers should receive no less favourable treatment than that which applies to nationals of the receiving state in terms of remuneration and other working conditions and terms of employment³²⁵ as well as social security.³²⁶ The right to freedom of association and to join trade unions is provided in the Migrant Workers' Convention.³²⁷ Migrant workers and members of their families have the right to transfer earnings and savings to any other State.³²⁸ Many provisions of the Migrant Workers' Convention, however, do not apply to fishers, such as the right to education in the destination country, vocational and placement services and housing.³²⁹

Importantly, States parties are required to collaborate to prevent and eliminate illegal movements and employment of migrant workers. Appropriate measures against the dissemination of misleading information regarding emigration and immigration need to be taken, as well as measures to detect and eradicate illegal movements, to impose effective sanctions on anyone that uses violence or intimidates migrant workers in irregular situations,³³⁰ and to provide solutions in cases where migrant workers and members of their families find themselves in an irregular situation.³³¹

Law 18/2017 includes a reference to Law 6/2000 on the ratification of the Migrant Workers' Convention, which requires the government to inform prospective migrant workers of working conditions, requirements and their rights before departure. In addition, the government is required to protect migrant workers from being placed in positions that are different to what was promised and to prevent the confiscation of documents.³³²

319 Migrant Workers' Convention, Art. 11.

320 Migrant Workers' Convention, Art. 12.

321 Migrant Workers' Convention, Art. 13.

322 Migrant Workers' Convention, Art. 14.

323 Migrant Workers' Convention, Art. 15.

324 Migrant Workers' Convention, Art. 16 (2).

325 Migrant Workers' Convention, Art. 25.

326 Migrant Workers' Convention, Art. 27.

327 Migrant Workers' Convention, Art. 26.

328 Migrant Workers' Convention, Art. 47.

329 Migrant Workers' Convention, Art. 43.

330 Migrant Workers' Convention, Art. 68.

331 Migrant Workers' Convention, Art. 69.

332 Migrant Workers' Convention, Art. 21.

► Chapter 5: Conclusion and recommendations

Labour migration contributes to migrant workers' skills and improves the financial status of families and the Indonesian GDP through remittances. Without PrEAs, international recruitment would not be possible on the current scale. While hundreds of registered PrEAs send migrant fishers abroad through formal channels, other recruitment agents avoid the official registration and licensing systems. High numbers of unregistered recruiters, the lack of prospective migrant fishers' knowledge about formal recruitment procedures and their human rights, weak legislation and enforcement, all lead to irregular migration, with an adverse effect on migration benefits and the protection of migrant fishers.

Migrant fishers, who do not have the information they need, are vulnerable to deception, abuse, discrimination, restrictions on freedom of association and collective bargaining, forced labour and occupational safety and health concerns. Because of their unique status, migrant fishers often fall through protection gaps in laws, regulations and measures that countries have established to protect land-based workers. Monitoring of the working conditions of migrant fishers and the enforcement of legislation can be challenging as aspects of living and working conditions may come under the jurisdiction of different government ministries and agencies and coordinating inspections is challenging.

Law 18/2017 is an improvement on previous legislation, providing more comprehensive definitions and addressing a number of inconsistencies in Law 39/2004 on the recruitment of migrant workers. Importantly, under the new law, the Indonesian Government takes over some responsibilities from PrEAs. Stakeholder workshops are organized by the MoM to draft a government regulation on the recruitment and placement of migrant fishers. A new agency – to be established by and accountable to the President – will implement the protection policy. However, Law 18/2017 still leaves space for interpretation and includes many areas for which additional implementation regulations are required. Importantly, the Law needs to be effectively implemented and enforced to improve the protection climate for migrant fishers.

Gaps and overlaps in previous regulations and instructions hampered implementation. Presidential Regulation No. 81/2006, for instance, does not clearly determine the level of cooperation between the MoM and the BNP2TKI. As the MoM remained the licensing and oversight authority for PrEAs, the BNP2TKI could not sanction PrEAs. Meanwhile in 2013, the MoT developed its own Ministerial Regulation No. 84/2013 on the Recruitment and Placement of Seafarers, creating duplication as well as gaps in protection for migrant workers in fisheries.

While Law 18/2017 is a clear improvement on Law 39/2004 in terms of the division of responsibilities between central and local governments and private entities, some significant gaps remain. For instance, responsibility for the establishment of the one-stop service centre and repatriation remains unclear between all three levels of authority.

