

System Maid Online as Violations of the MoU on Placement and Protection of Indonesian Migrant Workers in the Domestic Sector in Malaysia 2022

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ABSTRACT

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This research discusses in depth Malaysia's non-compliance with the Memorandum of Understanding (MoU) on the placement and protection of Indonesian Migrant Workers in the Domestic Sector (PMID) in Malaysia in 2022, through the continued use of System Maid Online (SMO) in the PMID recruitment process. A normative legal research method with a conceptual approach is used, supported by secondary data sources from previous research such as journal articles, books, and mainstream media. The principles of Pacta Sunt Servanda and Good Faith in international treaty law are used as analytical tools in this research. This research also argues that the MoU has legally binding and Malaysia's delay in providing One Channel System (OCS) in PMID recruitment has violated the principles of Pacta Sunt Servanda and Good Faith stipulated in Article 26 of the 1969 Vienna Convention. Indonesia then responded to this problem with a temporary moratorium on sending PMI, which indicates the importance of implementing international agreements and the obligation to respect international agreements. Furthermore, this study also suggests that Indonesia maximizes its diplomatic capacities to increase Indonesia's bargaining position and pressure Malaysia to be serious in protecting the rights of migrant workers.

1. Introduction

Indonesia and Malaysia have many interactions based on cultural similarities as two “one family” countries. This connection arises naturally, largely due to geographical factors that place Indonesia and Malaysia close to each other. This proximity facilitates socio-political interactions, including trade, labor, and marriage between the two countries (Efantino & Arifin, 2009). Cultural similarities, historical proximity, and unity as a nation of the same family also play a role in strengthening this close bond (Sunarti, 2014). These relationships and interactions form the basis for cooperation in bilateral diplomacy, especially in the field of labor, which is reflected in the phenomenon of Indonesian Migrant Workers (PMI). The high interest of people to become migrant workers is largely due to the limited job opportunities in Indonesia. In addition, the problem of uncontrolled birth rates also complicates the employment situation. Sending migrant workers abroad, one of which is to Malaysia, is expected to be a solution to overcome the minimal employment problems in Indonesia.

According to data released by the Ministry of Foreign Affairs, the number of migrant workers in Malaysia reached around 2.7 million people, most of whom work in the informal sector such as domestic workers, construction, and agriculture (IOM Indonesia, 2023). However, implementation on the ground shows that migrant workers in Malaysia often face various human rights violations, including detention, abuse, human trafficking, and even death (Detik News, 2022). To safeguard the rights and welfare of migrant workers, Indonesia and Malaysia have signed a new Memorandum of Understanding (MoU) regarding the placement and protection of migrant workers, the new agreement was signed by each country in 2022 (Kementrian Luar Negeri, 2022). This proves the Indonesian government's commitment to continuously improve the system of sending and protecting migrant workers, formulating and updating regulations, as well as strengthening its diplomatic relations with destination countries, considering that migrant workers have an important role for Indonesia, so they are also referred to as foreign exchange heroes.

The application of this MoU is inseparable from various obstacles and challenges, both from the perspective of Indonesia and Malaysia. One of the main problems that has attracted attention is Malaysia's non-compliance with the MoU agreement that was signed together (Intan, 2022b). Some examples of these violations include the use of System Maid Online (SMO) that is not by the contents of the MoU, the refusal to provide weekly leave and minimum salary to migrant workers in the household sector, and the arrest and deportation of migrant workers without coordination with Indonesia (Saptohutomo, 2022). Malaysia's negligence caused losses to migrant workers, both in material and immaterial aspects, damaged trust based on the principle of good neighborliness without threatening or even harming each other's national interests, and disrupted the long-standing bilateral relations between the two countries.

Based on the MoU between the Government of the Republic of Indonesia and the Government of Malaysia on the Placement and Protection of Indonesian Migrant Workers in the Domestic Sector in Malaysia in 2022 aims to improve protection and strengthen the recruitment and placement mechanism of Indonesian Migrant Workers (PMI) in the domestic sector. The MoU stipulates that the placement of migrant workers must be done through a one-channel system, with recruitment, departure, and placement in accordance with the laws of both countries. Migrant workers can only work in one household with specific tasks such as housekeeping, cooking, childcare, or elderly care. They must meet specific requirements such as age, knowledge of Malaysian laws and culture, and language skills. In addition, they must be enrolled in social security programs in Indonesia and Malaysia.

Furthermore, PMI employment agreements need to be authorized by Indonesian authorities and employers must comply with Malaysian laws and policies. Migrant workers also do not bear the cost of placement, which must be borne by the employer. Protection and access to communication for migrant workers are also stipulated in this MoU. If there is a dispute, it is resolved through consultation and negotiation. The MoU is valid for five years and can be extended, with the signing taking place in Jakarta on April 1, 2022.

