INDONESIAN DIPLOMACY TOWARDS MALAYSIA ON
INDONESIAN MIGRANT WORKERS FACED DEATH
PENALTY (2010 -2013)

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International Relations

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JAKARTA
2015
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1. Is my original work proposed to fulfill one of requirements to obtain undergraduate degree in State Islamic University (UIN) Syarif Hidayatullah Jakarta.

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ABSTRACT

This thesis describes about Indonesian diplomacy towards Malaysia in order to commute Indonesian migrant workers from death penalty from 2010 to 2013. This study aims to analyze diplomatic efforts conducted by Indonesian government and some non-governmental parties to acquitted Indonesian migrant workers who threatened by death penalty in Malaysia from 2010 until 2013 after implicated the Moratorium policy in June 2009 and also signed Memorandum of Understanding of migrant workers by between Indonesia and Malaysia on 2006.

This study elaborates the attempts of Indonesian government in commuting Indonesian migrant workers from death penalty in Malaysia by using the concept of foreign policy and multi-track diplomacy. Indonesian government conducts its diplomatic efforts by sending its representative and also diplomatic notes to commute Indonesian migrant workers from death penalty in Malaysia. Diplomacy is also involving the role of the head of the state. President Yudhoyono has formed a task force unit to defend Indonesian citizen from death penalty abroad. Indonesia government implemented multi-track diplomacy towards Malaysia with NGO and also private influential citizen with purpose to save Indonesian citizen of Indonesian migrant workers from death penalty in Malaysia.

Keywords: Death Penalty, Indonesian Migrant Workers, Malaysia, Diplomacy.
ACKNOWLEDGEMENTS

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Jakarta, 18 June 2015

Maryam Fauziyah
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>vi</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>vii</td>
</tr>
<tr>
<td>TABLE OF CONTENTS</td>
<td>viii</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>xi</td>
</tr>
<tr>
<td>LIST OF FIGURE</td>
<td>xii</td>
</tr>
<tr>
<td>LIST OF ABBREVIATIONS</td>
<td>xiii</td>
</tr>
<tr>
<td>LIST OF APPENDIX</td>
<td>xiv</td>
</tr>
</tbody>
</table>

## CHAPTER I INTRODUCTION

A. Problem Statement.................................................................. 1
B. Research Question.......................................................... 7
C. Objective and Benefit of the Research ................................ 7
D. Literature Review ................................................................ 8
E. Theoretical Framework ...................................................... 11
   1. Foreign Policy.................................................................. 12
   2. Multi-Track Diplomacy................................................... 13
F. Research Method .................................................................. 18
G. Outline .............................................................................. 20

## CHAPTER II RELATIONS BETWEEN INDONESIA AND MALAYSIA REGARDING MIGRANT WORKERS

A. History of sending Indonesian Migrant Workers to Malaysia........... 22
B. Indonesia and Malaysia Relationship on Indonesia Migrant Workers ........................................ 25
C. The Problems of Indonesian Migrant Workers in Malaysia.......... 30

## CHAPTER III DEATH PENALTY AMONG INDONESIAN MIGRANT WORKERS IN MALAYSIA 2010 – 2013

A. Death Penalty in Malaysia as Legal System......................... 38
B. Labor Regulations in Malaysia............................................ 43
C. Indonesian Migrant Workers’ Condition in Malaysia............. 45
D. Death Penalty Case among Indonesian Migrant Workers in Malaysia 2010 – 2013.............................. 46
CHAPTER IV INDONESIA DIPLOMATIC EFFORTS TO COMMUTE INDONESIAN MIGRANT WORKERS FROM DEATH PENALTY

A. Indonesia Diplomatic efforts in order to resolve the Indonesian workers faced death penalty in Malaysia ............... 52
   1. Diplomatic Efforts Developed by Indonesia Government to protect Indonesia Migrant Workers from Death penalty in Malaysia 2010 – 2013 ....................................... 52
   2. The Role of Non-Governmental Parties ............................. 62

B. Challenges Faced by Indonesian Government in Commuting the Death Penalty on Indonesian Migrant Workers in Malaysia 2010 -2013................................................................. 67

CHAPTER V CONCLUSION ............................................................................ 69

BIBLIOGRAPHY ............................................................................................... xv

APPENDIX ......................................................................................................... xxi
LIST OF TABLES

Table I.A Placement of Indonesian Migrant Workers Based on the placement country 2011–2013
Table II.B.1 Placement of Indonesian Migrant Workers Based on the placement country 2011–2013
Table II.B.2 The number of Indonesian Migrant Workers in Malaysia until 2013
Table III.D The Number of Indonesian Migrant Workers faced Death Penalty 2010-2013
LIST OF FIGURE

Image III.1. Map of Abolitionist and Retentionist Countries of Death
## LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>BNP2TKI</td>
<td>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (National Authority for Placement and Protection of Indonesian Overseas Workers)</td>
</tr>
<tr>
<td>G to G</td>
<td>Government to Government</td>
</tr>
<tr>
<td>IMWs</td>
<td>Indonesian Migrant Workers</td>
</tr>
<tr>
<td>KBRI</td>
<td>Kedutaan Besar Republik Indonesia (Embassy of the Republic of Indonesia)</td>
</tr>
<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental organization</td>
</tr>
<tr>
<td>PWNIBHI</td>
<td>Perlindungan Warga Negara Indonesia dan Badan Hukum Internasional (Protection of Indonesian Citizens and Legal Entities Abroad)</td>
</tr>
<tr>
<td>BP3TKI</td>
<td>Badan Pelayanan Penempatan dan Perlindungan Tenaga Kerja Indonesia (Agency for Service, Placement, and Protection of Indonesian Overseas Workers)</td>
</tr>
</tbody>
</table>
APPENDIX

Appendix 1: Interview Report with Muhammad Ramdhan as Staff of PWNIBHI for Malaysia

Appendix 2: Interview Report with Abun Bunyamin as Staff of PWNIBHI for Malaysia

Appendix 3: MoU on Recruitment Indonesian Workers between the Government of Republic of Indonesia and the Government of Malaysia

Appendix 4: Penal code 1936, as amended by 574 of 2006 Act 574 about Murder

Appendix 5: MoU antara pemerintah Indonesia dan Pemerintah Malaysia tentang Rekrutmen dan Penempatan Pekerja Domestik


Appendix 7: Law of Malaysia Act 265 Employment act 1955 amended on 1 April 2012. First Schedule - Section 2(1)
CHAPTER I

