

Use of the Memorandum of Understanding Model on Legal Protection Of Indonesia Migrant Workers

Abdul Maasba Magassing

S.M. Noor

Iin Karita Sakharina

Salma Laitupa

Viyani Annisa Permatasari

Faculty of Law, Hasanuddin University, Makassar, Indonesia

Abstract

The purpose of this article is to discuss the legal protection of migrant workers, however there is a difference between the legal system and culture of the sending states and the recipient country, causing problems to arise. To anticipate such problems both the sending states and the receiving states are obliged to legal protection measures so that they may avoided becoming the object of arbitrariness/lawlessness. Therefore, to avoid this, one of the efforts that needs to be done is to make a bilateral agreement in the form of a legal document in the model of a Memorandum of Understanding (MoU) that is not too formal, but is quite effective with the recipient country. In addition to this, the Indonesian government's commitment is demonstrated by its active participation in the discussion of various international legal instruments related to the rights of migrant workers. This article uses a literature study with a juridical approach and is complemented by field/case data.

Keywords: memorandum of understanding, legal protection, Indonesia migrant workers

I. Introduction

International labor migration is the process of the movement of people from one State to another State caused by a variety of reasons, one of which is to get a job. According to the International Labor Organization¹ it is estimated that 231 million people migrate internationally. In addition, the Indonesian Ministry of Foreign Affairs note that there are 2,7 Indonesian citizens that are overseas, of which more than 90 % work to earn a decent living.²

Migration has a positive impact for the migrants and for their State of origin, ranging from the fulfillment of employment for the workforce to the remittance that may push the economy of the State of origin. Nevertheless, the large flow of international labor migration also brings about local consequences; the emergence of various challenges that must be faced.³

Indonesian Migrant Workers (TKI) mostly work in the informal sector and have low levels of education, thus being in a vulnerable or disadvantageous position, with such conditions often become victims of exploitation.

The Indonesian Government has an obligation to provide protection for the Indonesian workers. This is in accordance with the 1945 Indonesian Constitution which guarantees that each Indonesian citizen has equal rights and opportunities without discrimination, to obtain decent employment and livelihood. The protection of Indonesian workers overseas is an effort to realize equal rights and obligations for Indonesian workers to obtain decent employment and livelihood in accordance with their expertise, skills, talents, interests and abilities, whose implementation is undertaken with due regard to the dignity, humanity, human rights and legal protection as well as equal distribution of employment opportunities and the provision of manpower in accordance with national needs.

¹ International Labour Organization: World of Work Report 2014

² Badan Pengkajian dan Pengembangan Kebijakan Kementerian Luar Negeri, 2016, *Posisi Dasar Kebijakan Luar Negeri Indonesia*, Kementerian Luar Negeri Republik Indonesia, p. 431

³ *Ibid.*

One of the efforts taken by the government to realize a decent live is pursued through a policy we know as the expansion of employment opportunities program and the utilization of labor with inter-work mechanisms. Through mechanisms between inter-local work and inter-regional work, the problem of labor utilization has not been resolved, due to the limitation of domestic sectoral absorption capacity, the labor placement program is developed through inter-work mechanisms between Countries by placing Indonesian workers overseas.¹

The placement of migrant workers overseas is conducted through a process that begins with preparation, placement and repatriation to the country of origin. In Law No. 39 of 2004 on the Placement and Protection of Migrant Workers Overseas in consideration subsections(d) and (f) have emphasized that:

“That the State shall guarantee and protect the human rights of its citizens working both at home and abroad based on the principle of equal rights, democracy, social justice, equality and gender equality, anti-discrimination and anti-trafficking”.

“In the placement of migrant workers overseas that requires integration between the central and regional government agencies and the participation of the public in the legal system to protect Indonesian workers overseas”.