However, despite the April 2022 MoU, Malaysia continues to use the System Maid Online (SMO) which is inconsistent with the agreement. SMO is designed to make it easier for employers to recruit migrant workers at a more affordable cost (Pramudyani, 2022). Previously, the cost of recruiting through agents was considered too high, which was a barrier for many households in Malaysia in finding migrant workers. With the SMO, employers can register and connect with migrant workers at a lower cost. However, the SMO also allows undocumented (illegal) migrant workers to be rehired at an additional cost to the employer. It also enables direct recruitment of migrant workers through online mechanisms, which often neglect training and understanding of contracts by workers, and bring them in on tourist visas that are then converted into work visas. This practice leaves migrant workers vulnerable to exploitation and violates commitments in the MoU (Wardah, 2022).

Based on this, Malaysia has violated the MoU in Article 1 (i) and Article 3 (1) which essentially requires that the process of recruitment, departure, and placement of Indonesian Migrant Workers in the Domestic Sector (PMID) in Malaysia must be carried out exclusively through the One Channel Placement System. The MoU emphasizes this system as the agreed legal mechanism for recruiting and placing migrant workers to ensure maximum protection for them by Law No. 18/2017 on the protection of migrant workers (Pramudyani, 2022).

The relationship between Indonesia and Malaysia in the field of labor shows the dynamics of contemporary international relations, where each actor has dependency on each other. In this case, of course, compliance with all forms

of international treaties and laws is needed. Therefore, international law must be in harmony and be able to answer the developments and problems of the international community. International law itself consists of several sources of law, one of which is international treaties, this provision is regulated in Article 38 (1) of the Statute of the International Court of Justice. Furthermore, Article 2 (1a) of the 1969 Vienna Convention on the Law of Treaties defines international treaties as agreements entered into by states, in written form and governed by international law, whether consisting of one or more instruments and whatever the name.

In the development of modern international law, international agreements are also known by various terms such as Memorandum of Understanding (MoU), convention, agreement, protocol, treaty, and others. The difference in naming terms or nomenclature does not at all affect the obligation of the parties to fulfill the agreed agreement (Sefriani, 2016). This can be pulled back by looking at the decision of the International Court of Justice (ICJ) in the case of Qatar and Bahrain, which basically argues that a document remains valid as an international agreement, without having to look at its nomenclature (Pratomo, 2011).

In the context of MoUs, there is a debate on this matter, where countries adhering to the common law system consider MoUs as non-legally binding, so they must be distinguished from treaties. Furthermore, many experts also argue that the use of MoUs in international relations today is only a political move to avoid more formal and binding forms of agreement. However, in practice in several countries including Indonesia, MoUs are considered to have the same binding power as Treaties (Damos in Pratomo, 2011). In line with this Setianingsih & Wahyuningsih (2022), argue that all forms of international agreements themselves are classified as treaty contracts which will then give rise to various rights and obligations to the parties involved in them.

In practice, international agreements in any nomenclature are used by states as a basis for cooperation, regulating international relations activities, and resolving various problems for the benefit of the international community, as well as protecting the national interest in anarchic international relations. Furthermore, countries usually use MoU as initial documents that will later be contained in other cooperation agreements that are considered stronger and legally binding. The debate over MoU can eventually lead to disputes, where one party considers the MoU binding and the other party only considers the MoU as a moral and political commitment (Pratomo, 2011).

International treaties also have the main principles or absolute postulates of the treaty law system, including the principle of *Pacta Sunt Servanda* which comes from a Latin term that means promises must be kept. The principle of *Pacta Sunt Servanda* in international treaties is a grundnorm or basic norm that requires the attachment of countries that agree to the agreement to implement the agreement as laws in their national law. Furthermore, the principle of *Pacta Sunt Servanda* always goes hand in hand with the principle of good faith. According to the provisions in article 13 of the 1949 Declaration of Rights and Duties of States, "Every state is obliged to carry out in good faith its obligations arising from treaties and other sources of international law ..." The implementation of international treaty points itself must be based on awareness to fulfill, responsibility, and pay attention to the interests of other parties (H. Purwanto, 2009).

Article 26 of the 1969 Vienna Convention also links the principle of *Pacta Sunt Servanda* with the principle of good faith, which means that the implementation of international treaty points must be initiated by the countries involved in good faith without overriding the national interests of other countries. Furthermore, the combination of these two principles in international agreements includes several aspects including:

1. Provisions such as the content, soul, purpose, and objectives contained in the agreement must be implemented by the parties involved.
2. All parties involved including third parties (if any) must be respected for their rights and obligations
3. Before the agreement and after the agreement is enforced, the parties involved are prohibited from doing things that have the potential to hinder efforts to achieve the intent and purpose of the agreement (Partiana in Purwanto, 2009).