INTRODUCTION

A. Problem Statement

Indonesia is among the world’s largest countries by population, with a total of up to 253,609,643 people. By this figure, Indonesia is the 5th most populated country after Tiongkok, India, The European Union, and the United States.\(^1\) A common problem with heavily populated countries is that the number of citizens is not sustained by a sufficient availability of jobs. Indonesian government takes a policy toward Indonesian workers, and one of government policies over Indonesian workers is sending Indonesian workers to other countries. The placement of Indonesian workers in other states based on Indonesian government policy came in 1970 and was conducted by the Ministry of Manpower, transmigration and cooperation marked by government regulation No. 4/1970 through Antarkerja Antardaerah program (between works and between areas) or AKAD and Antarkerja Antarnegara program or AKAN (between works and between states).\(^2\) One of Indonesian workers destination states is Malaysia. Geographically Malaysia is pretty close to Indonesia. Besides that, Saudi Arabia and other Middle East states, Japan, Korea, Taiwan, Hong Kong, and Singapore also become the destination for Indonesian workers.

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Indonesia is a country that has a thousand of potential workers, who are ready to be sent to multiple destination countries, include Malaysia. Most of the migrant workers are women, who worked in the domestic sector (household assistant). \(^3\)

The policy of sending Indonesian workers to other states is caused by several factors such as economic conditions, the small number of job opportunities inside the country, and the high salary that is offered by the destination countries. These factors have become the reason why Indonesian workers look for jobs outside Indonesia. In other words, the main factor behind the migration of workers is the lack of one of citizens’ most important basic rights: employment. A mandate in Article 27, Paragraph (2) of the 1945 Constitution, and its amendment, state that “Every citizen has a right of work and decent living for humanity”. \(^4\) The program of placing Indonesian workers abroad is part of government efforts to reduce unemployment and also fulfill citizens’ basic rights.

According to the data from Ministry of Human Resource there are approximately 2,109,954 migrants currently working in Malaysia, about 50 percent are migrant workers from Indonesia. \(^5\)

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\(^5\) Data from the presentation by Ministry of Human resources Of Malaysia when study visit by Indonesia government delegation on 1-2 September 2009, IOM International Organization for
Table I.A Placement of Indonesian Migrant Workers Based on the placement country 2011–2013

<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>MALAYSIA</td>
<td>134.120</td>
<td>134.023</td>
<td>249.950</td>
</tr>
<tr>
<td>2.</td>
<td>TAIWAN</td>
<td>78.865</td>
<td>81.071</td>
<td>83.544</td>
</tr>
<tr>
<td>3.</td>
<td>SAUDI ARABIA</td>
<td>137.835</td>
<td>40.655</td>
<td>45.394</td>
</tr>
<tr>
<td>4.</td>
<td>UAE</td>
<td>39.917</td>
<td>35.571</td>
<td>44.505</td>
</tr>
<tr>
<td>5.</td>
<td>HONGKONG</td>
<td>50.301</td>
<td>45.478</td>
<td>41.769</td>
</tr>
<tr>
<td>6.</td>
<td>SINGAPORE</td>
<td>47.786</td>
<td>41.556</td>
<td>34.655</td>
</tr>
<tr>
<td>8.</td>
<td>SOUTH KOREA</td>
<td>11.392</td>
<td>13.593</td>
<td>15.021</td>
</tr>
<tr>
<td>9.</td>
<td>UNITED STATES</td>
<td>13.749</td>
<td>15.353</td>
<td>15.021</td>
</tr>
<tr>
<td>10.</td>
<td>BRUNEI DARUSSALAM</td>
<td>10.804</td>
<td>13.146</td>
<td>11.269</td>
</tr>
</tbody>
</table>

Source: www.bnp2tki.go.id

The large number of Indonesian migrant workers in Malaysia has several causes. Firstly there are the demographic factors and economic imbalances between Indonesia and Malaysia. Second is the presence of intermediaries’ networks, brokers and workers agencies that have been instituted. In these networks, the intermediary also acts as a broker, causing a rapid flow of migrants to Malaysia. A third factor is the relationship of linguistic, cultural and historical relations between the employers and the workers, compared with migrants from other countries. That is why Malaysia has large demand toward Indonesian migrant workers and highly dependent on their contribution to the development and industrialization of Malaysia.

Indonesian workers in Malaysia are involved in many problems which are difficult to be solved, including illegal migrant workers. Most workers are

Migration, Migrasi Tenaga Kerja Dari Indonesia “Gambaran umum migrasi tenaga kerja indonesia di beberapa negara tujuan Asia dan Timur Tengah”, Jakarta, 2010, p 39

6 Ibid. P. 40
uneducated and unskilled which results in violations of their rights. These violations may take forms such as sexual abuse, violence by employers, unpaid salaries. It can also lead them into committing serious crimes and in the end they are sentenced to death.

There are several factors behind the problems of migrant workers. The first one comes from the migrant workers themselves. They have limited or low level skills and tend to work dangerous, dirty, and lowly esteemed jobs. Besides that, they don’t have knowledge of the law and the customs of the destination state. The other factor is the recruitment system for applicant workers who are recruited in both legal and illegal ways. In the legal recruitment process, the applicant should provide letters or official documents and permits from the Department of Manpower. They should join the skills training of prospective Indonesian migrant workers before they are sent to the destination country. On the other hand, the illegal recruitment process breaks the immigration laws and places the workers without authorization. They do not meet the requirements to get legal protection, which then makes them vulnerable to exploitation.  

