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**District Legislation and Access to Justice:
A Case Study of Female Migrant Workers in Cianjur**

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Abstract

This paper discusses whether district level legislation in Indonesia provides an effective new avenue for access to justice for female migrant workers (FMW). It criticizes the national law that has insufficiently addressed the problems faced by FMW. Under the decentralization policy, district level regulation became an option for FMW to remedy the injustices suffered by them. A District Regulation could improve migrant workers' protection from various problems which occur prior to departure and upon their return to their home regions. This paper includes data from field research in the district of Cianjur (West Java), where the current District Regulation concerning migrant workers does not protect them effectively and thus should be revised. The paper focuses on the work of a local Non-Governmental Organization (NGO) with FMW. It argues that the ways in which the NGO has assisted migrant workers in voicing their grievances, and has used these voices to ensure effective participation in the process of drafting the District Regulation and subsequently to secure its effective implementation, has served to increase access to justice for these workers. The case study also indicates that participation in drafting district legislation has had a variety of indirect effects, one of which was increasing awareness amongst both government officials and the wider public of the various ways in which the rights of migrant workers are being violated.

Keywords: *Access to justice, female migrant workers, district legislation, legislation process, Indonesia*

1. Introduction

District legislation is increasingly seen as a useful avenue for NGOs to help disadvantaged Indonesians address injustices. A number of migrant workers' organizations that work at district level in Indonesia - in the districts of Cianjur, Cirebon, Sukabumi, Brebes, Grobogan, and Blitar, among others - are currently using District Regulation to address the ongoing violation of the rights of female migrant workers (FMW). They argue that '[we] should have District Regulation to ensure the safe mobility of migrant workers at home and in the destination country to ensure the enforcement of the migrant workers' rights.'² The NGOs' operations are sometimes supported by government officials who believe that the monitoring of migrant workers' mobility in the destination country would not be effective without active participation of the sub-national government, mainly at the district level.³

The current national law to protect FMW has provoked criticism (Komnas Perempuan, 2006; Arnold, 2007; Solidaritas Perempuan, 2010). The Law on the Placement and Protection of Indonesian Migrant Workers (Law No.39/2004) does not have a clear vision to protect Indonesian migrant workers. It does not provide comprehensive ideas to deal with abuses of migrant workers inside and outside the country. Furthermore, labour ministerial decrees are needed to get this law implemented. The Law No.39/2004 is not equipped with adequate instructions for sub-national government to support migrant workers' protection. The national government's effort to encourage nation-wide support to increase migrant rights protection through the Presidential Instruction No.6/2006 (The Instruction) was a complete failure.

Between 1999 and 2005 the Indonesian government gradually transferred both budgets and discretionary powers in fields such as labour relations, land tenure and trade from the central government in Jakarta to Indonesia's district governments. Observers of Indonesian politics have argued that this process of government decentralization in Indonesia supports the process of democratization and the strengthening of civil society, as the ongoing decentralization enables sub-national government to respond more effectively to societal demands (Antlov 2003; Goffar et.al. 2003; Schulte Nordholt and Van Klinken 2007). But for the struggle for gender rights, decentralization has been a mixed blessing (Arnold 2009): while on the one hand discriminatory district regulations have been adopted in several regions,⁴ on the other hand decentralization has created new avenues for activism (Siahaan 2003) and some regional parliaments have adopted policies to support gender equality. Decentralization opens up possibilities for civil society organizations to participate in the district regulation process with the aim of improving the condition of FMW (Arnold, 2009).

FMW face abuses before, during and after their stay abroad: many of them face physical, mental and sexual abuse, are discriminated against and are also regularly tricked out of their hard-earned salaries.⁵ These abuses need to be addressed at both National and sub-national government policy levels. The central question in this article is whether sub-national or district level legislation in Indonesia provides an effective new avenue for access to justice for FMW. For example, a district level regulation could address data falsification of the prospective FMW, include

provisions against illegal recruitment of migrant workers or female trafficking or regulate the activities of sub-national branches of migrant workers' recruitment agencies and provide instructions for monitoring them.

This paper includes data from field research in the Cianjur District. SBMC (Solidaritas Buruh Migran Cianjur or Cianjur Migrant Workers Solidarity), a local NGO in that district, used district level regulation to defend the rights of FMW. A case study of returned FMW in Girijaya village in Cianjur indicates how SBMC assists FMW to deal with these injustices. The case study will serve to examine to what extent the legislation process in Cianjur District was an effective avenue to tackle the injustices faced by the FMW.

SBMC functions as an intermediary, as it helps FMW to translate their experiences into the language of the violation of basic human rights (Merry: 2006). It helps victims to name the injustices they faced, and to attribute blame (Felstiner et.al. 1981). SBMC recorded stories of the returned FMW and the organization facilitated a public hearing in order to inform local parliament members and local government officials of their plight.⁶ SBMC decided to advocate the rights of FMW by pressurizing the local government to adopt a new District Regulation.