To ensure protection for migrant workers working overseas, the Indonesian government continues to make various efforts to enable Indonesian workers to work comfortably and to maximum protection. One efforts made is to make bilateral agreements with the receiving states. In addition to this, the commitment of the Indonesian government is demonstrated by its active participation in the discussion of various international legal instruments related to the rights of migrant workers.²

The protection of migrant workers is considered the jurisdiction of the migrant workers' receiving states's labor law, therefore the protection of their rights is very dependent on the good faith of the receiving states and the goodwill of their employers. The government cannot apply the placement and protection of labor through the eyes of national law alone. The protection of migrant workers has an international dimension which includes bilateral cooperation with the receiving states and the subject of State law.³

Currently, in regional forums, the Indonesian government actively participates in the ASEAN Instrument on the Protection and Promotion of the Rights of Migrant Workers also known as the ASEAN Declaration on Migrant Workers, year 2007. This instrument is intended to be a legal umbrella for migrant workers in the ASEAN region. At the multilateral level, Indonesia has ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families through Law No. 6 of 2012. This is to demonstrate the Indonesian's Government commitment to provide protection for migrant workers overseas with reference to the standards of the Convention.

Although both instruments have been accepted by Countries as international positive law, but specifically related to migrant workers, the Indonesian government and partner Countries where migrant workers were placed still requires a more effective model or form of law that is more effective that is known as the MoU document model (Memorandum of Understanding) which is more flexible. Based on this explanation, then the problem discussed in this paper is how the model or form of legal protection for Indonesian migrant workers should be?

II. Research Method

This research is a legal research, legal science has characteristics as a prescriptive and applied⁴ or legal science as a *sui generis science*.⁵ With perspective character, legal research proceeds to discover legal rules, legal principles, and legal doctrines. This legal research is conducted for academic studies.⁶ The approaches used in this research are the statute approach, conceptual approach and case approach.

¹ Fadri, *et.al.*, 2010, *Pelayanan, Penempatan, dan Perlindungan Tenaga Kerja Indonesia-Kasus Pendataan Selapajang-Leuser*; Cita Pustaka, Jakarta, p. 1-2

² Badan Pengkajian dan Pengembangan Kebijakan Kementerian Luar Negeri, 2016, *Op.Cit.*, p. 436

³ Koesrianti, 2010, *Kewajiban Negara Pengirim dan Negara Penerima Atas Perlindungan Pekerja Migran*, Jurnal Diplomas Vol. 2. No. 1

⁴ Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, p. 26

⁵ Philipus M. Hadjon and Tatiek Sri Djatmiati, 2005, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta, p. 1

⁶ Peter Mahmud Marzuki, 2010, *Op.Cit.*, p. 35

Based on these three approaches an assessment of the reasoning of various international conventions and philosophical background, as well as the historical development of all migrant workers and their families.

The legal material that have been collected are then classified in accordance with the research formulation, research objectives and the systemic preparation of research results. After it has all been organized then conducted analysis and/or interpretation. This paper is also accompanied with field data that has been processed.

III. Result and Discussion

A. Memorandum of Understanding (MoU)

International Treaties using the MoU Nomenclature is the most popular form of agreement used in international treaty-making practices. Anthony Aust said that “the widespread use of MOUs results solely from state practice”¹ According to Eddy Pratomo² Memorandum of Understanding/MoU is one of the most distinctive/typical state practice, specifically in Countries with the common law system, who view that MoUs are non-legally binding and must be distinguished from Treaties. But the practice of other Countries including Indonesia emphasizes the principle that any agreement made between Countries (including MoUs) has binding power like Treaties. On the other hand, Damos Dumoli Agusman³, argued that from the political perspective of Indonesia uses MoU to illustrate informal agreement illustrates informal agreements that do not require complicated procedures that are not too binding. MoU is a common heading used by Indonesia in bilateral agreements.