Many problems related to Indonesian migrant workers keep coming up. The large numbers of Indonesian migrant workers that are threatened by death penalty punishments get serious attention from the Indonesian Government. Indonesian government is very exasperated by this problem. Indonesian

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7 Data from the presentation by Ministry of Human resources Of Malaysia when study visit by Indonesia government delegation on 1-2 September 2009, IOM International Organization for Migration, Migrasi Tenaga Kerja Dari Indonesia “Gambaran umum migrasi tenaga kerja Indonesia di beberapa negara tujuan Asia dan Timur Tengah”, Jakarta, 2010, p 42
migrant workers who are threatened by death penalty are accused of committing murder, drug offences, kidnapping and other serious crimes in Malaysia. For example, Wilfrida Soik, an Indonesian worker from East Nusa Tenggara, faced the death penalty because she had committed a serious crime in Malaysia. She admitted that she had killed her employer, Yeap Seok Pen. She also argued that her crime was based on self-defense because Mrs. Pen often scolded and beat her. She could not stand her employer’s treatment anymore, so Wilfrida acted defensively. She resisted and pushed her employer until her employer fell, and the fall killed her.\(^8\) In August 26, 2013, Wilfrida was sentenced to the death penalty by the court under section 302 *Kanun Keseksaan.*\(^9\)

Wilfrida’s case is one of hundreds of cases regarding Indonesian migrant workers who face the death penalty in Malaysia. About 300 Indonesian workers were threatened by death penalty. According to data from Migrant CARE, along 2010 - 2013 there were 213 Indonesian migrant workers in Malaysia facing death penalty. They were accused of murder and committed other crimes.\(^10\) Anis Hidayah, Executive Director of Migrant CARE stated that although 70 Indonesian migrant workers were sentenced to death at the lower court level, 17 people already have a legal force and sometimes they would

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\(^{8}\) *Inilah penyebab wilfrida bunuh majikan di Malaysia*  

\(^{9}\) *Urus TKI di Malaysia Prabowo tak ajak SBY*  

\(^{10}\) *Hukuman Mati mengancam 265 TKI. Kemana pemerintah?*  
either be hanged, or shot dead. The other 67 Indonesian migrant workers are free of the death penalty.\textsuperscript{11} Considering the number of migrant workers facing the death penalty quite high, the government should take an action to protect its citizen.

Based on the violence problem, the Indonesian workers had suffered in Malaysia, government should create a concept that guarantees the safety of placement and protection of migrant workers abroad, in accordance with the Law of the Republic of Indonesia No.39 of 2004, article 1 of the Placement and Protection of migrant workers abroad are the contents of the worker's rights that must be respected and guaranteed enforcement. While the government’s duty contained in article 6 states that the government is responsible for the quality upgrade of the protection of migrant workers abroad. In this case the government is obligated to protect its citizens in accordance with the Law of the Republic of Indonesia No.39 of 2004.

This research focused on the effort of Indonesian Diplomacy toward Malaysia 2010 – 2013 to give more attention toward the Indonesian Migrant Workers in Malaysia who were convicted under death penalty. The author chose the period between 2010 – 2013 as a study case because in 2009 Indonesian government launched Moratorium policy in regard of Indonesian migrant workers placement in Malaysia in order to guarantee the protection of IMWs’s rights and until 2009 there are 175 cases regarding Indonesian migrant

\textsuperscript{11} \textit{Ibid}
workers faced death penalty in Malaysia. Beside that there are also Memorandums of Understanding between Indonesia and Malaysia about the placement and protection of Indonesian migrant workers in Malaysia. Compare to before along 2010 until 2013 the number of Indonesian migrant workers faced death penalty is increasing, there are still many Indonesian migrants workers threatened by death penalty with 213 cases of death penalty.

B. Research Question

In handling the problems of migrant workers who are facing the death penalty, we know the government has been working hard in protecting their citizens and to conduct diplomacy in labor protection.

In this research, in order to achieve deep study, the author will explain Indonesia Diplomacy process with Malaysia toward Indonesian migrant workers faced death penalty in 2010 - 2013.

How does Indonesian conduct diplomatic efforts to commute Indonesian migrant workers from death penalty in Malaysia 2010 – 2013?

C. Objectives and Benefits of The Research

According to the problem statement above, the objectives of the research are:

1. To know the diplomacy process by the government in order to protect Indonesian migrant workers from the death penalty.

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2. To explain the dynamics of this issue in the Study of International Relation.

Besides the main purpose of the research, there are also benefits such as:

1. To develop of the knowledge of International phenomena.

2. Provide benefits to the study of International Relations by offering non-traditional issues, the phenomenon of the many problems faced by migrant workers in Malaysia who are faced the death penalty threat.

3. To understand the actor who plays a role in protecting Indonesian migrant workers.

4. To know the process which is undertaken by the government in order to protect its citizens abroad.

5. To increase knowledge for students of international relations, especially regarding the diplomacy issue.

6. For the author, to develop ability to think and write through scientific work.

D. Literature Review

To explain the Indonesia Diplomacy process with Malaysia to commute Indonesian migrant workers from death penalty, we need to see others research which has similar issues toward the other states.
According to Yeni from International Relations department of UPN Veteran Jakarta in her thesis “Proses Diplomasi Indonesia Dengan Arab Saudi Terhadap Permasalahan Darsem” explains the efforts of the Indonesian government to absolve Darsem from death penalty threat by Saudi Arabia Government. Darsem reported by her boss on suspicion of killing a Yemeni citizen, named Walid, who was came to their house. In his confession Darsem stated that she killed Walid for defending her honor, because she would have been raped. She uses a hammer to hit the body of the victim until he is dead

According to Yurizka Nur Rahmah from International Relations department, UIN Syarif Hidayatullah Jakarta, in her thesis “Indonesian Diplomacy to commute Indonesian migrant workers from death sentence in Saudi Arabia (2011 -2013) explains about the efforts of President Yudhoyono to commute Indonesian migrant workers in Saudi Arabia after the execution of Ruyati in 2011. She also explained about Indonesia implemented first track diplomacy. She argued that there are three challenges faced by Indonesia government in commuting the death sentence of IMWs in Saudi. The challenges are lacking of forgiveness from victim’s family, un-affordable diyat for IMWs and under age heir to give approval to IMWs.

According to Mike Martaleta from International Relations department, UIN Syarif Hidayatullah Jakarta on her thesis “The challenges of international labour organization (ILO) in protecting Indonesian domestic migrant workers in Malaysia (2008 -2012)” explains about the challenges of international labour organization (ILO) in protecting Indonesian domestic
migrant workers in Malaysia study case 2008 – 2012. The first challenge is because Indonesia and Malaysia still have not ratify ILO Convention No.189. The second challenge is the low public awareness about the position of domestic workers as workers. The third challenge is the limited budget of Indonesia’s government, and the last one is technical challenges in project services and research and documentation.