After providing a brief overview of the challenges involved in protecting the rights of FMW, this paper will identify problems that hampered implementation of the existing legislation regarding migrant workers' protection. Subsequently I will discuss the efforts of SBMC to get the district parliament in Cianjur to adopt a new District Regulation to better protect the rights of migrant workers. I will show that district level legislation throughout Indonesia is to some extent more of a symbolic instrument for politicians and NGOs to show commitment and to secure funds. Instead of actually tackling the problems of migrant workers, local regulation serves to help NGOs gain access to government funding, while district governments try to use this legislation to receive a larger percentage of the migrant workers' income. Nevertheless, this case study does show that the local legislation process in Cianjur did boost the awareness of both government officials and the wider public of the various ways in which the rights of migrant workers are being violated.

2. Female Migrant Workers in Cianjur

The National Agency for the Placement and Protection of Indonesian Migrant Workers (Badan Penempatan dan Perlindungan Tenaga Kerja Indonesia – BNP2TKI)⁷ states that 696,746 Indonesian migrant workers worked abroad in 2007, of which 78 percent were female. According to the Indonesian Ministry of Manpower and Transmigration, 76% of Indonesian FMW worked in informal sectors in Saudi Arabia, Malaysia, Singapore, United Arab Emirates and Kuwait in 2007. The volume of remittances that migrant workers sent home prompted government support to provide greater opportunities for Indonesians working abroad. A World Bank Report (2008) acknowledged that the majority of migrants were from rural areas where poverty is greatest, and that the remittances would have an impact on poverty reduction. As yet, however, no information is available on the macroeconomic impact of remittances on economic growth, their net effect on poverty alleviation, and the

extent to which such flows have influenced social welfare indicators in the beneficiary community.

As a contribution to improving information on practices in the home area of FMW, I conducted field research in Girijaya village in the south of Cianjur district in West Java. 5,027 villagers live on the fertile lands that are mostly not their own property, as they have had to sell their land to wealthy landlords owing to poverty. Most villagers are farm labourers with daily earnings between 1 and 1½ US\$. With this income, villagers are generally not able to own houses or provide proper education to their children. To escape this misery, most female villagers have decided to leave Girijaya and work as domestic workers in big cities in Indonesia⁸ or in Saudi Arabia.⁹ This migration for *family reasons* is not specific to Girijaya but is common in other parts of Java as well.¹⁰ 'I want to work as domestic helper in Saudi Arabia so that my son is able to study in university,' said a female villager in Girijaya. Apart from that, building their houses was also one of the main motivations for FMW to work in Saudi Arabia.¹¹

Advanced education and skills are not required for female villagers who want to work as domestic helpers abroad. Article 51 Law No.39/2004 requires that prospective migrant workers should have, among other things, an Identity Card, an education diploma, a birth certificate, a marriage certificate, a permission letter from husbands or wives or the guardian, a passport and a medical certificate. For work in Saudi Arabia, recruiters require that the potential workers be Muslim as well.¹²

The recruiters in villages assist the prospective FMW to meet the documentary requirements, and the potential recruits are transferred to and stay in a holding centre in Jakarta to undergo training. A village official in Girijaya acknowledged that obtaining work in Saudi Arabia has been getting easier for female villagers. They do not have to pay recruitment fees, and some former FMW in Cianjur mentioned that they even received money when they applied for a job through an official recruitment agency.¹³

Unfortunately there have been many cases of abuse of FMW. Migrant Care, a Jakarta-based NGO that works on the migrant worker issues, documented a variety of abuses suffered by Indonesian migrant workers in Malaysia, Saudi Arabia, and Kuwait.¹⁴ In February 2008, the International Non-Governmental Organization Forum on Indonesian Development (INFID) presented data on the serious problems faced by Indonesian migrant workers to the UN Human Rights Council.¹⁵ The INFID report stated that 206 Indonesian migrant workers (including 114 females and 90 males) died during 2007, from which 71 died in Malaysia, 36 in Taiwan, 31 in Saudi Arabia and 18 in South Korea, among other countries. During the same year, 303 Indonesian migrant workers were in detention awaiting execution in Malaysia (297 workers), Saudi Arabia (4 workers), and 1 worker each in Egypt and Singapore. Moreover, 600 Indonesian migrant workers were in detention in Saudi Arabia and other countries. Also, there are regular reports of extreme abuses of Indonesian FMW in national and international media. The dreadful experience of Siti Hajar, who was severely injured through serial violence perpetrated by her employer in Malaysia, led to the issuing of a moratorium on sending migrant workers to Malaysia in June 2009.¹⁶

3. Current Legislation and Protection for Female Migrant Workers

In light of this information, there is a clear need for legal protection of FMW both at national and sub-national level. The competence to legislate on matters relating to migrant workers lies at the national government level. Therefore, if we want to understand how district regulations could improve protection for migrant workers, it is necessary to indicate how this type of legislation is situated within the legislative hierarchy, because any law or regulation is only valid as long as it does not contradict higher legislation. In the next two sections, I analyse the substance of the current legislation following the hierarchy from the national level down to Cianjur District regulations.