Although Law No.24 of 2000 on International Treaties does not question the title of the nomenclature, but Indonesian practice has led to the crystallization of certain nomenclature usage for certain material; for example, it uses Agreements an umbrella and then MoU as well as Arrangements for its derivative instruments. This Approach is intended only for practical needs and does not legally reduce or prohibit Indonesia from determining other forms based on the principle of freedom of contract as both parties agree.

Furthermore, Eddy Pratomo believes that the term MoU is used for political reasons that is to as much as possible avoid using the term Agreement that is considered more formal and binding. The existence of MoU that is non-legally binding in the practice of various Countries, will lead to a situation where a party assesses the document as a legally binding international treaty, but the other party believes it to be a document that contains only political and moral commitment.⁴

B. Legal Protection

The law is created as a means or instrument to regulate the rights and obligations of legal subjects so that each legal subject can perform its duties properly and receives its rights fairly. In addition to this, the law also functions as a protective instrument for legal subjects. According to Sudikno Mertokusumo, the law functions as the protection of human interests. In order for human interests to be protected, the law must be implemented. Legal protection can take place normally, peacefully, but it can also happen because of a violation of the law.⁵ Violations of the law happen if specific legal subjects do not perform their obligations or because they violate the rights of other subjects. The legal subjects whose rights are violated must be protected by the law.⁶ That the law calls for peace, peace between people is defended by law to protect human interests such as honor, freedom, soul, property, and so forth against those who disadvantage them.⁷

C. Migrant Worker Rights

A migrant worker is a person who migrates from his or her birthplace to another place and then works in that new place within a relatively fixed period of time. Migrant workers cover at least two types: internal

¹ Anthony Aust, 2000, *Modern Treaty Law and Practice*, Cambridge University Press, United Kingdom, p. 30

² Eddy Pratomo, 2016, *Hukum Perjanjian Internasional*, Elek Media, Jakarta, p. 166

³ Damos Dumoli Agusman, 2010, *Hukum Perjanjian Internasional, dan Kajian Teori dan Praktik Indonesia*, PT. Refika Aditama, Bandung, p. 33

⁴ *Ibid.*, p. 167

⁵ Sudikno Mertokusumo, 2005, *Hukum Ketenagakerjaan Indonesia*, Bumi Aksara, Jakarta, p. 130

⁶ Yahya Ahmad Zein, 2016, *Hak Warga Negara di Wilayah Perbatasan, Perlindungan Hukum Hak Atas Pendidikan dan Kesehatan*, Liberty, Yogyakarta, Jakarta, p. 3

⁷ *Ibid.*, p. 4

migrant workers and international migrant workers. Internal migrant workers are concerned with urbanization, while international migrant workers cannot be separated from globalization. Internal migrant workers (domestic) are those people who have migrated from their place of origin to another place that is still within the territory of Indonesia. Because of the tendency for rural-to-urban migration, internal migrant workers are often identified with “villagers working in the city.”

International migrant workers (overseas) are those who have left their homeland to fill jobs in other countries. In Indonesia, this definition refers to Indonesians who are working overseas or known as Indonesian migrant workers. Because the Indonesian migrant workers issue often involves the women workers who become manual laborers overseas, Indonesian migrant workers are usually associated with female workers (TKW).¹

Further, labor migration is the term used to describe the movement/migration done by people from one place to another, for the purpose of working or to find work. When migrating, they are classified as “migrant workers”. Labor migration covers many types of migrant workers, ranging from less skilled to semi and very skilled contract workers. In the context of labor migration, countries where migrants originate from are referred to as “Sending States” and the receiving states are referred to as “destination Countries” or “host Countries.”

The right to work and the right in work is a Human Right. The protection and fulfillment of those rights provide an important meaning for achieving a decent standard of living. Jeff King asserted that, “The right to work is considered a right of fundamental importance for both intrinsic and instrumental reasons. It is of intrinsic importance because work is a fundamental part of our daily life activity, and is therefore an expression of our spirit and a strong determinant of our happiness”.²

The right to work is provided for in Article 23 UDHR as follows: (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

The placement of labor overseas has a different impact in each country. Positive impacts in sending states among others are: resolving high unemployment, providing employment for low-skilled workers looking for, improving people’s welfare. The existence of technology transfer in terms of placement to Japan and South Korea. However, there are also negative impacts, including exploitation of migrant workers, family splits, trafficking, people smuggling and so on.