In the Journal of Diplomacy Vol 2, 2010, “Diplomasi Perlindungan Tenaga Kerja Indonesia di Luar Negeri” Teguh Wadoyo said that the problems faced by the workers have been much discussed by various parties, both inside and outside the country and in the international order were discussed within the framework of bilateral, regional and international levels. Indonesia is active in the forums meeting organized by the International Labour Organization, International Organization for Migrantion, Development United Nations Fund for Women. While in the country itself, have been held several regional and national forum discussions to discuss the problems and to reduce the settlement of the workers. At first, the phenomenon of migrant workers in trouble, 90% occurred in the country starting from recruitment, delivery and placement and protection of labor, therefore, the government is required to be able to fix the problems at home and were able to remove the level of problems migrant workers abroad. In this case to resolve the problems of migrant workers in addition to using the legal approach, and socio-cultural diplomacy which seeks to be lobbying the government bureaucracy of destination country, Multi-track Diplomacy is one of the approaches that touch non-governmental
organizations, professional organizations of civil society in the country purpose. Multi-track Diplomacy proved to be very effective in accelerating the Indonesian representatives in accessing critical information and provide convenience and assistance to solve the migrants’ problems. In 2010, the National Development Priorities is increase, development and protection of migrant workers is one of the priorities in the national economic development in 2010.13

In the Journal of diplomacy, 2011. “Wajah Diplomasi Perlindungan Buruh Migran Indonesia” Anis Hidayah said the issue of migrant workers today have become an agenda in every country. In this case we can see that there are three conditions that can describe the situation of domestic workers today, are dark, dirty and dangerous or 3D. In Malaysia most Indonesian women migrant workers, who are victims of violence, sexual abuse by her employer, in addition to the diplomatic protection of citizens have often seen and practiced by way of Law Enforcement.14

E. Theoretical Framework

According to the research question above, the author will use Foreign Policy and Multi-Track Diplomacy concept. By using that theory can help to answer the research question.

1. **Foreign Policy Concept**

According to K.J Holsti, Foreign Policy is an action or idea designed by policy makers to solve problems or promote a change in the environment, such as in policy attitudes or actions of other countries. The idea of foreign policy can be divided into four components from the general to the more specific direction, inter alia: oriented foreign policy, national role, purpose, and action.\(^{15}\)

Holsti also stated that governments constitute the foreign policy in highly complex external and domestic environments. Holsti distinguish between the external context-all those condition and other countries policies that impact on one’s own choices.\(^{16}\) The target of foreign policy is to create or escalate a condition (or a problem) outside its territorial-sovereign boundaries.\(^{17}\)

Mark Webber and Michael Smith determined foreign policy as a composed of the goals sought values set, decisions made, and actions made by states, and national governments acting on their behalf, in the context of the external relations of national societies. It constitutes an attempt to design, manage, and control the foreign relations of national societies.\(^{18}\)

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\(^{16}\) *Ibid* p.270


This research is focuses on the implementation of foreign policy particularly the instruments used by a state in conducting its foreign policy. Implementation of foreign policy consists of a spectrum which has two sides on it. The first side is military intervention and the other side is communication and persuasion ways. The communication and persuasion ways are referred to the actions of a country in conducting its policy through receiving, delivering and interpreting message. These ways which aim to express country's view on a particular issue are known as part of diplomacy.\textsuperscript{19}

Indonesian foreign policy regarding manpower and the protection of its citizen in overseas is very important for example Indonesia created the Law institution to protect and ensuring the viability of its citizen in overseas.

2. Multi-Track Diplomacy Concept

Diplomacy is an instrument of foreign policy. R. P Barston was stated that diplomacy is the implementation of foreign policy. (R. P Barston, Modern Diplomacy, New York, Addison Wesley Longman, 1997, 1) Sukawarsini Djelantik stated that diplomacy has close interdependency with foreign policy which is conducted by trained official agents.\textsuperscript{20}

According to Sir Ernest Satow in his book “Guide to Diplomacy Practices”, is the conduct of official relations between states by peaceful

\textsuperscript{19} \textit{Ibid} p. 88
means. In the end, the main purpose of Diplomacy is to achieve mutual understanding both in bilateral, trilateral, or multilateral relationship.

S. L Roy argued that successful of diplomacy is reached when conflicting parties reach mutual understanding among them. Diplomacy can be conducted not only between state governments (Track on Diplomacy) but also between citizens, institutions, or communities from different countries (Track Two Diplomacy).

In applying the foreign policy regarding the Indonesian migrant workers that faced the death penalty, Indonesia needs the diplomacy with Malaysia to find a solution for this problem. Indonesia is obligated to protect its citizens in accordance with the Law of the Republic of Indonesia No. 39 of 2004.

In general, diplomacy is the art and practice of communication and negotiation by someone, which represents a state. Diplomacy can also be defined as the process of the implementation of inter-state relations through the representative system, where in the process to seek a diplomatic mission of a country to another country. In this case the S.L. Roy explains diplomacy is the art of prioritizing the interests of a nation through negotiation in a peaceful way, if peaceful means fail, then the threat of force is allowed.

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21 Mohammad Shoelhi, Diplomacy: Praktik Komunikasi Internasional, Bandung: Simbiosa Rekatama Media, 2011, 76
23 Mohammad Shoelhi., Diplomacy: Praktik Komunikasi Internasional (Bandung: Simbiosa Rekatama Media, 2011) p 79
24 Roy, S.L, Diplomacy in Ancient India, Calcuta, 1978
According to Sir Earnest Satow in his book “Guide to Diplomatic pratice” define the diplomacy as:

“Diplomacy is the application of intelligent and tact to conduct of official relation between the government of independent states”.25

In line with the development of International Relations disciplines, then diplomacy is connected with the management of international relations. Diplomacy is arts, how to use the skill to reach the success in international relations and cooperation negotiations between countries.

In this case, the actor of diplomacy is not only state but also non-state actor. Both of them have the influence of this diplomacy process such as migrant care as an organization and the others elements. Therefor, Multi Track Diplomacy is more suitable to analyze this case.

Multi-Track Diplomacy is an expansion of the "Track One, Track Two" paradigm and as an interconnected activities, individuals, institutions, and communities that operate together for a common goal: a world at peace. Multi Track Diplomacy is an expansion of the “Track One, Track Two” paradigm.26

Multi Track Diplomacy utilizes all levels of society in order to determine the needs and facilitate communication between all levels of society.27 Here the nine tracks in the Multi- track System28:

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26 Louise Diamond and John Mc Donald, Multi-Track Diplomacy (New York: Kumarian Press USA, 1996), 5
27 Ibid
Track 1 – Government, or Peacemaking through Diplomacy. This is the world of official diplomacy, policymaking, and peace building as expressed through formal aspects of the governmental process.