3.1. Hierarchy of Law and Decentralization Policy

The implementation of the decentralization policy in 1998 political reform in Indonesia has shifted some authority and governance mechanisms from the national government to provincial and district levels. The roles of sub-national government in drafting district or provincial government regulations have gained a strategic position in the context of this decentralization policy. District regulation has become a type of national law that is authorised by the Indonesian Constitution, the Law No.10/2004 on the Creation of Regulations and the Hierarchy of Law in Indonesia, and the Law No.32/2004 on Decentralization Policy. Law No.27/2009 and the Indonesian Government Regulation No.16/2010 regulates the implementation of District Parliament authorities and tasks that include district legislative processes.

The transfer of most government functions from national level to the district and provincial level has resulted in district governments becoming the leads in improving people's welfare. District and provincial governments have been mandated to manage all aspects of governance except foreign affairs, defence, national security, judiciary, financial, fiscal and religious matters. Consequently, labour relation including FMW matters fall under the authority of district or provincial government and, in accordance with the decentralization policy, the district government has authority to develop regulation to govern their administration.

The Indonesian Constitution mandates that district and provincial governments are to regulate the implementation of the decentralization policy, and the national law system has given away part of its powers to sub-national governments in determining district level government ordinances. Article 18 (6) of the 1945 Indonesian Constitution states, 'the provincial and district governments have the right to determine their own regulation to support the implementation of the decentralization policy'. The objective of district level regulation is precisely to accommodate local diversity and needs such as the protection of FMW. Nevertheless, district regulation cannot be in contradiction with national laws. This is highlighted in hierarchy of law under Article 7 Law No.10/2004:

‘Article 7 – Law No.10/2004

- 1) The Hierarchy of Laws is as follows:
 - a. The 1945 Indonesian Constitution

- b. National Law or Government Regulation to Substitute National Law
 - c. Government Regulation
 - d. Presidential Regulation
 - e. Sub-national Government Regulation
- 2) Sub-national Government Regulation as mentioned in paragraph (1) (e) covers:
 - a. Provincial Government Regulation drafted by the provincial Parliament and Governor
 - b. District Government Regulation drafted by the district Parliament and Mayor/Regent
 - c. Village Government Regulation drafted by village representative council and village head
 - 3) The drafting of Village Government Regulation shall be regulated a Regulation made by the District Government.
 - 4) The types of regulation mentioned under paragraph (1) shall be recognised and be regulated in accordance with the provisions of higher laws or regulations.
 - 5) The legal power of laws shall be in accordance with the hierarchy of law mentioned under paragraph (1).'

3.2. Current Legislation on Female Migrant Workers: A Critique

Indonesia has a national regulation for the mobility and the protection of migrant workers. Law No.39/2004 regulates the recruitment, training, and transfer of migrant workers including the method of their protection within and outside Indonesia. The law has been criticized since its inception. Despite evidence of injustices faced by FMW, the national policies on migrant workers' protection do not establish a clear notion of protection. Moreover, various ministerial level regulations required for technical implementation of Law No.39/2004 have not been enacted. Hence, policy directives at national level concerning migrant workers' protection remain vague.

The mentioned Law requires the formulation of a broad range of technical regulations that impose obligations on private recruitment agencies to manage the preparation and placement of Indonesian workers abroad. Arnold (2007) and Solidaritas Perempuan (2010) suggest that various rights and protections for migrant workers in Law No.39/2004 are limited or poorly formulated. There is no specific state agency named to enforce migrant workers' rights and protection. The legal provisions for dispute resolution between migrant workers and the recruitment agencies, for the monitoring of workers' migration, for licensing of recruitment agencies, and procedural and documentary requirements are obscure. Also, Law No.39/2004 does not provide a clear mandate for the protection of migrant workers abroad and there are no mechanisms and methods for the Indonesian Embassy or the Indonesian Foreign Ministry to serve migrant workers facing problems in the destination country.

Although most of Indonesian migrant workers are female, government policy has paid no specific attention to gender related protection needs, such as protecting the female workers being forced to undergo improper medical checks and sexual abuse within households, and facing other problems listed above. As mentioned above, most of

Indonesian migrant workers are female and most of them work in the patriarchal middle-east countries in which gender justice enforcement is generally weak.¹⁷

Law No.39/2004 mandated the establishment of a National Agency for the Placement and Protection of Indonesian Migrant Workers (National Agency). Presidential Regulation No.81/2006 provided for the division of responsibilities with a policy-making role for the Ministry of Labour and an implementation role for the National Agency. In reality, however, the vagueness in the allocation of these responsibilities has created conflicts between the two state bodies and adversely affected FMWs, as acknowledged by the head of the National Agency and by the US Department of State's *Trafficking in Person Report 2010*.¹⁸

Furthermore, the diverse background of National Agency board members that consists of agencies responsible for labour, immigration, foreign affairs, population, health and policing, has not contributed to effectively co-ordinated services. In particular, disagreements between the Ministry of Labour and the National Agency are indicators of weak government leadership. In 2006, the Government of Indonesia promulgated Presidential Instruction No.6/2006 (the Instruction) to respond to the high incidence of abuse of Indonesian migrant workers abroad. The Instruction provided for the establishment of a co-ordination team to strengthen collaboration between government agencies. It outlined the critical components of Law 39/2004 and set up the milestones for each government agency to improve migrant workers' protection.