International agreements in the form of MoU are also practiced in efforts to protect Indonesian Migrant Workers in Malaysia, at least from 2004-2022 there have been five MoUs agreed upon, namely in 2004, 2006, 2011, 2016, and finally in 2022, although there were violations from the Malaysian side in it. Based on research conducted by Irawan et al., (2023), it is concluded that the MoU has legal binding as an international agreement stipulated in the 1969 Vienna Convention on International Treaties. Furthermore, in practice in Indonesia, the MoU itself has binding power which then gives rise to rights and obligations between Indonesia and Malaysia to protect Indonesian migrant workers in Malaysia. Thus, the principles of *Pacta Sunt Servanda* and good faith must be implemented by both parties by implementing the entire contents of the MoU in good faith and not harming the interests of the parties involved. In this case, both parties must ensure that the protection and welfare

of Indonesian migrant workers in the domestic sector is realized starting from the recruitment process to their return to their homeland as stated in the MoU.

In the context of Malaysia's violation of the MoU with SMO can be evaluated by referring to the principles of *Pacta Sunt Servanda* and good faith. This means Malaysia should fulfill its obligations by respecting and implementing the contents of the MoU that has been mutually agreed with Indonesia, and Any form of violation of this will can have legal consequences such as sanctions, compensation, or even termination of cooperation relations. Malaysia's commitment in this regard is also questioned by Indonesia, which continues to make maximum efforts to protect the rights and welfare of migrant workers in Malaysia through initiatives such as the establishment of the National Agency for the Placement and Protection of Indonesian Migrant Workers Abroad (BNP2TKI), the ratification of the Indonesian Migrant Workers Protection Act, and diplomacy with destination countries for migrant workers, especially Malaysia, regarding the protection of migrant workers.

Based on the above research problems that arise from this event, the author has further interest in researching and answering the research question, namely "How does Malaysia's non-compliance with the MoU on the placement and protection of Indonesian migrant workers in Malaysia in 2022 not fulfill the principles of *Pacta Sunt Servanda* and good faith in international treaty law?". This research aims to thoroughly examine Malaysia's move to continue implementing the System Maid Online (SMO) as a form of non-compliance with the agreed MoU.

2. Method

The method used is the normative legal research method by examining the content of the MOU as a bilateral agreement that must be agreed upon by both parties in resolving PMI issues in Malaysia. Normative legal research is conducted by examining library documents or secondary data. According to Peter Mahmud Marzuki, normative legal research is the process of searching for legal rules, legal principles, and legal doctrines to solve the legal problems at hand (Sitompul, 2016). This research also uses a conceptual approach, which is a type of legal research method that provides an analytical perspective in problem solving. This legal research is seen from the point of view of the underlying legal concepts or criteria that arise from the values contained in the standardization of regulation regarding the concepts used (Ardiansyah, 2020). In this case, the concepts used are the principles of *Pacta Sunt Servanda* and Good Faith in International Treaty Law.

3. Result

3.1. Dynamics of Complaints on Violations of Indonesian Migrant Workers' Rights in Malaysia

One of the parameters of Malaysia's lack of commitment to protecting migrant workers can be seen from the many reports of migrant workers

regarding mistreatment, exploitation, discrimination, and violations of their rights by employers or agents in Malaysia. This fact is supported by information released by the Crisis Center of the Indonesian Migrant Workers Protection Agency (BP2MI), which annually receives thousands of complaints about the challenges faced by migrant workers, as illustrated in the graph below;

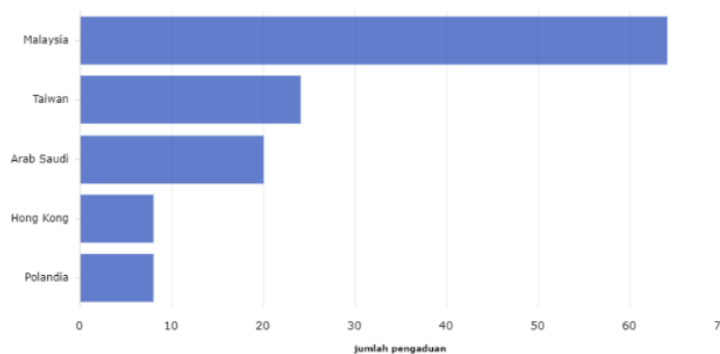
Graph 1. Total complaints of Indonesian migrant workers abroad