The part of society with a low level of education will be easily attracted to working overseas, which promises a higher wage for the same type of work in Indonesia. This is exploited by irresponsible parties who practice recruitment, thus causing workers to be trapped in a debt-laden situation to go overseas. The workforce is often not well-trained and does not understand their rights so it is easy to exploit. On the other hand, destination and transit countries face problems with illegal migration, organized criminal networks involving people trafficking, and people smuggling, as well as other social problems. The transnational nature of labor migration requires the involvement of the sending, transit, and placement countries to address these challenges.

Strict labor migration policies in the destination countries and the low commitment of sending and placement states to protect migrants result in the vulnerability of groups of workers requiring special protection. On the other hand, high skilled workers tend to have better protection compared to the semi-skilled or the low-skilled. High-skilled workers are more appreciated by the placement countries’ government because they are able to meet the pressing needs of the labor market with their specialized skills. While low-skilled or semi-skilled workers fill vacancies where many residents in the destination Countries do not want to do so because of low salaries. Many sending and placement states delegate to private companies (business mechanisms) to address the placement and protection of low-skilled migrants.

¹ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_1223_18.pdf
Accessed on 29th April 2016

² Majda El Muhtaj, 2013, *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, dan Budaya*, Rajawali Pers, Jakarta, p. 181

D. Usage of MoU and Agreement between Indonesia and Placement Countries

Memorandum between Indonesia and the placement countries in principle must prioritize the protection aspect over the placement aspects. Current MoU stalk more about placement and pay less attention to the protection and fulfillment of the rights of Indonesian migrant workers. For MoU to be more comprehensive, MoU or other forms of agreements made by Indonesia with placement Countries should refer to international conventions governing the fulfillment of the rights of migrant workers. Specifically, for domestic sector laborers/domestic helpers, need to refer to ILO Convention Concerning Decent Work for Domestic Worker (ILO Convention 15 A/ILO Convention No. 189) adopted on June 2011. This convention was born against the backdrop of recognizing that of the significant contribution made by domestic workers through the movement of money from the placement country to the sending states (*nota bene* developing countries), which provides a solution to the growing number of aging populations, children, and the differently abled that require nurses. The convention recognizes the contribution of domestic workers in reducing employment, especially in developing countries.

This convention obliges state parties to:

1. Ensure the fulfillment and protection of human rights for domestic workers.
2. Respect, promote, realize fundamental principles and rights in a work that includes: freedom of association and recognition of the right to collective bargaining, the elimination of all forms of forced labor, the abolition of the use of child labor, the elimination of discrimination in employment.
3. Protect the rights of domestic workers and employers to establish and join an organization, federation, or confederation of their respective preferences.
4. Establish a minimum age for domestic workers under the provisions of international law relating to age restrictions and with regard to national law.
5. Provide an opportunity to gain access to education or the opportunity to participate in vocational education/training for workers under the age of 18 or those above the specified maximum age.
6. Ensure protection of domestic workers from any form of violation, violence, harassment.
7. Ensure domestic workers to receive fair treatment and a decent work environment that also concerns privacy.
8. Ensure domestic workers obtain information on their rights and obligations in accordance with those agreed in work contracts in accordance with national law, policy or consensus.
9. National Laws and Policies should include domestic workers from other countries who have previously obtained job orders or work contracts that may apply in the placement country.
10. National Laws and Policies shall govern the repatriation and its terms in the event of termination or eventual termination of a contract of employment.
11. Ensure the rights of domestic workers who include candidates for freedom to make agreements with employers or prospective employers to live together or not with employers; and the right to store goods and identity documents.
12. Ensure equal rights of domestic workers with other workers in terms of working hours, overtime compensation, and time off / leave.
13. Arranging the mode of payment for domestic workers both in cash and forms of payment and health in the work environment.

