

Session plan

Breakout Session C6:

Home & host, compensation & criminal defense: The many aspects of migrant workers' legal needs & pro bono support (Session 1)

This first session will introduce participants to the wide range of legal needs that migrant workers have, across migration routes that span various home and host countries and ways pro bono can support these needs. Participants will have a chance to discuss what they know, learn about the latest issues in multiple jurisdictions, and consider next steps for either getting involved or advancing their own work in migrant worker advocacy.

Speakers

1. Douglas MacLean, (Justice Without Borders, Regional)
2. Febi Yonesta (SUAKA, The Indonesia Civil Society Network for Refugee Protection)
3. Felicia Ong, (Beacon Law Corporation, Singapore)
4. Hariyanto (SBMI, Indonesia)
5. Irina Zaitseva-- (Herbert Smith Freehills, Hong Kong)

Facilitator

Douglas MacLean

TENTATIVE AGENDA

Introduction of panelists

Icebreaker: participants break into groups and make a list of what they know about the issues migrant workers encounter, whether in home or host countries.

Panelists respond: What issues that participants brought up have you encountered, worked on, or know is common in your jurisdiction?

Home & Host country issues: Participants return to the list of issues they drew up. What issues do they think are common in the home country? Host country? Which ones might require partnerships with those at the other end of the migration route to solve?

How can pro bono address these issues? Panelists will discuss the role that pro bono in their particular sector (international law firm, local law firm, NGO, academia) can play in solving the problems raised in the course of the session.

Closing thoughts on getting involved/Q&A

This agenda is subject to change, so input is of course welcome.

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Douglas MacLean, J.D.
Executive Director
Justice Without Borders



JUSTICE WITHOUT BORDERS

*Because the right to just compensation shouldn't end
Even when a victim returns home*

Justice Without Borders (JWB) is a not-for-profit law firm that supports victims of labour exploitation and human trafficking in seeking just compensation against their abusers, even after returning home. Operating at the regional level, we work with local support organisations along key migration routes to ensure victims can access aid, wherever they are.

Who We Help

Individuals are increasingly migrating across borders for work. Many face exploitation, from unpaid wages to outright human trafficking. With legal aid, victims can seek redress in the host country. However, many migrants return home before they can pursue a case. They give up, lose contact, and the case drops. A cross-border support network that understands international legal aid is vital to ensuring a real chance at compensation exists. Unfortunately, these networks are underdeveloped in the region.



Building International Lifelines to Legal Aid



Connecting stakeholders: Migrant workers live and work along migration routes, while most service providers focus on only one jurisdiction. We seek to connect legal and non-legal stakeholders in home and host countries so victims can go home without giving up their claims. Developing these networks ensures legal aid is as international as the victims who need it.

Case support: JWB helps its partners overcome practical barriers common to cross-border cases, by assisting in identifying, preparing and shepherding a case through to completion. Local lawyers in host countries bring the litigation, while JWB provides the specialised knowledge and know-how to bring a claim on behalf of a client who is often thousands of kilometres away.

Capacity Building of Strategic Knowledge: Transnational litigation is complex. The logistics of gathering evidence, taking statements and conducting remote appearances from abroad are often new issues to many local partners. JWB works to build capacity across countries by identifying best practices and developing strategic legal research to help practitioners maximise success.

Where We Work

JWB focuses on civil litigation in the target host jurisdictions of **Singapore, China (Hong Kong S.A.R), and Japan** where the rule of law is strong, and where victims have sustained the most significant financial damages. Our target host countries exhibit high rates of labour migration, while our target home countries of **Indonesia, the Philippines, and Thailand** have civil society organisations and legal aid that can support host country lawyers in collecting evidence and maintaining client contact.

Recent and Current Projects

Ground Breaking Practitioner's Manuals on Bringing Cross-Border Civil Claims

The Singapore-focused Practitioner's Manual for Migrant Workers explains the claims that victims can bring against bad employers or agents in Singapore courts, and how to access remedies remotely. It serves as both a screening tool for non-lawyers and a how-to guide for legal professionals in Singapore and abroad.