Source: (Data Indonesia, 2023)

In addition, data from BP2MI also shows that in January 2022, the highest number of reports and complaints came from migrant workers working in Malaysia, reaching 64 reports, followed by migrant workers in Taiwan, Saudi Arabia, Hong Kong, and Poland. The total number of complaints received reached 146. The majority of complaints were related to failure to depart, followed by cases of death, illegal recruitment, and fraud. More information can be found in the following graph;

Graph 2. Countries with the Highest Number of PMI Complaints as of January 2022



Source: (Data Indonesia, 2023)

The data and facts above indicate that until the period of 2022, there are still many migrant workers who do not receive adequate protection and treatment in their place of work. This can be seen from the many cases and reports of complaints related to the exploitation of workers in various forms, one of which is unpaid salaries. According to data from the Indonesian Migrant Workers Protection Agency (BP2MI) (2023), unpaid

salaries are among the ten most frequently reported problems by migrant workers. At the beginning of 2022, based on a report from the Indonesian Embassy in Kuala Lumpur, there were at least 16 complaints related to cases of unpaid salaries with a value of around IDR 1.1 billion. In the previous year, which was throughout 2021, the Indonesian Embassy in Kuala Lumpur, Malaysia reported at least 206 cases with the same cause experienced by migrant workers in Malaysia, with a value of around IDR 7.37 billion (Fauzia & Patnistik, 2022). Migrant workers often lack the power to claim their rights, either due to language barriers, lack of legal knowledge, or fear of deportation.

In addition, other cases such as physical, sexual violence, and neglect also often happen to migrant workers in Malaysia. The Indonesian Embassy in Kuala Lumpur, Malaysia reported that in the last five years, there have been at least 5,000 problems experienced by migrant workers in Malaysia, with hundreds of cases related to abuse. This data was obtained only from those who reported directly or from public complaints. There are still many out there who are trapped and cannot report it. This has implications for the increasing number of migrant workers accommodated in the shelter of the Indonesian Embassy in Kuala Lumpur, Malaysia. The average migrant worker who takes refuge in this shelter is those whose rights have not been fulfilled. Furthermore, data from the Indonesian Embassy in Kuala Lumpur from 2018 to 2022 also shows that the percentage of PMI cases in the shelter of the Indonesian Embassy in Kuala Lumpur includes 2,361 cases or 51.75% of those whose salaries were not paid, 1,571 cases or 34.44% were not by the agreement, 470 cases or 10.3% were related to cases of mistreatment, and approximately 160 cases or 3.51% were unilaterally terminated (Nurdin & Lumbanrau, 2023).

Furthermore, according to Migrant Care's records, during the Covid-19 pandemic, there are around 5,000 Indonesian Migrant Workers (PMI) who are still in detention in Malaysia for no apparent reason, even though their detention period should have ended. They have received inappropriate treatment, ranging from intimidation, verbal abuse, torture, to harassment by officers. A large number of them suffered serious trauma and depression during their detention. They hope that the Indonesian government can provide protection and justice for them (International Labour Organization, 2022).

The above forms of exploitation are not the end of the concrete evidence of how the rights of migrant workers in Malaysia have not all been fulfilled, and some even have to wait for years. Migrant care activist Anis Hidayah argues that Malaysia has not shown seriousness in solving this problem. Malaysia has only prioritized its interest in obtaining cheap labor. In practice, this effort to obtain low-wage workers is not only for domestic workers, but also for other sectors such as plantations and manufacturing companies, which provide huge profits for the Malaysian

economy (Eriyanti et al., 2022). Complaint reports continue to move dynamically, up and down each year, considering the many challenges faced by migrant workers, strategic action is needed to improve this situation. As a follow-up, Indonesia conducted intense diplomacy with Malaysia, which later gave birth to the MoU on the protection of PMI, although later on it was still found that the contents of the MoU had not been running effectively and optimally with the recruitment through the Online Maid System (SMO).

3.3. The latest MoU between Indonesia and Malaysia

The problems of migrant workers are not only when they are working there, but also include recruitment, implementation, and return. The recruitment process is fraught with injustice and tends to violate rights and is followed by uncertainty at the time of departure. Another problem faced by migrant workers is that the work they do is not in accordance with the agreement and physical violence often occurs in the workplace (Hamid, 2019).