The Instruction outlines the division of tasks among the relevant ministries, provincial and district governments in dealing with issues under the four headings: the placement of Indonesian migrant workers; the Indonesian migrant workers' protection; the abolition of illegal 'middle-men' and regulation of recruitment agencies. The Instruction authorises sub-national governments to make provisions for prospective migrant workers' education to improve their awareness, increase job creation at district and provincial levels and the prevention of illegal middlemen or recruiters in villages. Komnas Perempuan (2006) criticizes the Instruction for being mostly focused on sending Indonesian migrant workers abroad. It also suggests that the protection section within the Instruction does not deal with social protection.

The Instruction is, however, silent about the role of sub-national governments in the provision of legal aid and other assistance to ill-fated migrant workers. While the Instruction has made this the responsibility of the Ministry of Foreign Affairs and the Indonesian Embassy in the destination countries, it makes no provision for migrant workers who have returned home and face a number of problems such as access to medical insurance and medical services generally because of their time abroad. Sub-national governments should be enabled to enact regulations to ensure that medical services and financial support are available for sick and hospitalized returned workers.

4. Female Migrant Workers: Problems and Protection Needs

It is important that those drafting regulations for protection of migrant workers know the nature of threats and abuses involved. In the interviews I conducted during my fieldwork, the returned FMW in Girijaya, Cianjur, revealed the injustices suffered by

them (Novirianti 2009; See also Solidaritas Perempuan 2010). The table below sets out the nature of the injustices they faced during the process of recruitment and migration, in the households in which they worked and in the process of returning to their home village. It also sets out the appropriate policy responses to deal with the situation.

Problems of the Prospective FMWs prior to Departure		
Actors or Perpetrators	Problems	Possible Policy Response from Government
Recruiters at villages	Recruiters submitted fake information (e.g. age and address) to village heads when applying for an Identity Card (ID) for the potential FMWs. By using a fake ID card an ill-fated FMW might not get an effective redress since, for example, no one is able to contact FMWs' family address since the address written in the ID card (and passport) is different from the original address.	Sub-national government regulations at the village and district level should prevent the submission of false information by recruiters. The regulations should cover the content of the relevant identity databases, its accessibility by government officials and the public, and provide an incentive for FMWs to register themselves.
Recruitment Agency and Paramedics at Jakarta (National level)	The Recruitment Agency provides very poor facilities in the holding centres for migrant worker candidates (e.g. serious overcrowding); often employed FMWs to do the cleaning without authority; provided inadequate language training (resulting in serious communication problems during work); faked information in migrant workers' passport (age, address) resulting in difficulties in contacting the families of FMWs.	The current national law and policies that regulate the holding centres in Jakarta should be revised to accommodate the solution of the problems. The law and policies should require relevant ministries (health, social, justice and human rights, labour, women's empowerment) and government institutions to supervise the training and legal document preparation for the FMWs during the pre-departure period in the holding centres. The National Commission on Human Rights and the National Commission on Violence against Women in Indonesia should be mandated to supervise the pre-departure preparation.
When FMW's are in the Destination Country		
Actors or Perpetrators	Problems	Possible Policy Response from Government
Employers and their family members in the destination countries	FMWs suffered physical abuses such as long working hours, sexual abuses or were not allowed to contact their family back home; FMWs did not receive salary or the salary received did not comply with the contract of employment	The Government of Indonesia should ratify the International Convention on the Protection of All Migrant Workers and Members of Their Families. A Memorandum of Understanding (MoU) should be developed between

		<p>Indonesia and destination countries. The MoU should ensure the rights of FMWs and list details such as minimum salary and number of working days.</p> <p>The Indonesian embassy should provide legal aid for FMWs and disseminate relevant information that is needed for FMWs. The Indonesian embassy should monitor the mobility of FMWs.</p>
Employment agency in destination country	FMWs were transferred without their consent to different employers and employed without remuneration while waiting to be transferred to other employers.	Idem
Family (relatives, parents or husbands) in villages	Family members of FMWs used the money that were sent home by the FMW without the FMWs' permission or knowledge (to buy goods such as motorbikes or even to enter into another marriage); neglect of Children.	The Indonesian government at national and local level (provincial and district) should actively promote the law of domestic violence that prohibits psychological violence to the partner in marriage and also child neglect.
Problems faced by FMWs upon Return		
Actors or Perpetrators	Problems	Possible Policy Response from Government
Officers and government officials, money exchange agencies, porters, ticket office staff, BNP2TKI (national agency) at the terminal for the returned migrant workers.	FMWs suffered from a variety of extortions; families are unable to pick up migrant workers from the airport because FMWs are required to use BNP2TKI vehicle services.	National policies and law should protect the returning FMW from extortion during the arrival time in the terminal. The current special terminal for migrant workers in Jakarta should be abolished. The National Government should order the closing down of the special terminal for FMWs.
BNP2TKI, sub-national Government Apparatus during the journey back to the villages.	FMWs are forced to pay 'unofficial' levies on the trip back to their villages. Migrant workers were forced to make contributions to their villages, in some cases resulting in their improvement.	<p>National and District government should work together and create common policies to end extortions; sub-national government regulation should cover assistance for any returned FMWs who are sick or paralyzed by accidents.</p> <p>Sub-national government should create a district or provincial regulation to encourage sub-national government officials to supervise the arrival of FMWs in their villages.</p>

5. District Legislation and Access to Justice for Female Migrant Workers

I have suggested above the need, as affirmed by the table, for regulation at sub-national level for the protection of FMW. A district level regulation on migrant workers' protection would help prevent the illegal recruitment of migrant workers or female trafficking. It would further regulate sub-national branches of migrant workers recruitment agencies and provide for the supervision of their operation. Sub-national regulation would oblige the District Government to support the sick and paralyzed returned FMW and their families. It would also oblige the District Government to collaborate with sub-national and national state institutions to provide appropriate assistance for returned FMW.