The University of Hong Kong (HKU) is partnering with JWB to develop and launch our Hong Kong Practitioner's Manual, which covers claims specific to those exploited in Hong Kong.

Partnering with Local Law Faculties to Advance Our Mission

JWB is partnering with National University of Singapore (NUS) to establish a litigation clinic that supports migrant workers' cross border claims. Law students from NUS will work with JWB staff and pro bono lawyers to develop cases through client interviews and litigation support. Similarly, law students and the faculty from HKU will begin identifying both test cases and novel issues of local law that impact victims' ability to bring claims.

JWB's Network by the Numbers

6 Countries

13 Pro bono Staff

4 Global Law Firms

12 Partner Institutions

Over 1,400 pro bono hours provided in 2014
(expected to double in 2015)

Our sincere thanks to all of our Funding Partners for their generous support:

The United Nations Development Programme (UNDP), The Institute for Developing Economies—JETRO, Duane Morris & Selvam LLP, Herbert Smith Freehills LLP, and the many generous individuals who invest in justice.

Identifying Cutting-Edge Test Cases in Partnership with Local Support Organisations

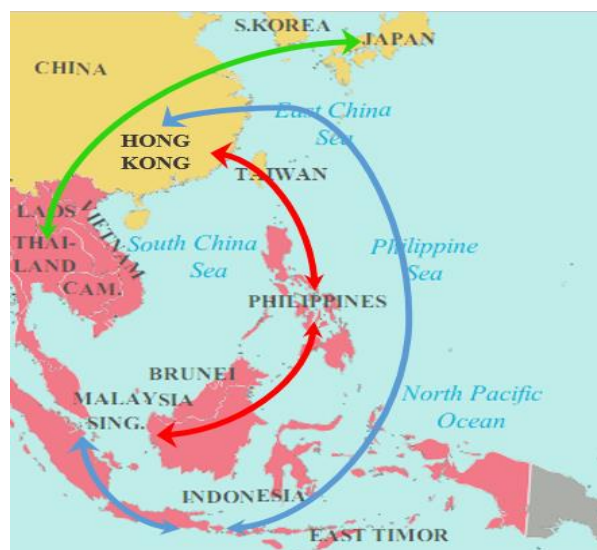
Working with H.O.M.E. and other local organisations in Singapore, JWB is identifying appropriate test cases for transnational litigation. As these test cases begin, JWB reaches out to partners in the clients' home communities to ensure that clients can easily remain connected to the case.

JWB is currently undertaking two pieces of test litigation, involving illegal kickbacks and enforcement of judgments. Both cases highlight issues that affect migrant workers region-wide.

Growing the Organisation's Network in Home Countries

JWB conducts outreach to local legal aid and direct service providers in target home countries. We have developed partnerships in Indonesia and the Philippines to prepare for cases in progress, and to begin identifying potential claims by victims who never received aid in the host country.

Learn more at
www.forjusticewithoutborders.org



JWB's most active migration routes in the region.



SBMI's Experiences in Advocacy for Indonesian Migrant Workers

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Outlines

- Introduction
- SBMI's Objectives
- SBMI's Activities
- Indonesia Migrant Workers Overview
- Migrant Workers Problems
- SBMI's Data Cases
- SBMI's Advocacy Procedures
- Complaint Mechanism
- SBMI's Obstacles



Introduction

- Indonesian Migrant Workers Union (SBMI) is an organization with membership of migrant workers (potential migrant workers/migrant workers-to-be, migrant workers currently working abroad, and former migrant workers) and migrant workers' families.
- SBMI's secretariat is located in Jakarta, have 6 coordination offices in province level and have 59 branch offices in district level throughout Indonesia.
- SBMI have approximately 25.000 members throughout Indonesia.
- SBMI established in 2003 till present.