To avoid these problems and unwanted events, the Indonesian government itself has made preventive efforts through Law No. 18 of 2017 concerning the protection of migrant workers, which is an amendment to Law No. 34 of 2004 concerning Placement and Protection of Labor (Uswatun Khasanah et al., 2023). This law also explains in detail the standard rights that every migrant worker must obtain, which include various pre-departure procedures such as medical examinations, pre-employment training, and placement of migrant workers. As well as, migrant worker protection procedures, which include supervision of the placement of migrant workers, mechanisms for resolving industrial relations disputes, and other PMI protection activities (Rosalina & Setyawanta, 2020).

At least the law passed in November 2017 has the spirit to change the Indonesian government's paradigm in addressing the myriad of PMI issues. The government with the old paradigm that seemed to prioritize PMI as an aspect of the placement business, then changed by mainstreaming the protection aspect. Furthermore, this law also outlines the protection of Prospective Indonesian Migrant Workers (CPMI) and PMI to ensure the upholding and fulfillment of the Human Rights of every Indonesian citizen, especially migrant workers, and also guarantees all forms of protection of PMI and their families both from legal, economic and social aspects (Erou, 2020).

This law is a form of concern and effort by the government to reduce the number of rights deprived of migrant workers out there. However, these efforts have not fully succeeded in suppressing, reducing, and eliminating the rights violations experienced by migrant workers. Migrant workers still face low wages, physical and verbal abuse, long working hours, poor

working conditions, and confiscation of passports by their employers. Furthermore, undocumented migrant workers often face threats to their personal safety, such as kidnapping and human trafficking (Hugo dalam Safitri & Wibisono, 2023). These adverse events often happen to unskilled and undocumented migrant workers such as those in the domestic field. The lack of strength and power to resist makes them easier objects of discrimination, violence, and exploitation.

To protect and avoid this heartbreaking incident, Indonesia has agreed with Malaysia to make a memorandum of understanding or MoU regarding the Placement and Protection of Indonesian Migrant Workers in the Domestic Sector in Malaysia. This MoU itself is a demand of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Quoting from Kementerian Luar Negeri (2022), the memorandum of understanding between the two countries regulates the use of a single channel system as a recruitment and monitoring system. Indonesian President Joko Widodo believes that the use of this system will bring maximum protection for migrant workers. The efforts made by the government are a form of concern and also concern for migrant workers who work in Malaysia. The Prime Minister of Malaysia, Ismail Sabri, also emphasized that the newly signed MoU will guarantee the entire recruitment and protection process for Indonesian migrant workers in Malaysia (Kementerian Luar Negeri, 2022).

According to Irawan et al., (2023), the Memorandum of Understanding between Indonesia and Malaysia on the Placement and Protection of Indonesian Migrant Workers in Malaysia aims to strengthen the protection of employers and migrant workers, especially in the domestic sector in Malaysia by strengthening the recruitment and placement mechanisms as specified in the MoU of Understanding between Indonesia and Malaysia on the Recruitment and Placement of Indonesian Workers (2006) and its Amendment Protocol (2011), which expired on May 30, 2016. There are additional points in this 2022 MoU. The additions are:

1. Register all migrant workers into a single channel system integrated with the Malaysian government. Data includes place of work, employer identity, and employment history. This point is included in article 3(1) of the Implementation which reads “The Parties agree that the recruitment, departure, and placement of PMID in Malaysia shall only be conducted within the framework of the Single Channel Placement System as outlined in Appendix A”;
2. Raising the minimum wage from 1,200 Ringgit (IDR 4 million) to 1,500 Ringgit (IDR 5 million). This point is included in article 9(1) of the Employment Agreement which reads that the PMID recruited under this MSP shall work in Malaysia for a certain period of time, certain categories of work, and in one premise in accordance with the terms and conditions of the Employment Agreement, as set out in Appendix D. In accordance with

Appendix D at point 4.2 regarding payment of wages, it is explained that the Employer shall pay the PMID's wages every month no later than the 7th (seventh) day of the following month directly to the PMID's bank account. In the amount of RM (Malaysian Ringgit) (not less than RM 1500);

3. Prohibit employers from withholding PMID passports or identity documents and require the Malaysian government to ensure compliance with this prohibition. This point falls under article 8(1) Responsibilities which reads "The Parties recognize that the responsibilities of the Employer, APM, P3MI, and PMID for the purpose of implementing this MSP shall be in accordance with Annex C." In accordance with Appendix C in point A number 22 which emphasizes the Employer is obliged not to detain or confiscate passports and/or personal documents belonging to PMID for any reason;
4. Requires the employer to give the worker the right to use the telephone or communicate with his/her family or with the representative of the Republic of Indonesia in Malaysia to sign the employment contract or to extend the work visa. This point is included in article 10 (1) Protection and Assistance for PMID which reads "For the purpose of PMID protection, the Parties shall ensure that PMID have access to communicate with their families on a regular basis, as well as with the competent authorities in Malaysia regarding their working conditions"; and
5. The labor placement process can only be carried out by agencies registered with the Malaysian government and its representatives. This point is included in article 8(1) Responsibilities which reads "The Parties recognize that the responsibilities of the Employer, APM, P3MI, and PMID for the purpose of implementing this MSP shall be in accordance with Appendix C". In accordance with Annex C in point A number 1, Employers are only required to submit recruitment applications and arrange PMIDs through a single channel recruitment system and are required to appoint an authorized APM to carry out the PMID recruitment process.