14. Ensure safety and health in the work environment.
15. Ensure equality of treatment for domestic workers in the case of social security which includes the issue of childbirth in accordance with applicable national law.
16. Ensure arrangements on the obligations of private agencies in their national law, including regulating sanctions against offenses committed by agencies.
17. Ensure equality of opportunity for judicial proceedings in courts or through other dispute resolution mechanisms for domestic workers not exceeding or equal to those generally held by workers in general under applicable national provisions.
18. Ensure mechanisms and means of delivering complaints from domestic workers in order to provide protection.

With the ILO Convention concerning Indonesian domestic workers and other sending states should ratify the Convention to provide adequate protection. In addition, the participation of the placement State should be encouraged in ratifying ILO Convention 15A/ ILO Convention No.189.

With respect to employment agreements, the ILO convention assets out the Government's obligation to provide information and understanding to domestic workers on rights and obligations in the workplace. The employment agreement shall include:

1. Name and address of employers and workers;
2. Address of work;
3. Duration of employment;
4. Salary method;
5. Normal hours of work;
6. Annual leave with salary, including the right to cut in a week;
7. Provision of food and shelter;
8. Trial period;
9. Repatriation of workers; and

Matters relating to termination of employment, including duration of notification.

E. MoU and Agreement

E.1. Qatar

Agreement between the Government of the Republic of Indonesia and the Government of the State of Qatar concerning the Regulation of Indonesian Manpower Employment in the State of Qatar.

This agreement basically has adequately represented the things recommended by the ILO through *Convention concerning Decent work for Domestic Workers*. This can be seen in the substance of the MoU that has regulated the mechanism of the placement of Indonesian workers which can only be placed in Qatar based on existing job orders. Job orders from the Qatari government are conveyed to the relevant parties in Indonesia to complete qualifications and specifications of labor qualifications and specifications listed in the job order. The job order also describes the condition/working environment that will be faced, as well as the rights of the worker, such as accommodation to and from Qatar, work and leave salary. The Agreement also requires a work agreement to be written in Indonesian and Arabic and to be printed in four copies, each for the employers, workers, the Qatari Ministry of Labor and Social Affairs, and the Indonesian Embassy.

The agreement states the obligation of the Manpower Ministry to take the necessary steps in facilitating document preparation medical examination, and to give the Indonesian migrant workers an understanding of the workplace conditions, the costs to be incurred and the standard of living in Qatar. The agreement includes the rights of the Qatari government to repatriate workers if it disrupts Qatar's national security. The agreement also contains the repatriation of workers at the time of the completion of the contract and if there is a dispute with the employer it will be settled under the law of Qatar.

The agreement also contains an agreement to respect each country's regulations especially on the placement and protection of workers. However, this agreement does not include a monitoring mechanism for relevant parties, employers, workers, worker sending and receiving institutions. In addition, there has been no sanctions when there are parties who violate the employment contract. Or in other words, the agreement focuses on the side of the placement and has not much to mention the issue of protection. This agreement regulates the general placement of workers applicable to the formal and informal sectors so as not to specifically specify the placement and protection of domestic helper (PLRT), especially on the emphasis that PLRT also has the same rights and position as other workers

E.2. Jordan

Memorandum of Understanding between the Indonesian Government is represented by the Ministry of Manpower and Transmigration and the Hashemite Kingdom of Jordan represented by the Ministry of Labor on the Placement and Protection of Indonesian Domestic Helpers.