5.1. Problems with the Current District Regulation

Currently, some regions with a concentration of migrant workers, such as Cianjur, East Lombok, Indramayu, and Sukabumi, have District Regulations on migrant workers' protection. However, these have sparked criticism. In particular, Arnold (2007) suggests that the main aim of such regulations, especially their insistence that recruitment offices establish local representative offices, is to secure payment of fees to the sub-national government.

In 2002, the Cianjur District Government enacted District Regulation No.15 on Migrant Worker Protection. It refers to the previous national policy on migrant workers, the Indonesian Ministry of Manpower Decree No.104-A/Men/2002 on the Placement of Indonesian Migrant Workers Abroad. District Regulation 15/2002 clearly aimed to reduce unemployment rates and the lack of employment opportunity in Indonesia and increase migrant workers' protection by improving their quality of life and wealth and respect for their integrity. The District Regulation obliges the Cianjur government to inform citizens about the requirement they have to fulfil if they want to become an international migrant worker. However, the general problems still persist.

Laws should be general, prospective, clear and certain to meet the requirements of formal legality (Tamanaha 2004:96-7). The District Regulation No.15/2002, however, does not have a clear perspective on protection. The Regulation mainly covers the procedure to recruit migrant workers, the establishment of a private recruitment agency in Cianjur, rules and requirements for villagers wishing to be migrant workers, and miscellaneous fees that should be paid by the agency and the migrant workers. There are some obscure sections on monitoring, evaluation, and reporting and there is provision for termination of recruitment agency activity for breach of the Regulation.

District Regulation 15/2002 has been criticised for its lack of clarity and absence of focus on FMW protection in Cianjur. In particular, it does not provide a dispute resolution procedure for disputes between the FMW and the Recruitment Agency. 'The District Regulation merely copied and pasted the Ministry of Manpower Decree on migrant workers' placement,' said a member of parliament in Cianjur.¹⁹ SBMC (Solidaritas Buruh Migran Cianjur) has suggested that the Regulation deals mainly with institutional matters pertaining to the licensing of Recruitment Agencies and the District Government and in particular, the District Regulation does not provide for

legal aid for the abused migrant workers.²⁰ Thus SBMC has had to meet legal aid expenses including transport costs involved in obtaining redress for migrant workers.

A member of parliament in Cianjur, Dadan, pinpointed his concerns regarding the current District Regulation.²¹ In terms of the substantive norms, Dadan observed that the current District Regulation does not touch upon the core problems of migrant workers and trafficking of women in Cianjur. Dadan suggested that Cianjur produced the highest numbers of migrant workers and the second highest number of women trafficking incidents in West Java province. He was concerned with the unsatisfactory management of FMW placements by government institutions in Cianjur and especially called for a migrant workers' database for monitoring their movement and for effective collaboration among local government institutions.²²

Government officials in Cianjur acknowledged that most sections of District Regulation 15/2002, other than those requiring dissemination of information, have yet to be implemented. Unsurprisingly, no sanctions have been imposed on private recruitment agencies or recruiters in Cianjur. The District Regulation implementation unit has contended that no violation of the Regulation has been reported and furthermore that District Regulation 15/2002 contains sections which are beyond the power of the District Government: 'Government in Cianjur does not have power to impose sanctions and revoke the operational permit of district level recruitment agencies.' The Manpower Unit of the District Government blamed the lack of support from implementing institutions in Cianjur for the weak enforcement of the Regulation.²³

5.2. Proposal to Revise the Current District Regulation

A member of the District Parliament in Cianjur acknowledged, 'the role of the District Government is essentially to keep an eye on the sending of migrant workers from the district.'²⁴ He suggested that the current national law on migrant workers' protection dealt inadequately with FMW problems within the district, and suggested that there was need for a district government regulation, development of a local database and a special task force at village, sub-district and district levels to monitor developments and to support the operation of the village database. He further suggested that a District Regulation to protect FMW may also reduce the high numbers of trafficking incidents because of interlinks between FMW and trafficking recruitment.

The practice of demanding taxes and contributions from returned migrant workers in other Indonesian districts has encouraged members of the Cianjur Parliament to demand similar contributions. According to a Member of Parliament, 'Migrant workers in Cianjur are a great potential source for increasing district government income.' However, until now there has been no imposition of compulsory taxation, but nevertheless, demands are made for contributions as 'good citizens'. This confirms Arnold's (2007) analysis that a key objective of district regulations has been to boost sub-national government income (Arnold, 2007).