SBMI's Objectives

- To form solidarity between Indonesian migrant workers
- To increase bargaining position of Indonesian migrant workers
- To protect Indonesian migrant workers communities and to fulfill their rights.
- To build self-sustenance and critical awareness of Indonesian migrant workers.
- To resolve cases faced by migrant workers
- To enhance capacities of Indonesian migrant workers
- To embody the social justice and feel free from oppression for Indonesian migrant workers and their families
- To manifest of social welfare for Indonesian migrant workers and their families

SBMI's Activities

- To advocacy toward Migrant Workers (MW), both of litigation and non litigation mechanism in accordance with Pro-Bono
- To analyze and advocacy of policy concerning on the National, Regional and International level.
- Legal aid education for MW particular and SBMI members through paralegal education program
- Counseling and sheltering for witnesses and victims of MW.
- Economic empowering and reintegration towards victims of trafficking former and MW family members.
- Enchancing of organization in MW enclave region.
- Forming of cadres of SBMI
- Center of information and consultation relating on MW
- Research and development for MW circumstance.

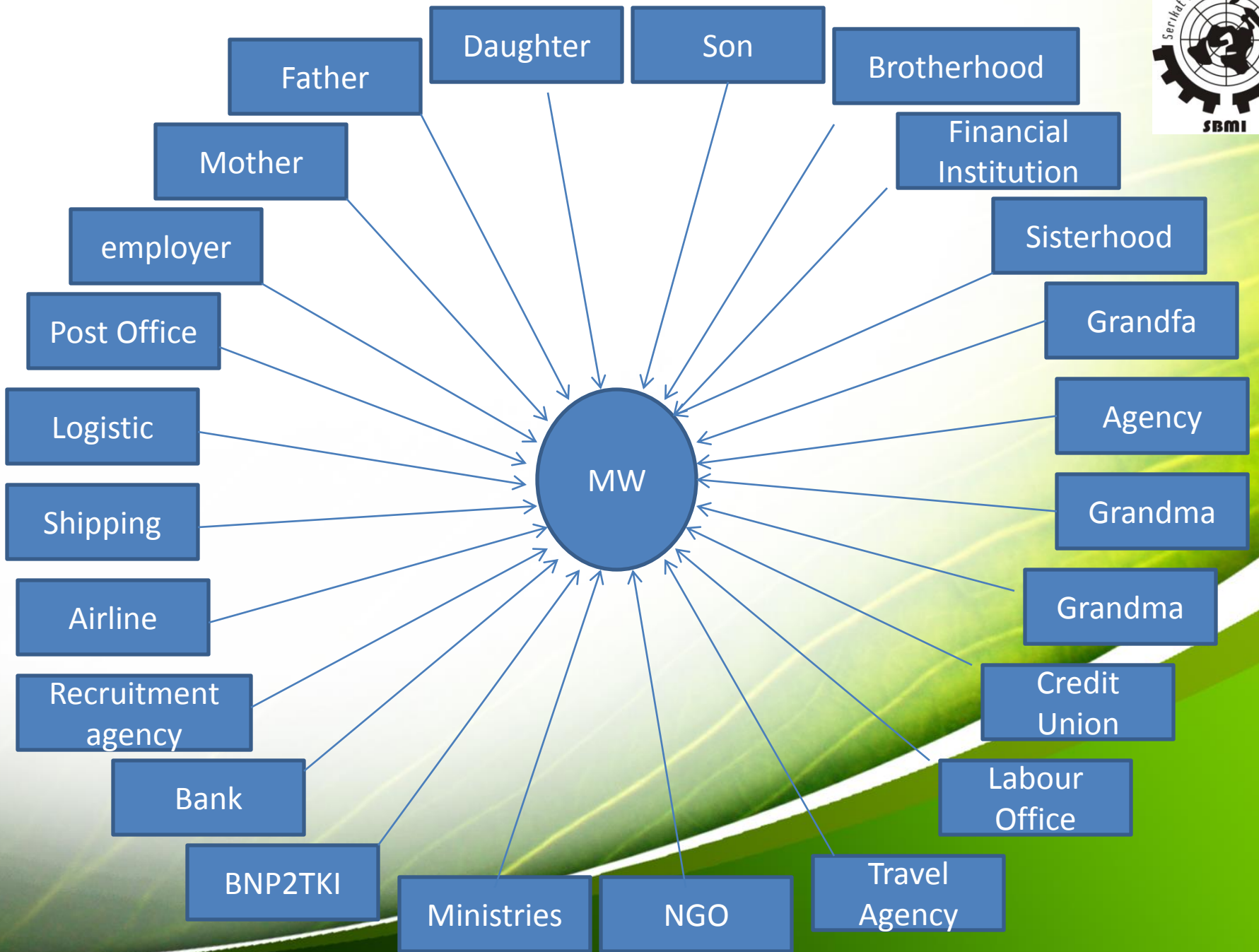
Indonesian MW Overview

- Most of MW are women and employ in vulnerability sector.
- The sectors are domestic workers, plantation and construction.
- MW faced on discrimination, stereotype and criminalization object (deception, manipulation, extortion, physical abuse, sexual harassment and trafficking in person).
- Less of structural instrument in protection for MW, both of sending and receiving country.
- MOU is the instrument one, but there is not followed up to be a legal binding by receiving country.



Regulation to Advocacy for Indonesian MW

- Indonesian Law No. 8 of 1981 concerning on Indonesian Criminal Code (*Wetboek van Strafrecht*)
- Indonesian Law No. 23 of 1948 concerning on Indonesian Civil Code (*Burgerlijk Wetboek*)
- Indonesian Law No. 13 of 2003 concerning on Labour