Between the Government of Jordan and the Government of Indonesia has a special MoU yang regulating the placement and protection of Indonesian migrant workers in Jordan, one of the advantages in this MoU is to include the mechanism of updating employment data by the Government of the two countries, thereby facilitating the implementation and service of Indonesian citizens overseas. This MoU also mentions a mechanism for worker holidays, assurance mechanisms, and worker payroll.

However, the MoU does not elaborate the mechanism of the placement of Indonesian migrant workers in Jordan, particularly in the placement of Indonesian migrant workers based on job orders from the Jordanian Government. Although it does not mention the employment agreement, it does not elaborate further on the matters that should be included between the employer and the employee, especially regarding the rights and obligations of the employer and employee. The MoU also does not clearly mention the mechanism of repatriation, and the mechanism for the fulfillment of workers' rights if repatriation occurs.

The MoU only specifies the law enforcement mechanisms against those parties that place Indonesian migrant workers illegally. The mechanism for dispute/conflict resolution between the employer and the employee as well as the right of workers to defend themselves before the law has not yet been described. Meanwhile it has been explained in the MoU that the placement of Indonesian migrant workers is done by the sending and receiving agencies of both countries. However there has not been any mention of the oversight mechanisms of these agencies by their respective governments.

E.3. Kuwait

Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of the State of Kuwait on the Placement of Manpower.

The MoU regulates the worker placement mechanisms generally, and does not specifically address the mechanisms of employment placement and protection in the informal sector. The MoU also does not state that the right and status of workers in the domestic sector are equal to those in other sectors. This MoU can also be said to be very weak, because it is still very general and normative. It does not explain the employment placement mechanism based on job orders from the Kuwaiti Government, employment agreements, as well as the rights and obligations of the workers and employers.

In this MoU the mechanism for repatriation and the fulfillment of workers' rights when repatriation happens is not explained. In addition to this, it is not explained in detail about the parties eligible for the placement of manpower and this MoU also does not regulate the oversight mechanism by the government of both Countries to the sending and receiving parties.

E.4. United Arab Emirates (UAE)

Memorandum of Understanding between the Government of the Republic of Indonesia and the United Arab Emirates Government in the field of Manpower.

MoU between the Government of Indonesia and the UAE Government only provides for general employment and does not specify the placement and protection of work in the informal sector. Because it only regulates the placement of employment generally, it is not included in the MoU's emphasis on the need for equal rights and the position of domestic workers in the domestic sector with workers in other sectors.

In the MoU, it has been explained about the mechanism of the placement of foreign workers based on job orders, which includes specifications and qualifications required by the conditions/work environment and the rights of the workers. Other matters which have also been contained in the MoU are employment agreements between the employer and the employee, and it has also been explained regarding the aspects which should be included in the employment agreement.

Meanwhile what has not been included in the MoU is concerning the minimum age of workers, repatriation mechanisms and oversight mechanisms to channeling agencies of each country's government.

E.5. Malaysia

Protocol of Amendment to Memorandum of Understanding of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers signed in Bali Indonesia on 13 May 2006.

MoU between the Indonesian Government and the Malaysian Government includes the establishment of a Joint Task Force composed of representatives from both parties. This Joint Task Force seeks to provide an appropriate solution associated with PLRT. The process of receiving Indonesian migrant workers is under the strict supervision of the Malaysian Government, where the service users are obliged to personally or through placement agencies in Malaysia to obtain permission of the Malaysian authorities in the case of recruitment of PLRT.

The amendment protocol also regulates the amount of monthly effort provided to the PLRT under the terms and conditions of the Employment Agreement, adjusted to market mechanism by paying due regard to the wage range agreed by the parties to the employment agreement. In the Amendment Protocol, it is also explained that the passports are under the control of the PLRT, not the employer. PLRT are also entitled to 1 (one) day off every week, through agreement and worker. The amendment protocol also completely sets out the mechanisms for dealing with self-employment or incompetence.

Meanwhile, the 2006 MoU alone does less to regulate informal Indonesian migrant workers, and regulates placement more.