The District Government and SBMC had different perspectives on the revision of the current District Regulation. Some leading activists in SBMC contended that a revised

District Regulation should encourage the Cianjur District Government to allocate a budget for legal aid that is accessible to independent organizations such as SBMC. In addition, there should be provisions for free and accessible medical services, financial support and local monitoring mechanisms, including a local FMW database. On the other hand, members of parliament and government officials in Cianjur proposed that the revised District Regulation should involve the lowest level government official in villages, establish requirements and procedure for migrant workers' recruitment, provide for co-ordination among government officials by creating a task force from village to district levels and encourage private recruitment agencies to establish their branch in the district. A draft District Regulation was produced by Dadan, a member of the District Parliament.

6. SBMC Advocacy to Promote Female Migrant Workers' Protection

6.1. Legal Aid

Since the 1990s an increasing number of NGOs in Indonesia have begun to focus on women's issues and migrants' rights (Silvey 2006). This is a consequence of reported abuses, including torture, rape, sexual assault, overwork, and non-payment wages, experienced by female migrants and the need for legal protection and support.²⁵ In Indonesia, NGOs which focus on migrant workers' issues mainly operate in Jakarta. Thus the village level work of SBMC in Cianjur is an exception. SBMC was initially established as the 'branch' of Women's Solidarity or Solidaritas Perempuan (SP), a Jakarta-based NGO. Under the leadership of Dede Ela, SBMC coordinator and a former FMW, SBMC provides legal aid for FMW and their families in Girijaya.

Villagers in Girijaya appreciate the role of SBMC in providing legal services for FMW and their families. The training and apprenticeship that Dede Ela underwent with SP in Jakarta has provided her with the knowledge and skills to handle FMW injustices. Using her ability to speak Arabic, Dede Ela contacts the employers of migrant workers in Saudi Arabia and urges them to resolve their problems. Dede Ela has helped many FMW receive the salary retained by employers and has pressed the police in Saudi Arabia to deal fairly with FMW abuses. 'I received my seven months pending salary from my employer with the help of Dede Ela,' said a former female migrant worker.²⁶ However, it has been difficult for Ela and SBMC to deal effectively with violence by domestic employers because of the slow response of the Indonesian Embassy in Saudi Arabia.

6.2. Public Hearings in the District Parliament

After some years of advocacy, SBMC perceived that providing traditional legal aid for FMW would not be enough and there was need to reform government policies at the district level and obtain sustainable funding for legal aid. This led to a campaign involving SBMC and a network of local NGOs to reform the District Regulation No. 15/2002 on the Protection of Migrant Workers. An Agreement to reform the Regulation was reached after intensive negotiation between the activists and members of the Cianjur District Parliament.

Using a simple survey distributed in focus group discussions, SBMC documented obstacles that hampered migrant workers' access to justice. The village discussions, surveys, and focus group discussions encouraged SBMC into using public hearings as the forum to convey FMW grievances. Public hearings are in fact part of the legislative process in District Parliaments and SBMC was able to assist FMW to voice their grievances to legislators in Cianjur.

In January 2006, SBMC mobilized a group of FMW to attend a public meeting at the Cianjur parliament, which is a five hour drive from Girijaya village. The group, consisting of former FMW, SBMC activists, and other local NGOs met Commission IV members in the District Parliament for a public hearing.²⁷ A number of former migrant workers presented their unpleasant experiences working as FMW within and outside of Indonesia. 'I presented my terrible experience during health examination in the holding centre in Jakarta,' said a former migrant worker participating in the hearing.²⁸ Other returned FMW reported experiences of physical and sexual abuse. While most legislators initially ignored the testimony, they changed their attitude when they realised that most of the participants in the hearing were former FMW. As a consequence, Parliament members and some of the government officials in the hearing committed to support and follow up the SBMC proposal to draft a revised District Regulation. This public hearing has thus become an important step in the FMW struggle for access to justice at the sub-national level.

Following the hearing, several events were held and attended by SBMC and the legislators to collate relevant data and information to draft the District Regulation. Pahru of SBMC and H. Saban Farouk of the Cianjur parliament participated in a workshop on FMW organized by the National Commission on Violence against Women in Jakarta. To gather first hand information and lessons learned, all Commission IV members in Parliament and government officials in the Manpower Unit in Cianjur went to remote villages in Cianjur district and visited West Nusa Tenggara and Batam provinces.²⁹ 'Migrant workers in West Nusa Tenggara travel out and in through a single door system so that the local government can easily monitor their mobility' said one of legislators in Commission IV.

The Legislators' observation of several areas that migrant workers belonged to encouraged the production of a draft revised District Regulation. SBMC, having realized its limited drafting capacity acquired the assistance of a university teacher to draft a different version of a revised District Regulation. While some SBMC proposals were incorporated, the draft produced by members of Parliament was dominant during the legislative process.