3.4. SMO as a Breach of MoU by Malaysia Viewed from the Principles of *Pacta Sunt Servanda* and Good Faith

Article 3(1) of the MoU on the Placement and Protection of Indonesian Migrant Workers in Malaysia reads "The Parties agree that the recruitment, departure, and placement of domestic workers in Malaysia shall only be carried out within the framework of the One Channel Placement System as described in Appendix A." By using the principle of *Pacta Sunt Servanda*, the MoU has created rights and responsibilities between the governments of Indonesia and Malaysia so that the recruitment of migrant workers is only carried out through the agreed system, namely the One Channel System (OCS). Through OCS, the sending of migrant workers to Malaysia pays more attention to human

dignity and rights by going through various strict selections so that exploitation and rights violations do not occur again.

The facts on the ground show something different, where sometime after the signing of the MoU, the Embassy of the Republic of Indonesia (KBRI) in Kuala Lumpur, found that there is still a practice of recruiting PMI through System Maid Online (SMO). This is quite strong evidence of violation of the MoU. Considering that SMO itself is a legal project of *Jabatan Imigresen Malaysia* (JIM) taken in 2018, to make it easier for families in Malaysia to get migrant workers without having to pay large agency fees (Nidatya et al., 2023). Indonesia as a country that sends many migrant workers to Malaysia considers that this system is detrimental to migrant workers in terms of protection, where those who are not officially documented can potentially continue to work and their position is very vulnerable in terms of discrimination, exploitation and violation of workers' rights. This is because the system can easily place migrant workers simply by converting a visit visa into a work visa. Furthermore, this practice can make it difficult for the Indonesian government to track down migrant workers who are exploited by employers in Malaysia, which is inconsistent with the ideals of Indonesia's national law in this area, namely Law No. 18/2017 on the Protection of Migrant Workers.

Malaysia's slow implementation of the MoU as an international agreement is clearly not in accordance with the principle of *Pacta Sunt Servanda* and the principle of good faith in international treaty law, both of which bind Malaysia and Indonesia as parties to the MoU to implement the entire contents of the MoU in good faith. In line with this, Fadjar Dwi Wisnuwardhani as the Principal Expert of the Presidential Staff Office (KSP) emphasized that this MoU must be respected and implemented following the commitments contained in the MoU or memorandum of understanding. Furthermore, any actions that deviate from this MoU are a form of violation and have injured the goodwill and commitment agreed upon by the leaders of the two countries, considering that the signing of this MoU was witnessed directly by the President of Indonesia, Joko Widodo and the Prime Minister of Malaysia, Ismail Sabri bin Yaakob at the Merdeka Palace in Jakarta (Kantor Staf Presiden, 2022; Kementerian Luar Negeri, 2022).

The absence of good faith from Malaysia through SMO is clearly the main issue when viewed from the principles of *Pacta Sunt Servanda*. Given the content of the MoU clearly mandates the existence of a one channel system as the only mechanism for recruiting workers from Indonesia. Moreover, this SMO is managed directly by the Malaysian Government through the Malaysian Ministry of Home Affairs with *Jabatan Imigresen Malaysia* (JIM) as the responsible party. In a broader context, the MoU between Indonesia and Malaysia in 2022 on the Protection of Indonesian Migrant Workers in the Domestic Sector is one of the international agreements that has direct relevance to the principles of *Pacta Sunt Servanda* and good faith. These

two principles require the implementation of international agreements with full sincerity and honesty to ensure that the agreed rights and obligations are fulfilled. Furthermore, in the context of these two principles Malaysia also violated the provisions of article 26 of the Vienna Convention on the Law of Treaties which basically states that International Treaties bind countries to comply with them in good faith. Although Malaysia is not an original party to the convention, Malaysia has expressed its agreement to be bound by it, or Malaysia has acceded to this convention on July 27, 1994 (Suwardi & Kurnia, 2019).