- Indonesian Law No. 39 of 2004 concerning on Placement and Protection Indonesia Overseas Migrant's Workers
- Indonesian Law No. 21 of 2007 concerning on Eradication of Trafficking in Person
- Indonesian Law No. 35 of 2014 concerning on Children Protection
- Indonesian Law No. 23 of 2004 concerning on Elimination in the Domestic Violence
- Indonesian Law No. 14 of 2008 concerning on Public Information Openness
- Indonesian Law No. 25 of 2009 concerning on Public Services
- Indonesian Law No. 16 of 2011 concerning on Legal Aid



MW's Problems

Data & Information System

- Job orders information obtained from recruiter (sponsor)
- Govt officer is less spreading of information to people
- Disordering in data and information management by govt

Education & Training

- Less education of skill, language and culture relating on placement country
- Training activities conducted by recruitment agency
- Less of monitoring and evaluation implemented by govt

Cost Structure

- Salary deduction is too high (8 – 9 months of salaries)
- Recruitment fee, training and sheltering are loaded to MW
- Prevailing of overcharging to MW
- The interest of credit is too high (40-45 % per annum)

Cont...

Insurance & Social Assurance

- MW forced to buy the insurance product by govt and recruitment agency
- There is no social assurance that fulfilled by govt for MW
- Insurance is compulsory for MW but it managed by private

Dispute Solving System

- Dispute solving system is still centralized (Jakarta)
- Conducting mediation mechanism (non litigation), though the problem is criminal act, e.g. trafficking in person case
- A little of MW case conducted by litigation mechanism

Public Service & Returning

- Lack of coordination between govt organization
- Irresponsibility, lack of implementation the SOP
- Long of bureaucracy chain in MW service

MW's Occupational Situation

- High of workload (12 – 14 hours per day)
- There is no furlough / day off
- There is no assurance
- Low wage (Discrimination of wage)
- Interchange of employer
- The workplace is improperly
- Lack of security and safety work
- The workplace is dangerous, difficult and dirty
- MW's don't know about their rights in contract