7. The Outcome of District Legislation in Cianjur

The overall content of the revised draft District Regulation (Draft Revised Regulation) which prevailed in Parliament proceedings did not result in the substantial change to District Regulation 15/2002 expected by most activists and former migrant workers. The Draft Revised Regulation was similar to the previous version in which most sections focus on the roles of private recruitment agencies in sending FMW abroad. Despite a claim that the Draft Revised Regulation follows Law No.39/2004 on migrant workers' placement, it follows a different definition of

migrant workers' protection. The Draft Revised Regulation defines it as 'the protection and advocacy of rights and interests of migrant workers that should be provided by private recruitment agencies and employers' in contrast to the definition in Law No.39/2004 which defined migrant workers' protection as 'any effort to protect the interest of prospective migrant workers to realize migrant workers rights in accordance with the laws and regulations prior to-departure, in the destination country, and upon return to Indonesia'. The focus in the Draft Revised Regulation is on the protection of migrant workers in the hands of private recruitment agencies at the district level and the Draft does not provide a holistic approach and has no clear concept of rights enforcement.

The Draft Revised Regulation is very similar to the current District Regulation in its objective, the definition of protection, the way of informing citizens about the recruitment procedures, and the establishment and roles of private recruitment agencies. A significant difference in the Draft Revised Regulation is the imposition of duties on private recruitment agencies to deal with migrant workers' problems including the provision of legal aid prior to departure, at the destination and upon return. Two concepts that are completely new in the Revised District Regulation consist of the provision of specific responsibilities by village sub-district and other government units and the provision of databases covering both migrant workers and private recruitment agencies. The draft mandated sub-national government agencies to organize dispute resolutions between migrant workers and employers and provide legal aid for the migrant workers.

The Draft Revised Regulation recognizes the role of NGOs in providing legal aid for migrant workers through the advocacy team established to address migrant workers' problems. The authority to monitor migrant workers who are transferred to the holding centre and the destination country remains in the hands of the Cianjur government head. Yet no clear detailed roles and responsibilities are outlined within the draft. The Draft Revised Regulation requires the village government to provide effective services for each prospective migrant worker seeking an identity card or KTP, family card, and birth certificate. Village officials are responsible for monitoring private recruitment agencies.

The Draft Revised Regulation however does not clearly define how district government will facilitate legal aid provided by an NGO such as SBMC. It provides a more detailed section of legal aid by mandating an advocacy team to conduct litigation and non-litigation services. The draft requires officials at Cianjur district and private recruitment agencies to provide legal aid services. The government in Cianjur is required to involve NGOs, local private recruitment agencies, media, workers' union and the community in case handling. The Draft Revised Regulation outlines several responsibilities of the advocacy team, but provides unclear information about the Cianjur government unit charged with this task and the procedure for involvement of local NGOs and other institutions.

The Draft Revised Regulation has clearly imposed obligations on private recruitment agencies to provide assistance for migrant workers starting from the process of recruitment in the village, in the destination country, and upon return to the village. Articles 14 and 39 of the Draft Revised Regulation require the branch office of the private recruitment agencies to ensure the safe mobility of migrant workers. In

particular, private recruitment agencies are tasked with supervising the welfare of Cianjur's migrant workers while they are working in the destination country, are paralyzed or sick or have died during their movement, and assist with insurance claims in case of accident.

The District Government is obliged to supervise the migrant workers' recruitment and placement under the Draft Revised Regulation. This is similar to the present District Regulation 15/2002 in that the draft assigns the responsibility to the head of District Government without details of how the monitoring will be implemented. Surprisingly, the Draft Revised Regulation provides some responsibilities which go beyond district government jurisdiction, for example administrative sanctions that provide the District Government with authority to revoke the recruitment agency's operational permit. The Draft Revised Regulation also focuses on the migrant workers' movement in the destination country, without providing clear coordinating mechanisms between the District and National government.

As a result of political disagreements between members of Parliament, the Draft Revised Regulation was never promulgated and the old District Regulation is still in force. According to Dadan, the Parliament Member in Cianjur, extensive discussions in the Parliament between those who agreed and those who disagreed with the revised draft, were inconclusive. He promised that if his political party won the elections and was reelected as Parliament member, he would continue to support this draft legislation until it was enacted by the Cianjur District. However, in the meantime the old District Regulation is still in force.

8. Conclusion

It has been suggested that the current national law does not sufficiently protect FMW. There should be additional decrees of the Labour Minister to support the technical implementation of Law No.39/2004 concerning the Placement and Protection of Indonesian Migrant Workers. The law does not provide guidelines for sub-national level regulations for FMW protection. The table in section four indicates the comprehensive legislation and implementation strategies that are needed at every level of state institution in Indonesia. The drafting and promulgation of a District Regulation is only one of the strategies.

The most critical issue in the process of drafting the Draft Revised Regulation was the extent to which SBMC succeeded in including FMW voices into the draft. Although, the Draft revised Regulation should provide 'redress' of the FMW injustices only some elements of FMW protection needs are accommodated. The draft offers legal aid facilitation for migrant workers and the concept of a village database for the protection of FMW. However, no complaint mechanism has been established to support FMW access to justice. A suggestion that task forces from village level up to the district should supervise the recruitment and mobility of the FMW was not accommodated in the Draft Revised Regulation. In particular, the expectation of SBMC that the Draft Revised Regulation would require local governments to provide legal aid facilities has not been effectively fulfilled. While it is true that the Draft Revised Regulation provides sections on legal aid for migrant workers, it is unclear on who will bear the cost and the mechanisms for NGO participation. In addition,

although FMW outnumber male migrant workers, they do not receive particular attention in the Draft Revised Regulation.