Track 2 – Non-government/ Professional, or Peacemaking through Conflict Resolution. This is the realm of professional non-governmental action attempting to analyze, prevent, resolve, and manage international conflicts by non-state actors.

Track 3 – Business, or Peacemaking through Commerce. This is the field of business and its actual and potential effects on peace building through the provision of economic opportunities, international friendship and understanding, informal channels of communication, and support for other peacemaking activities.

Track 4 – Private Citizen, or Peacemaking through Personal Involvement. This includes the various ways that individual citizens become involved in peace and development activities through citizen diplomacy, exchange programs, private voluntary organizations, nongovernmental organizations, and special-interest groups.

Track 5 – Research, Training, and Education, or peacemaking through Learning. This track includes three related worlds: research, as it is connected to university programs, think tanks, and special-interest research centers; training programs that seek to provide training in practitioner skills

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such as negotiation, mediation, conflict resolution, and third-party facilitation; and education, including kindergarten through PhD programs that cover various aspects of global or cross-cultural studies, peace and world order studies, and conflict analysis, management, and resolution.

Track 6 – Activism, or Peacemaking through Advocacy. This track covers the field of peace and environmental activism on such issues as disarmament, human rights, social and economic justice, and advocacy of special-interest groups regarding specific governmental policies.

Track 7 – Religion, or Peacemaking through Faith in action. This examines the beliefs and peace-oriented actions of spiritual and religious communities and such morality-based movements as pacifism, sanctuary, and nonviolence.

Track 8 – Funding, or Peacemaking through Providing Resources. This refers to the funding community-those foundations and individual philanthropists that provide the financial support for many of the activities undertaken by the other tracks.

Track 9 – Communications and the Media, or Peacemaking through Information. This is the realm of the voice of the people: how public opinion gets shaped and expressed by the media-print, film, video, radio, electronic systems, the arts.

In this research, the author will use Track one, Track two and Track four concept to analyze the case.
F. Research Method

In this research the author will use Qualitative research method. Qualitative research is a field of inquiry in its own right. It crosscuts disciplines, fields, and subject matter. Qualitative research involves the studied use and collection of a variety of empirical materials case study, personal, experience, introspection, life story, interview, artifacts, and cultural texts and productions, along with observational, historical, interactional, and visual texts that describe routine and problematic moments and meanings in individual’s lives.  

Qualitative research method is a research procedure that use descriptive data through verbal or writing from the object observation. This research is literature study that use data collection technique by collecting various library resources which are related to the research problem, then selecting data, and then analyze data through the comprehensive explanation.

Qualitative analysis can eliminate an explanation by showing that a wide array of evidence contradicts it. The data might support more than one explanation, but all explanations will not be consistent with it. In addition to eliminating less plausible explanations, qualitative data analysis helps to verify a sequence of events or the steps of a process.

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29 Norman K. Dezin and Yvonna S. Lincoln. The Discipline and Practice of Qualitative Research (The Sage Handbook of Qualitative Research) P 3
30 Neuman, W Lawrence. Basic of Social Research: Qualitative and Quantitative Approaches (The United States; Pearson education Inc, 2007), p 329
31 Neuman, W Lawrence. Basic of Social Research: Qualitative and Quantitative Approaches (The United States; Pearson education Inc, 2007), p 329
The author will be using library research as a data collection technique by collecting various library data which are related with the research problem, either books, journals, or articles in magazine or newspaper. The materials for this thesis contain various sources, both from the library or institution, and also from the internet which is related to the thesis material. In collecting the data the author will visit:

1. Library of FISIP UIN Syarif Hidayatullah Jakarta
2. Library of UIN Syarif Hidayatullah Jakarta
3. Library of Indonesia Ministry of Foreign Affairs, Jakarta
4. Indonesia Ministry of Manpower and Transmigration office, Jakarta
5. Library of University of Indonesia
6. BNP2TKI Office
7. Migrant CARE Secretariat

Analytical data in this research are through collecting data, selecting data, interpreting data, and concluding the data as a result of interpretation. For the first step, the data that has been collected then arranged and selected before further processing. The selected data should be appropriate with the scope of the research. After that is interpreting data and find the correlation between the concepts. The last step is make a conclusion over the result of interpretation.
G. Outline

The outlines of this thesis are:

CHAPTER I INTRODUCTION

1.1 Problem Statement
1.2 Research Question
1.3 Objective and Benefit of the Research
1.4 Literature Review
1.5 Theoretical Framework
1.6 Research Method
1.7 Outline

CHAPTER II RELATIONS BETWEEN INDONESIA AND MALAYSIA REGARDING MIGRANT WORKERS

2.1 History of Sending Indonesian Migrant Workers to Malaysia
2.2 Indonesia and Malaysia Relationship on Indonesia Migrant Workers
2.3 The Problems of Indonesian Migrant Workers in Malaysia.

CHAPTER III DEATH PENALTY ON INDONESIAN MIGRANT WORKERS IN MALAYSIA 2010 - 2013

3.1 Death Penalty in Malaysia as Legal System
3.2 Labor Regulations in Malaysia
3.3 Indonesian Migrant Workers’ Condition in Malaysia
3.4 Death Penalty Case among Indonesian Migrant Workers in Malaysia 2010 - 2013

CHAPTER IV INDONESIA DIPLOMATIC EFFORTS TO COMMUTE INDONESIAN MIGRANT WORKERS FROM DEATH PENALTY

4.1 Indonesia Diplomatic Efforts in order to Resolve the Indonesian Workers Faced Death Penalty in Malaysia.

4.1.1 Diplomatic Efforts Developed by Indonesia Government to Protect Indonesia Migrant Workers from Death Penalty in Malaysia 2010 – 2013.

4.1.2 The Role of Non-State Actors

4.2 Challenges Faced by Indonesian Government in Commuting the Death Penalty on Indonesian Migrant Workers in Malaysia 2010 -2013

CHAPTER V CONCLUSION
CHAPTER II

RELATIONS BETWEEN INDONESIA AND MALAYSIA REGARDING MIGRANT WORKERS

This chapter is focused on Relations between Indonesia and Malaysia on Migrant Workers from the history of sending workers to Malaysia until the problem that faced by both countries. It will discusses in three point that are related to the relation between Indonesia and Malaysia on migrant workers issue. The first one is History of sending Indonesian Migrant Workers to Malaysia. This point will be started by describing the beginning of sent workers to Malaysia. The second one is Indonesia and Malaysia Relationship on Indonesia Migrant Workers. This point explains the efforts of Indonesia and Malaysia to manage and regulate the system of recruitment and placement process to protect IMWs in Malaysia. The last one is the Problems of Indonesian Migrant Workers in Malaysia. It will explain about the problem that faced by both countries until caused death penalty punishment.