Malaysia's slowness in implementing the MoU can be analyzed through provisions in the MoU such as article 3(1), the MoU's objective to improve protection for employers and migrant workers by strengthening appropriate mechanisms in the recruitment and placement of migrant workers is not immediately implemented by the Malaysian government due to the slow reform of the migrant worker recruitment system. This indicates that Malaysia does not respect the rights of Indonesia as a party to the MoU. In addition, the persistence of the SMO is also an effort that has the potential to hinder the achievement of the aims and objectives of the MoU itself, namely to improve the protection of Indonesian migrant workers in Malaysia. Furthermore, Malaysia also seems to have no enthusiasm to avoid obstacles to achieving the objectives of the MoU.

In an interview published in (Noveria, 2020), the former Labor Attaché at the Indonesian Embassy in Kuala Lumpur considers Malaysia's negligence in implementing the MoU to be due to Malaysia's underestimation of international agreements if the nomenclature is an MoU. This is in contrast to Indonesia, which considers the MoU to have sufficient binding legal force. Furthermore, he also emphasized that Malaysia considers that what is binding is the Memorandum of Agreement (MoA). And the protection of PMI there will only be maximally realized when the two countries have a more binding agreement.

According to Malaysian Home Minister Hamzah Zainuddin, his country is in the process of transitioning recruitment from the Online Maid System (SMO) to the One Channel System (OCS), as agreed in the signed Memorandum of Understanding (Firdaus & Mustafa, 2022). This lengthy follow-up process also contradicts article 22(1) of the MoU, which states that this MoU shall come into force on the date of signing, April 1, 2022. As a result, this delay creates uncertainty in the implementation of the agreement and may impact the relationship between the two countries in terms of the recruitment of domestic workers from Indonesia.

In this context, Malaysia's membership in the International Labor Organization (ILO) since 1957 and has ratified around 14 ILO Conventions is also questionable. According to Gunawan et al., (2022), Malaysia has violated the provisions in Article 4 of ILO Convention No.

97 which requires member states to take the necessary steps, within the limits of their power and sovereignty to facilitate the departure, travel and reception of migrant workers. Furthermore, all ILO conventions have comprehensively regulated the welfare standards of migrant workers in member states. Therefore, violations of agreements within the framework of international treaties or ILO conventions must be responded to with concrete steps in the form of strict sanctions (Gunawan et al., 2022).

In response to this, on July 13, 2022 the Government of Indonesia responded firmly by conducting a moratorium or temporary suspension of sending migrant workers to Malaysia. This strong effort is not without reason, Indonesia has found convincing evidence of violations of the MoU on the Placement and Protection of Indonesian Migrant Workers in Malaysia. This unilateral moratorium is also reasonable for Indonesia, because it concerns Malaysia's commitment as a receiving country to protect its citizens (Hidayat, 2022). Furthermore, after the signing of this MoU, both parties agreed that the recruitment and placement of domestic sector migrant workers from Indonesia to Malaysia must follow the One Channel System (OCS), which includes the availability of workplace facilities, placement processes, and Job Orders. This system is recognized as the only official method for recruiting and placing migrant domestic workers from Indonesia to Malaysia (Disnakertrans NTB, 2022). The Indonesian Ambassador to Malaysia also emphasized that this moratorium will be enforced until Malaysia commits to stop recruiting migrant workers through SMO (Republika, 2022).

During the suspension period, Indonesia has the upper hand and Malaysia is under labor scarcity pressure as the majority of domestic, manufacturing and plantation workers are from Indonesia. Indonesia's move is expected to hurt the productivity of the palm oil industry in Malaysia, which relies heavily on Indonesian labor to sustain its production. Malaysia's palm oil industry needs around 1.2 million workers to help the economy recover from the COVID-19 pandemic, and the suspension raises concerns of a labor crisis that could slow down the recovery. In the domestic or household sector, the moratorium also has the potential to cause many Malaysian families to have late or even no workers, which will then affect the productivity of Malaysian citizens (Theodora, 2022).

Due to economic pressures and Malaysia is believed to still have good intentions to honor the MoU as an international agreement and is ready to change the recruitment system, although the Indonesian Government must first demand Malaysia's commitment to seriously implement the MoU as soon as possible. The Ministry of Foreign Affairs and the Ministry of Manpower also swiftly continued to communicate to immediately negotiate and reformulate the MoU on the Placement and Protection of Indonesian Migrant Workers (PMI) in the Domestic Sector in Malaysia (Intan, 2022a; Theodora, 2022). Finally, on July 28, 2022, Malaysia and

Indonesia formed a Joint Working Group, with the Director General of Placement and Expansion of Employment Opportunities of the Ministry of Manpower as the head of the Indonesian delegation and the Deputy Secretary General of the Ministry of Human Resources as the head of the Malaysian delegation. The meeting discussed several problems in implementing the previous MoU in the context of technical and policy implementation. Furthermore, the technical problems experienced by Malaysia must be resolved through a new agreement on measurable and significant steps to ensure the abolition of the SMO and the implementation of the One Channel System (OCS) as a comprehensive implementation of the MoU. Then, this meeting produced two documents including the Record of Discussion (ROD) and Joint Press Statement (Tabloid Diplomasi, 2022).