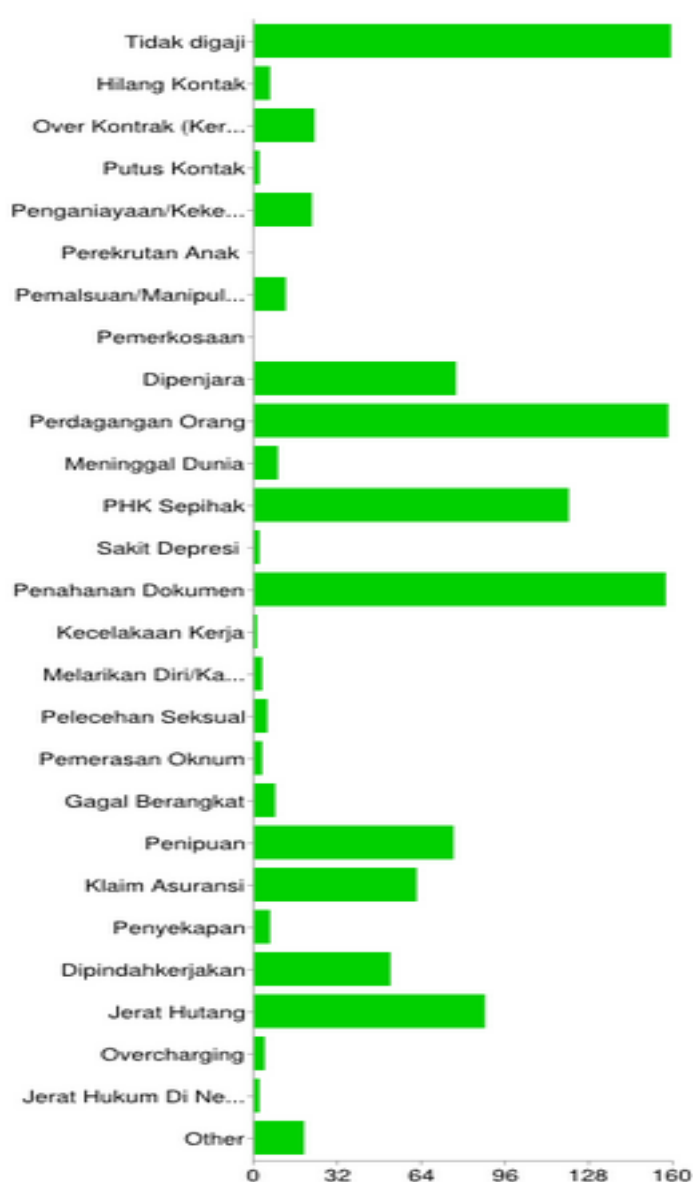
Privatization Imperfectly

- Recruiting, training, placing and returning referred to private
- There is no good business ethics in channeling and placing of MW
- Private seeks the highly profit rather than regarding upon MW rights, thus MW is as commodity.

Overcharging Riot

- MW and employer must pay high fee to recruitment agency
- Lack of stewardship and evaluation by govt to recruitment agency
- Employer demand to more of working since too expensive of charging

SBMI's Data Cases based on the Kinds of Case (2014)

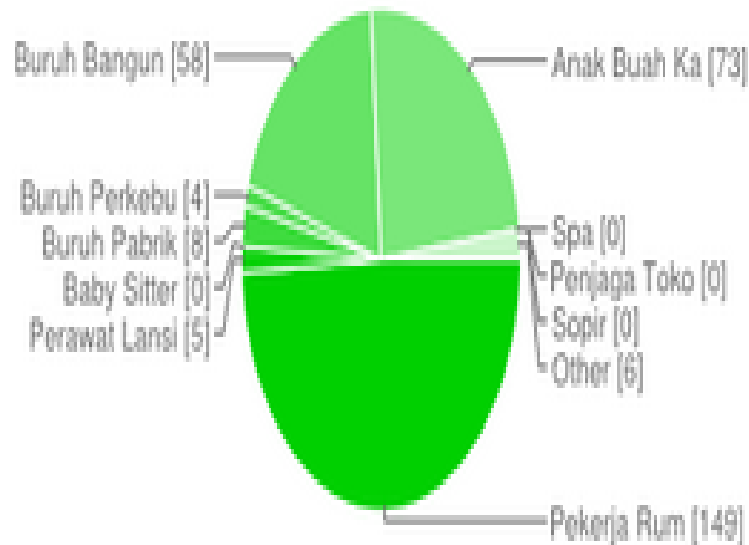


Tidak digaji	159	52%
Hilang Kontak	6	2%
Over Kontrak (Kerja Melebihi Kontrak)	23	8%
Putus Kontak	2	1%
Penganiayaan/Keke...	22	7%
Perekrutan Anak	0	0%
Pemalsuan/Manipulasi Dokumen	12	4%
Pemeriksaan	0	0%
Dipenjara	77	25%
Perdagangan Orang	158	52%
Meninggal Dunia	9	3%
PHK Sepihak	120	40%
Sakit Depresi	2	1%
Penahanan Dokumen	157	52%
Kecelakaan Kerja	1	0%
Melarikan Diri/Kabur Dari Majikan	3	1%
Pelecehan Seksual	5	2%
Pemerasan Oknum	3	1%
Gagal Berangkat	8	3%
Penipuan	76	25%
Klaim Asuransi	62	20%
Penyekapan	6	2%
Dipindahkerjakan	52	17%
Jerat Hutang	88	29%
Overcharging	4	1%
Jerat Hukum Di Negara Penempatan	2	1%
Other	19	6%