2.1. History of Sending Indonesian Migrant Workers to Malaysia

Malaysia became popular destination of sending IMWs after Saudi Arabia because geographically Malaysia is pretty close to Indonesia. Mostly they just came to Malaysia without any documents or legal letters from the government, because from long time ago there has been cross on the boundaries between Indonesia and Malaysia. Beside that, Indonesia has close similarity culture and language with Malaysia. This is also become a factor of many Indonesian migrant
workers came to Malaysia. As we know that, in terms of culture, between Malaysia and Indonesia is not much differences. In particular is the similarity of language, Malay language. It is different from the other destination countries of IMWs such as Hong Kong, Korea, and the Middle East.32

In “Mobilitas Tenaga Kerja ke Malaysia: study kasus Flores Timur, Lombok Tengah, Pulau Bawean” book mention that mobility of IMWs to Malaysia was happened before World War II.33 In the beginning, according to Hugo, there are three kinds of migration of IMWs to Malaysia. First, Force Migration is IMWs was forced to working on Plantation sector, street construction and the other constructions. Second, Contract migrant labor. The IMWs twas contracted to work on specific time period with massive sanction if the labor terminated the employment. Third one is Spontaneous Migration. This is the IMWs who worked on plantation or a construction based on their initiative.34

The flow of Indonesian migrant workers to the Malaysian Peninsula experienced increased in the 1930s. The results of the 1950 Malaysian population census indicated that there were 189.450 people born in the Java Island, 62.200 people originated from South Kalimantan, 26.300 people from Sumatra, 24.000 people from the Bawean Island (East Java), and 7.000 people from Sulawesi.35

34 ibid p 2
The migration of Indonesian migrant workers to Malaysia was declined during the War and also during the period of the confrontation between Indonesia and Malaysia. However, it was increased again after the relationship between the Indonesian government and Malaysian Kingdom normalized.  

Beside that, the migration of Indonesian Migrant Worker to Malaysia cannot be separated from the implementation of New Economic Policy (NEP) at 1971 – 1990. This policy has triggered the expansion of Industrial sector in Malaysia, especially in manufacture sector, and then followed by the addition of the employment in trade sector, services, and government, who are majority concentrated in urban areas.

These developments were influenced to the structure of the migrant workers who came to Malaysia, which can be explained by two causes. First, the rapid development of manufacturing sector caused many young Malaysian moved to the urban city to fill the jobs in the manufacturing and service sectors. The higher level of education of the Malaysian also triggered this situation, especially after the implementation of New Economic Policy in 1970s. The higher level of education leading to increased expectations for work in the modern sector that promises the higher wages. As a result, there was a shortage of labor in the

36 Ida Bagoes Mantra. *Indonesian Labor Mobility to Malaysia A Case Study: East Flores, West Lombok, and The Island of Bawean*, paper presented at the National Workshop on International Migration at Yogyakarta, 9-11 March 1998, by the Population Studies Center, Gadjah Mada University, Indonesia


38 Azizah Kassim, *International Migration and Its Impact on Malaysia, on Confidence Building and Conflict Reduction*, 11th ASPAC Roundtable, ASEAN-ISIS, 5-8 June 1997, Kuala Lumpur, Malaysia
agricultural sector. If the Labor shortage problem not solved clearly, it would be harmed to the Malaysian economic. Even though the manufacturing sector has grown rapidly and increases Malaysia foreign exchange reserves income, but the agriculture sector is still the main sector in generating Malaysian foreign exchange.

Second, New Economic Policy also increases the chance of Malaysian Woman higher education to work in formal sector. The higher of opportunity for career caused the needs of domestic servants are very large. However, the Malaysian woman who lack of formal education were more interested to work in manufacturing sector because of the salary is more higher than working in domestic sector. In the end, there was a shortage of labor to be domestic servants.

These two causes above had made Malaysian Government opened opportunities to International workers came to Malaysia. Migrant workers from Indonesia are largest than the other countries. In 1979, Malaysian Deputy Minister of Labor announced that the Indonesian migrant workers who work in Malaysia totaled about 1,200,000 people.39

2.2. Indonesia and Malaysia Relationship on Indonesia Migrant Workers

In Indonesia the regulation of international migration to work abroad have been structured that initiated in 1970 and called as "the placement Indonesian migrant workers abroad". That was implemented by the Ministry of Manpower, Transmigration and Cooperatives with the issuance of Government Regulation

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No. 4/1970 through *Antarkerja Antardaerah (AKAD)* and *Antarkerja Antarwilayah (AKAN)* program. Placement of workers abroad is the policy of the government, because the government could not provide the jobs according to the amount of increasing labor. This policy is the solution to solve unemployment problem and also to increase the foreign exchange reserves income for Indonesia.

In the 1970s, the arrival of migrant workers to Malaysia was not a big problem because Malaysia really needed them especially for the agricultural sector and domestic sector. From year to year the arrival of migrant workers to Malaysia have been increased until the 1980s. The number of migrant workers in Malaysia increased significantly. In article “The Phenomenon of Illegal Immigrants” Haji Abdullah Firdaus mentioned that the Malaysian Government estimates that the number of Indonesian workers has increased to approximately 100,000 people. According to the report by the Ministry of labor Malaysia about the labors problems in 1978 - 1988, in 1984 there were approximately 500,000 migrant workers in Malaysia, which is dominated by illegal Indonesian migrant workers. They not only worked in the agricultural sector, but also recruited to work as domestic servants and in the construction sector where mostly located in urban areas.