E.6. South Korea

Memorandum of Understanding between the Indonesian Ministry of Manpower and the Korean Ministry of Employment and Labor concerning the Sending of Indonesian Works to the Republic of Korea based on the Employment Permit System.

This MoU clearly covers the aspects of the placement and protection of Indonesian migrant workers to Korea, such as the obligation of sending and receiving institutions in both countries, Indonesian migrant workers sending costs, skill testing mechanisms, labor contracts and so on.

With this memorandum, then Indonesian workers who can work in South Korea are those who have passed the skill tests, according to the work system applied in Korea. This mechanism can certainly minimize the placement of workers with minimal education who are vulnerable to acts of fraud, violence, and sexual harassment.

In addition to employment, the MoU also contains cooperation in encouraging human resource development through training.

E.7. Japan

Memorandum of Understanding between the National Board for the Placement and Protection of Indonesia Overseas Workers and the Japan International Cooperation of Welfare Services on the Deployment and the Acceptance of Indonesian Candidates for “Kangoshi”, Indonesia Candidates for “Kaigofukushishi”, Indonesia “Kangoshi”, and Indonesia “Kaigofukushishi”.

This MoU regulates the sending of Indonesian nurses and caregivers to Japan, including the required experience, training program, minimum wages and so forth. More technical and specific issues are further defined in the MoU’s guidelines.

VII. Conclusion and Recommendation

Based on the description above, it can therefore be concluded that State attitudes both as migrant workers’ sending states as well as recipients of migrant workers still differ and have different views even though their State has become a party to both regional instrument and multilateral conventions on the protection of migrant workers. Thus, to bridge the existing constraints stated in the findings or the result of the previous research, the following things are advised as a follow up of the study:

- That it is necessary to develop programs that support the development of migrant worker;
- The consequences of the recipient country not ratifying the convention is that the convention becomes ineffective. Hence there is a need to reinforce bilateral agreements, including those in the form of MoUs whose content is parallel to conventions.
- The prevention and eradication of trafficking and people smuggling
- Harmonization of national labor laws with international labor standards.

References

- Anthony Aust, 2000, *Modern Treaty Law and Practice*, Cambridge University Press, United Kingdom.
- Badan Pengkajian dan Pengembangan Kebijakan Kementerian Luar Negeri, 2016, *Posisi Dasar Kebijakan Luar Negeri Indonesia*, Kementerian Luar Negeri Republik Indonesia.
- Damos Dumoli Agusman, 2010, *Hukum Perjanjian Internasional, dan Kajian Teori dan Praktik Indonesia*, PT. Refika Aditama, Bandung.
- Eddy Pratomo, 2016, *Hukum Perjanjian Internasional*, Elek Media, Jakarta.
- Fadjri, et.al., 2010, *Pelayanan, Penempatan, dan Perlindungan Tenaga Kerja Indonesia -Kasus Pendataan Selapajang- Leuser*, Cita Pustaka, Jakarta.
- http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_1223_18.pdf accessed on 29th April 2016
- International Labour Organization: World of Work Report 2014.
- Koesrianti, 2010, *Kewajiban Negara Pengirim dan Negara Penerima Atas Perlindungan Pekerja Migran*, Jurnal Diplomasi Vol. 2. No.1.
- Majda El Muhtaj, 2013, *Dimensi-Dimensi HAM: Mengurai Hak Ekonomi, Sosial, dan Budaya*”, Rajawali Pers, Jakarta.
- Peter Mahmud Marzuki, 2010, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta.
- Philippus M. Hadjon and Tatiek Sri Djatmiati, 2005, *Argumentasi Hukum*, Gadjah Mada University Press, Yogyakarta.
- Yahya Ahmad Zein, 2016, *Hak Warga Negara di Wilayah Perbatasan, Perlindungan Hukum Hak Atas Pendidikan dan Kesehatan*, Liberty, Yogyakarta, Jakarta.