The negotiation and reformulation steps through the Joint Working Group were then followed up with the signing of the MoU by the Indonesian Minister of Manpower, Ida Fauziyah and the Malaysian Minister of Human Resources, Dato' Sri M. Saravanan Murugan on July 28, 2022. In essence, the latest MoU reaffirms Malaysia's commitment to making the One Channel System (OCS) a single system in the recruitment of domestic migrant workers from Indonesia and prohibits recruitment practices outside of it. Furthermore, this commitment will also be implemented by a pilot project within 3 months with the One Channel System (Tabloid Diplomasi, 2022). Furthermore, both parties also agreed to continue to respect the interests of their respective countries by taking all necessary steps to ensure that the norms and procedures agreed in the MoU are fully complied with by Indonesia and Malaysia, by involving the relevant agencies or departments of their respective governments. In addition, there is also an agreement and commitment from both countries to jointly present concrete bilateral cooperation to combat cross-border trafficking in persons (Intan, 2022b).

With Malaysia's commitment to implement the agreed contents of the MoU, the Indonesian government also granted Malaysia's request to reopen the sending of migrant workers starting on August 1, 2022 (Tabloid Diplomasi, 2022). With this, prospective migrant workers who were worried that their departure would be delayed have received certainty and hope that they can work in Malaysia. Furthermore, Indonesian citizens who are interested in becoming migrant workers in Malaysia also get certainty regarding the recruitment system as well as the commitment to protect them while working until their return home. Malaysia's commitment to implementing the OCS can also facilitate the Indonesian government in terms of protection. Because through the OCS, the Indonesian government has complete data on PMI so that the government can find out the whereabouts of PMI if one day there are violations related to their rights as workers.

4. Conclusion

The relationship between Indonesia and Malaysia in the labor sector, especially related to Indonesian Migrant Workers (PMI) has long been the focus of bilateral cooperation. In this case, international agreements are needed as guidelines and binding cooperation commitments in solving the problems faced, at least in the period 2004-2022 there have been five MoUs agreed upon. The latest MoU is the result of the Indonesian Government's diplomacy in responding to events in the field, which in fact various acts of exploitation and discrimination still occur. The 2022 MoU on the Placement and Protection of Indonesian Migrant Workers in Malaysia basically requires an integrated one-channel system (OCS) that makes it easier for the Government of Indonesia to carry out protection. In fact, the implementation of this MoU still faces obstacles including violations of the agreement by Malaysia by maintaining the Maid Online System (SMO) which is prohibited in the MoU.

In the context of international treaty law, Malaysia's non-compliance with the MoU can be evaluated with reference to the principle of *pacta sunt servanda* and the principle of good faith, which indicate that agreements must be respected and implemented in good faith. This non-compliance has serious implications for the continuation of cooperation between the two countries and undermines the commitment of each country's leaders in terms of the protection of migrant workers. Therefore, Indonesia responded by temporarily stopping the sending of Indonesian Migrant Workers to Malaysia in July 2022. After going through the Joint Working Group diplomacy forum, a new MoU was finally made on July 28, which in essence emphasized Malaysia's commitment to work on the OCS as soon as possible, and in return Indonesia reopened the sending of PMI on August 1, 2022.

Departing from this case, the author recommends the Government of Indonesia to conduct intensive diplomacy to encourage and improve the PMI protection agreement in a nomenclature that is considered to have binding legal force by Malaysia, in this case the Memorandum of Agreement (MoA), because with this aspect of more binding legal force Malaysia should have the initiative and good faith to implement the results of the agreement without having to be billed or even responded harshly such as a moratorium on sending PMI in 2022. This is necessary because legal binding itself is key to the protection and legal certainty of PMI in Malaysia. In addition, the MoU that is currently still in effect must continue to be closely monitored in the field so that similar things do not happen again in the future. This supervision itself is needed to monitor technical policies in Malaysia so that they no longer deviate from the results of the agreement. Finally, the author also recommends the Government of Indonesia conduct intensive diplomacy with fellow migrant workers sending countries to Malaysia, such as the Philippines, India, and Bangladesh to unite to have a stronger position to pressure and demand Malaysia's commitment in terms of protecting migrant workers, if violations of the MoU or violations of PMI rights continue to occur in the future.

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