A key question for this research paper was whether the unfinished district legislation process in Cianjur was an effective avenue for migrant workers' to access justice. The failure to enact an effective Revised Regulation may appear to be an indicator of the limitations of the access to justice strategy. Yet, one good consequence of this district legislation process has been the increase in knowledge and awareness of those involved in the overall legislation process. Former FMW acknowledged that their involvement in village discussions and various events of advocacy has increased their confidence and knowledge of the issues of migrant workers. 'Now, I understand various migrant workers' issues and how to deal with them,' said Tika, a former female migrant worker who works for the sub-district government office in South Cianjur. Above all, as a result of visiting various migrant worker sending areas in Indonesia, parliament members and local government officials have a much improved understanding of the situation of migrant workers in Cianjur.

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² SBMI (Solidaritas Buruh Migran Indonesia or Indonesian Migrant Workers Solidarity); See also Koppbuni, Migrant Care.

³ Sub-national governments mean the Government at Provincial and District level. Indonesia consists of 33 provinces and 400 districts.

⁴ The Indonesian National Commission on Violence against Women estimated that at least 29 gender-discriminatory local regulations have been enacted in post reform Indonesia.

⁵ See below.

⁶ Sally E Merry (2006) suggests that successful human rights movements need personal stories from injured individuals that can be presented in a human rights framework.

⁷ It was established under the Presidential Regulation No.81/2006 concerning the National Agency for the Placement and Protection of Indonesian Migrant Workers or Badan Penempatan dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI). It is a non-departmental agency answerable directly to the President and is mandated to implement national policy for the placement and protection of migrant workers. Even though BNP2TKI is charged with 'developing technical policies', the Presidential Regulation does not clearly define policy-making roles and authority.

⁸ In 2008, 344 female villagers of productive age were working in Jakarta as domestic helpers.

⁹ In 2008, 285 female villagers of productive age were working in Saudi Arabia as domestic helpers.

¹⁰ As indicated by miscellaneous interviews with female villagers in Brebes, Central Java Province and Cianjur, West Java Province.

¹¹ In Girijaya village, we can easily recognize which houses belong to successful female migrant workers. Usually, villagers had to go abroad to work a couple of times in order to earn enough to build such houses (Silvey: 2006; Krisnawaty: 2009).

¹² Recruiter or sponsor (as the villagers called them) is the recruitment agency representative at the village level.

¹³ Some returned female migrant workers admitted that they received one and half million rupiahs or around one hundred and fifty USD as an incentive before they travelled to the holding centre in Jakarta.

¹⁴ <http://www.migrantcare.net/mod.php?mod=content&op=viewcontent&contid=11>

¹⁵ The United Nation General Assembly A/HRC/7/NGO/70 25 February 2008.

¹⁶ <http://www.tempointeraktif.com/hg/hukum/2009/06/28/brk,20090628-184202.id.html> (in Indonesian). This called for the government of Indonesia to provide comprehensive protection for migrant workers. Indonesian NGOs considered that a moratorium on sending migrant workers to Malaysia was insufficient, and urged NGOs to use this opportunity to pressurize the government to get the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family ('the Convention') ratified. By ratifying the convention, NGOs expect that the government of Indonesia would provide more comprehensive protection of migrant workers.

¹⁷ The World Economic Forum 2009 Global Gender Gap Report ranked Saudi Arabia 130th out of 134 countries for gender parity.

¹⁸ Please see <http://www.state.gov/g/tip/rls/tiprpt/2010/index.htm>. Each year, the US Government releases the situation of trafficking in persons across the globe.

¹⁹ Interview with Dadan, a member of Cianjur District Parliament, on 11 March 2009.

²⁰ Interview with Pahru, an SBMC activist, in Girijaya village on 10 April 2010.

²¹ Interview with Dadan, 11 March 2009.

²² Ibid.

²³ Interview with Toto, the staff in Labour Unit in Cianjur District Government, on 11 March 2009.

²⁴ Interview with Dadan, a member of Cianjur District Parliament, on 11 March 2009.

²⁵ See National Commission on Violence against Women (www.komnasperempuan.or.id) and Migrant Care (www.migrantcare.net) both are independent organizations Indonesia.

²⁶ Interview with Imas in Girijaya Village, Cianjur, by 27 July 2009.

²⁷ There are four commissions in Cianjur of which one is Commission IV, which deals with manpower, education and culture, youth and sport, religion, knowledge and technology, social prosperity, and health and family planning.

²⁸ Interview with Tika, a former FMW, who work for sub-district government office in South Cianjur. Interview was held by 10 April 2009.

²⁹ West Nusa Tenggara Province enacted regulations which require that the processing of all migrant workers' traffic should pass through a 'one door' system, in order to provide effective monitoring of movement. Batam Province has a high incidence of women and children trafficking in Indonesia.