SBMI's Data Cases based on the Kinds of Work (2014)



Jenis Pekerjaan

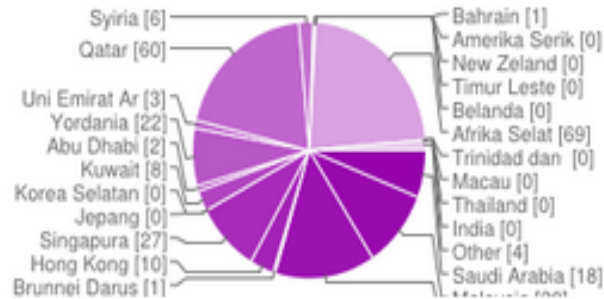


Pekerja Rumah Tangga (PRT)	149	49%
Perawat Lansia	5	2%
Baby Sitter	0	0%
Buruh Pabrik	8	3%
Buruh Perkebunan	4	1%
Buruh Bangunan	58	19%
Anak Buah Kapal	73	24%
Spa	0	0%
Penjaga Toko	0	0%
Sopir	0	0%
Other	6	2%

SBMI's Data Cases based on the Placement Country (2014)



Negara Tujuan/Penempatan



Saudi Arabia	18	6%
Malaysia	30	10%
Taiwan	42	14%
Brunnei Darussalam	1	0%
Hong Kong	10	3%
Singapura	27	9%
Korea Selatan	0	0%
Jepang	0	0%
Kuwait	8	3%
Abu Dhabi	2	1%
Yordania	22	7%
Uni Emirat Arab (UEA)	3	1%
Qatar	60	20%
Syria	6	2%
Bahrain	1	0%
Amerika Serikat	0	0%
New Zeland	0	0%
Timur Leste	0	0%
Belanda	0	0%
Afrika Selatan	69	23%
Trinidad dan Tobago	0	0%
Macau	0	0%
Thailand	0	0%
India	0	0%
Other	4	1%

SBMI's Advocacy Procedures



Recording

- Writing of the case records
- Compiling of the evidences

Counseling

- Recovering both of physical and physiological the client
- Instilling and understanding of their rights that be transgressed

Analyzing

- Reading intensively of case records
- Confronting the records to the law aspects

Prosecuting

- Reporting to the authorities
- Assisting, monitoring and evaluating of the process

Reintegrating

- Returning to their family and social circumstance
- Empowering of the economic household

SBMI's Case Handling Approach

- **Based on the Origin**

1. Resolving to the district level
2. Resolving to the national level
3. Resolving to the international level

- **Based on the Law**

1. **Non Litigation**

- Tripartite mediation in National Board for the Placement and Protection on the Indonesian Overseas Workers (BNP2TKI), Manpower Ministry and Foreign Affair Ministry

2. **Litigation**

- Report to police or criminal court system

- All of the processes and mechanisms to be conducted by Pro-Bono

Complaint Mechanism

Offline

- Referring from SBMI office branch
- Referring from SBMI network
- Referring from another NGO
- Referring from officer or govt organization
- Client visit upon SBMI's office

Online

- SBMI's Hotline number
- SBMI's Social Media
- SBMI Website (<http://sbmi.or.id>)

The Wall Obstacles faced by SBMI



Less of human resources had (generally MW former) by organization, while the opponent are privates, authorities, and so on who have much more capital



Financial operations are limited



There is fraction of the NGO network on the singular issues related in



Less of the facilities (infrastructure) had by organization



Thank You

Opponent or
Oppressed forever

<http://sbmi.or.id/>