Furthermore, while the Government assumes more responsibility under the regulation, including monitoring, Law 18/2017 still provides the Government with the option of delegating authority to the private sector. While PrEAs are responsible for placing prospective migrant workers according to the occupation and type of work set out in the work agreement and face administrative sanctions if they do not do so, the actual work agreement is between the employer and the worker, which seems to envision a monitoring role for PrEAs.

While the legislation provides for information sharing and training for (prospective) migrant workers, more details are required as to what kind of information and training is to be provided. The provisions to deliver education, training and protection centres in destination countries, depending on the central and/or local government mandated authorities, will be difficult to enforce outside the scope of the respective authority.

The issue around licensing by both the MoM and the MoT remains. Many PrEAs currently work under the MoT SIUPPAK licence and were actively discouraged from using SIPPTKI simultaneously. As the process to obtain a new MoM SIP3MI licence is similar to the SIPPMI, but considerably more expensive, it is difficult to envisage PrEAs registering with the MoM without incentives. Even with an effective licensing system, the large number of PrEAs may overwhelm the inspection and enforcement capacity of the MoM. As SIP3MI is valid for five years, but

only a three-year plan is required for monitoring, it will be difficult to measure effectiveness. The sanctions set out in Law 18/2017 for PrEAs and officials who do not comply are more severe, but these will only have effect if enforcement improves.

Although Indonesia is not yet a signatory to ILO Conventions No. 181 and No. 188, its legislation does include several of their provisions. Convention No. 181 for instance advises member States to arrange bilateral agreements, which Indonesia has done with multiple States. Furthermore, Law 18/2017 reflects the ILO's General Principles & Operational Guidelines for Fair Recruitment, covering all aspects of the recruitment process and a social security/insurance system.

At the time of research, implementation guidelines for Law 18/2017 were being developed, for instance how the new agency will coordinate with foreign ministries, how village administrations will develop a database and importantly how migrant fishers will be protected. Although Law 18/2017 is likely to improve the country's licensing system to regulate the international recruitment of migrant fishers, a significant number of unregistered and/or unlicensed PrEAs remain which are difficult to monitor and control.

A lack of guidelines concerning the responsibilities of government agencies and other stakeholders in the recruitment and placement of migrant fishers has resulted in gaps and overlap and a lack of cooperation between agencies, hampering the effectiveness of implementation and enforcement. The parallel regulations implemented by the MoM and the MoT created confused and opaque complaints mechanisms and hinder inspections and investigations. While the MoT in 2017 agreed to relinquish its regulatory authority over manning agencies to the MoM, including those engaged in the recruitment and placement of Indonesian fishers, most PrEAs continue to work with an MoT SIUPPAK licence. As PrEAs have thus far mainly abided by MoT Regulation No. 84/2013, implementation and enforcement of Law 18/2017 will have significant impact on their procedures.

A further complication is that there are often multiple PrEAs, individuals and other organizations involved in the recruitment and placement process, in both countries of origin and destination countries. These could include intermediaries, training agencies, shelters and travel agents in addition to the PrEA. For those migrant fishers and their families who wish to pursue a case, it is therefore difficult to determine against whom they should file a complaint. There is a need to clarify agreements between PrEAs and vessel owners. Currently, PrEAs often do not check whether employed fishers are no longer working on the same vessel they were recruited for, although in such cases the work agreement no longer applies. In addition, there are major problems with fake documentation, whereby vessels may be registered in different places and migrant workers may face criminal charges rather than be seen as victims.

Under Law 18/2017, local offices and village chiefs decide whether passports/agreements may be signed, potentially limiting the freedom of individual prospective migrant fishers. Meanwhile the BNP2TKI remains the implementing body for policies regarding the placement and protection of Indonesian workers abroad. The new agency and one-stop service centre should further increase the coordination of authorities, although it is unclear who will establish the service centre and what powers the agency will take over from the BNP2TKI. The inclusion of civil society and other stakeholders in the development of implementing regulations under the new law is a significant improvement over Law 39/2004.