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In 1981s until 1988s is the first stage of Malaysia started to recruit foreign workers officially and initiate the bilateral agreement with Indonesia regarding the necessary of foreign workers. The agreement between Indonesia and Malaysia was carried out in 1984 to manage the necessary of foreign labor in agricultural and domestic sector, after Malaysia established the Committee for employment of foreign workers in 1982.42

The number of IMWs who worked in Malaysia is increased from year to year. According to the data from Ministry of Human Resource there are approximately 2,109,954 migrants currently working in Malaysia, about 50 percent are migrant workers from Indonesia.43

<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>MALAYSIA</td>
<td>134,120</td>
<td>134,023</td>
<td>150,234</td>
</tr>
<tr>
<td>2.</td>
<td>TAIWAN</td>
<td>78,865</td>
<td>81,071</td>
<td>83,544</td>
</tr>
<tr>
<td>3.</td>
<td>SAUDI ARABIA</td>
<td>137,835</td>
<td>40,655</td>
<td>45,394</td>
</tr>
<tr>
<td>4.</td>
<td>UAE</td>
<td>39,917</td>
<td>35,571</td>
<td>44,505</td>
</tr>
<tr>
<td>5.</td>
<td>HONGKONG</td>
<td>50,301</td>
<td>45,478</td>
<td>41,769</td>
</tr>
<tr>
<td>6.</td>
<td>SINGAPORE</td>
<td>47,786</td>
<td>41,556</td>
<td>34,655</td>
</tr>
<tr>
<td>7.</td>
<td>QATAR</td>
<td>16,616</td>
<td>20,380</td>
<td>16,237</td>
</tr>
<tr>
<td>8.</td>
<td>SOUTH KOREA</td>
<td>11,392</td>
<td>13,593</td>
<td>15,021</td>
</tr>
<tr>
<td>9.</td>
<td>UNITED STATES</td>
<td>13,749</td>
<td>15,353</td>
<td>15,021</td>
</tr>
<tr>
<td>10.</td>
<td>BRUNEI DARUSSALAM</td>
<td>10,804</td>
<td>13,146</td>
<td>11,269</td>
</tr>
</tbody>
</table>

Source: www.bnp2tki.go.id


43 Data from the presentasion by Ministry of Human resources Of Malaysia when study visit by Indonesia government delegation on 1-2 September 2009, IOM International Organization for Migration, Migrasi Tenaga Kerja Dari Indonesia “Gambaran umum migrasi tenaga kerja indonesia di beberapa negara tujuan Asia dan Timur Tengah”, Jakarta, 2010, p 39
Until 2013, there are 1,189,235 Indonesia migrant workers worked in Malaysia with 1,157,735 IMWs worked at formal sector and 215,809 worked at Informal sector. Those number of migrants workers is not including the illegal Indonesia migrant workers. Mostly formal sector workers are working at construction, farming, manufacturing, agriculture, and services; and Informal sector workers are working at domestic sector.

Table II.B.2 The Number of Indonesian Migrant Workers in Malaysia until 2013

<table>
<thead>
<tr>
<th>Sector</th>
<th>Until 2011</th>
<th>2012</th>
<th>2013</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal</td>
<td>904,976</td>
<td>117,324</td>
<td>135,435</td>
<td>1,157,735</td>
</tr>
<tr>
<td>Informal</td>
<td>184,309</td>
<td>16,669</td>
<td>14,801</td>
<td>215,809</td>
</tr>
</tbody>
</table>

**Total**: 1,189,235

Source: [http://pusdatinaker.balitfo.depnakertrans.go.id/](http://pusdatinaker.balitfo.depnakertrans.go.id/)

According to the large number of Indonesian migrant workers in Malaysia, Indonesian Government needs to create the regulation over IMWs system. Then Indonesia and Malaysia brokered a Memorandum of Understanding (MoU) governing labor migration between them in 1998 and signed another one on May 10, 2004, specifically exclude the domestic workers. Malaysia’s Minister of Human Resources told to Human Rights Watch that a separate agreement need to be drawn up for “unskilled” workers.\(^44\) Migrant workers in construction, factories, and plantations are all covered by the May 10, 2004 agreement. Only domestic workers classified as “unskilled” by the two governments.\(^45\)

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\(^{44}\) Datuk Dr. Fong Chan Onn, Minister of Human Resources, made this comment in response to a question posed by Human Rights Watch at a press conference, Kuala Lumpur, Malaysia, February 16, 2004.

The Memorandum of Understanding 2004 was failed to provide several critical for domestic workers. For domestic workers there was the Notes of Agreement on the Guidelines of the hiring of Indonesian Maids between Malaysia and Indonesia of 30 January 1996. Hence this Notes of Agreement is not enough to be used as the legal basic for the manpower relations between both countries, then this notes of agreements substituted by Memorandum of Understanding between Indonesia and Malaysia on The Recruitment and Placement of Indonesian Domestic Workers that signed in Bali, Indonesia, on 13 May 2006 and amended by its protocol signed at Bandung, Indonesia, on 30 May 2011.46

Until these two Memorandums of Understanding were signed by both countries, but still those MoUs did not cover to handle the IMWs problems such as illegal workers problem that the numbers of illegal IMWs are increasing in every year and causing problem for both countries. Besides that, the IMWs still get harsh treatment and violence of their rights from the employer.

In June 2009, Indonesian government was imposed a moratorium policy on the placement of domestic workers in Malaysia. Moratorium on the placement of IMWS is a suspension of activity of sending IMWs to Malaysia for domestic sector with the authorized period of delay or waiting. The purpose of policy is for the protection of IMWs itself from the violations of their rights. However, the implication of implementing this Moratorium policy on the placement of domestic

workers in Malaysia is about 20,000 illegal Indonesia migrant workers came to Malaysia in every month during the moratorium.\textsuperscript{47}

2.3. The Problems of Indonesian Migrant Workers in Malaysia

Sending IMWs to Malaysia cannot be separated from many problems. Illegal IMWs become a serious problem both for Indonesia and also Malaysia. Most of them did not have enough knowledge about mechanism of working abroad. The ignorance of knowledge eventually became an opportunity for labor distributor agencies to took advantages of them such as extorting them or distributing them to Malaysian employer who give them very low salary because their illegal status that prone to deportation at any time.\textsuperscript{48}

Beside that, the rules in Malaysia itself facilitate the opportunity for workers who worked without procedure that determined by origin state. Malaysia has a policy about journey-performed visa for tourist who wants to work in Malaysia. With this policy, the prospective IMWs who will work in Malaysia, has an opportunity to change the visit passport as tourist and could put themselves forward to be workers with the appropriate regulatory until changed their status become legal IMWs in Malaysia. Indonesian government opposed this policy because the prospective workers, who take advantage from this procedure, would

\textsuperscript{47}Pepesan Kosong Moratorium Malaysia

The weakness of these regulations are used by several groups to made the profits from the time during the placement of migrant workers, regardless of their rights and also the guarantee of protection while IMWs working in Malaysia.