The immigration authorities have an important role in protecting migrant fishers, as the point of migration is a key point in monitoring international recruitment and placement. Under Law 18/2017, private entities and Indonesian representatives abroad also have a significant role in the protection of migrant workers, whereby the MoM effectively delegates authority outside its sphere of influence. The requirement that foreign recruiters be accredited by the Indonesian representative in the destination country enables checks to be conducted. Registering with the embassy is often difficult for migrant fishers however, as there may not be a consulate or embassy in the destination city or accessible to fishers on the high seas. To mitigate this, the MoFA is experimenting with informal information centres at the main Indonesian migrant fisher processing ports.

A significant obstacle to safe recruitment practices in Indonesia is the lack of information available to prospective migrant fishers about safe migration, documentation and employment conditions abroad. Under Law 18/2017, all information regarding migrant workers is to be disseminated by the central government to the provincial governments, which should be forwarded to the district governments and eventually the village administration for wider dissemination within the community.

The omission of awareness and/or capacity building in pre-employment protection in Law 18/2017 – which only covers the process from registration – is a missed opportunity. The requirement for prospective migrant fishers to register with their local manpower department, could help – if enforced correctly – to eliminate middlemen, as fishers can be recruited directly from the register. However, this requires a country-wide effort to raise awareness of the need to register.

5.1 Recommendations

Regulations

- The Indonesian Government should continue with the process of ratifying ILO Conventions No. 181 and No. 188, ensuring provisions regarding the prohibition to charge placement fees are enforced to prevent debt-bondage and extortion and monitoring the charging and payments of fees.
- As a priority, all necessary implementation regulations in support of Law 18/2017 should be drafted and enforced, in particular regarding the protection of migrant fishers on the basis of Convention No. 181.
- To increase its effectiveness, Law 18/2017 should apply to the act of recruitment as currently it does not include a provision concerning unregistered recruiters or those operating in the informal economy. A regulation should be developed to enable unregistered and unlicensed PrEAs to be sanctioned for recruiting and placing migrant fishers.
- The Ministry of Manpower should invite immigration authorities to comment on draft implementing regulations, monitoring and enforcement.
- Rather than Memoranda of Understanding, legally binding bilateral agreements should be agreed upon to promote and protect migrant fishers' rights covering wages, labour rights, migration costs and other protection measures. At a minimum, MoUs should be developed with migrant fisher receiving port and flag States that include recruitment and placement protection monitoring provisions.

Authority

- The agency should be established to increase cooperation between stakeholders and its membership and responsibilities clarified. This should not cause a delay in the drafting and enforcement of the required implementing regulations.
- Establish a public database of reliable PrEAs with detailed ownership information. This list will facilitate the screening of applications for new licences and, by sharing data with authorities abroad, will support monitoring in the destination country.
- The Ministry of Manpower labour inspection department should increase the capacity of labour inspectors to conduct inspections of PrEAs recruiting migrant fishers. Guidelines for inspections in the fisheries sector should be elaborated.

Infrastructure

- The Ministry of Manpower should disseminate comprehensive information to prospective migrant fishers advertising jobs through social media and radio, and raise awareness of labour rights and access to justice.
- The Ministry of Manpower should accelerate and streamline the documentation process to reduce migration costs and subsequently encourage workers to migrate through safer formal channels. This can be supported by simplifying documents and using the one-stop service.

- A single complaints mechanism accessible to migrant fishers and their families for complaints at all stages of the recruitment and placement process should be implemented, including free access to judicial and non-judicial remedies.
- The Ministry of Manpower should appoint labour attachés in all key overseas Indonesian representations (embassies and consulates) and consider seconding staff members to the informal service points established by the Ministry of Foreign Affairs. Labour attachés may cover multiple countries through an online and/or mobile registration system for migrant fishers, which may double as a complaints hotline.
- The Ministries of Foreign Affairs and Manpower should improve the reporting lines from Indonesian representations to the Ministry of Manpower migrant workers' department, with standardized protocols to follow up. In addition, cooperation with local NGOs and other civil society organizations needs to be enhanced.
- The Ministry of Manpower should install monitoring at different stages of the recruitment and placement process, including at PrEA registration, to check ownership and licences, recruitment databases and the existence of placement and work agreements. At immigration, migrant fishers' documents can be checked, including the validity of passport and health certificates, while monitoring may take place in the destination country through the migrant fishers' registration with the Indonesian representative and through random documentation checks.
- The International Labour Organization should consider including a long-term monitoring mechanism, including through (baseline) assessments and follow up studies, within the SEA Fisheries Project to enable the evaluation of trends and changes.

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