The Malaysian government categorizes migrant workers in three groups:\(^{50}\)

1. Documented Migrant workers
   They are entering legally and hold a temporary valid work visa issued by Malaysian Department of migration. They have right to receive protection. They usually employed in low-class work sectors and are unskilled

2. Expatriate workers
   They hold a work permit and permitted to bring partner and family to Malaysia. They usually work in higher managerial and executive positions and technical employment.

3. Irregular Migrant Workers
   They violate immigration laws by entering and working in Malaysia without authorization. They did not fulfill the requirement for protection under the law and they are also vulnerable to exploitation mistreatment. We usually call them as Illegal migrant workers.

As author said before that irregular migrant workers (illegal migrant

\(^{49}\) Ibid
workers) became serious problem for both countries because they are vulnerable to violation of their right and also exploitation mistreatment. In fact, Illegal IMWs working in many countries, such as in Malaysia, are not given basic human rights and have limited access to legal right in cases of non-payment of wages, unsafe working conditions, exploitation or abuse although there are existing laws and norms in each country regulating the system.\textsuperscript{51} They also live in greater fear of being arrested and deported and can therefore be much more easily controlled by their employers because they do not have the legal status to live or work in the destination country.\textsuperscript{52}

Institute for Ecosoc Rights identified five main factors that led to migrant worker becoming irregular (illegal) migrant workers.\textsuperscript{53}

First, due to the complexity, impracticalities, cost and length of time needed to migrate through regular migration channels. Some candidates of IMWs consciously choose to migrate irregularly. Some of them considered that irregular channels are more beneficial, both for themselves and the employer, as they are faster, less expensive and thus more practical.

Second, Malaysian migration law places the migrant workers with a specific employer, thus the irregular migrant workers have greater freedom to choose their employer and the type of work they do.

\textsuperscript{51} International Organization for Migration 2010, Labour Migration from Indonesia, International Organization for Migration, Jakarta, pp.18
\textsuperscript{52} Ibid
Third, although many migrant workers entering Malaysia as regular migrants, exploitative working conditions, physical and psychological abuse or non-payment of wages can leave the worker with little choice but to leave that particular employer and thus lose his/her legal status as a migrant workers, as the worker’s work permit is tied to the employer.

Fourth, the Memorandum of Understanding between Indonesia and Malaysia allows for the migrant workers’ travel documents to be kept by the employer. Leaving an employer, therefore, results in a loss of immigration status and identity documents.

Fifth, prospective Indonesian migrant workers often have little access to information about migration procedures and working conditions in Malaysia. Lack of information makes them vulnerable of deception and potential being victims of human trafficking by parties in both Indonesia and Malaysia.

Irregular immigration to Malaysia is considered as a crime, and irregular migrants (illegal migrant) are often treated as criminals: their homes or places of employment are raided and the workers placed in detention centers.54

In the other hand, the problem also is faced by Indonesian government itself. Compared with the number of Indonesian migrants in Malaysia, the Indonesian diplomatic missions are often understaffed. Due to the lack of reporting by recruitment agencies, Indonesian Government officials are often not aware of the location of IMWs, the nature of their work, and their general

54 Ibid p 46
conditions. This makes it difficult for government officials to be proactive in providing assistance. It is difficult for diplomatic representatives to supervise and detect, let alone anticipate the possibilities of serious problems emerging.  

The violence of migrant workers’ rights also becomes a problem in this manpower relationship. Most of the victims are the irregular migrant workers or illegal migrant workers. As we know that they are lack of knowledge, unskilled, and they did not bring the legal document of migrant workers or permit from origin state to be a migrant workers in Malaysia. They don’t have a guarantee of protection. In the other hand, the issue of protection of migrant workers’ rights has become a strategic issue of International community’s concern. This is not separated from the high recognition of the human rights of migrant workers, regardless from their status legal or illegal workers, they are still human being.

Beside that what becomes the problem is when the illegal IMWs are committed in criminal cases and the Government of Indonesia does not have the full access. Therefore, responsibility to access the case since their illegal status makes it difficult for them to thoroughly solve the problem. Their employers do not bother to fix the illegal status of IMWs they are hiring because of the complex bureaucracy and high fee.  

The number of Illegal IMWs in Malaysia is reached almost a million. They worked at various sectors such as domestic workers, manufacturing, agriculture,
and also constructing labor.\textsuperscript{57}

The applicants of Indonesian Migrant Workers often have little access to information about migration procedures and working conditions in Malaysia. Lack of information about recruitment process makes them vulnerable to deception and potential trafficking by some parties both in Indonesia and Malaysia.\textsuperscript{58} When they arrived in Malaysia, they often get a violence of their rights because they are lack of protection, such as the place of work is not match with the agent promised, unpaid salary or inappropriate salary, prosecution by the employers, or even sexual abuse.

This kind of condition could lead the Indonesian migrant workers get trapped in a situation that causing them to deal with the law enforcement because they were committed serious crimes. Some of them have to kill their employers for self-defense reason. For example, Wilfrida Soik, Indonesian worker from East Nusa Tenggara, she faced the death penalty because she had committed a serious crime in Malaysia. She admitted that she had killed her employer, Yeap Seok Pen. She also admitted that her crime based on self-defense because Mrs. Pen often tortured and beat her.\textsuperscript{59} Beside that case, there are a lot of cases regarding IMWs that sentenced by death in Malaysia.

\textsuperscript{57} 
\textit{Cerita Soal Warung di ’Kampung’ TKI Ilegal di Tengah Proyek Konstruksi di Malaysia}

\textsuperscript{58} \textit{Ibid} p 46

\textsuperscript{59} 
\textit{Inilah Penyebab Wilfrida Bunuh Majikan di Malaysia}
The lack of knowledge about the Legal system in Malaysia made Indonesian Migrant Workers who committed to serious crime could be threatened the Death Penalty. Based on Memorandum of Understanding Indonesia and Malaysia about migrant workers stated that Indonesian migrant workers who worked in Malaysia are shall comply with all Malaysian law, rules, regulations, and policies.\textsuperscript{60}

In Malaysia drug offences also become a serious crime and will sentenced by death. As stated on Law of Malaysia: Act 234 Dangerous Drug Act 1954 section 39 (B) Trafficking in Dangerous Drugs:\textsuperscript{61}

1. No person shall, on his own behalf or on behalf on any other person, whether or not such other person is in Malaysia
   a. Traffic in dangerous drug;
   b. offer to traffic in a dangerous drug;
   a. or do or offer to do an act preparatory to or for the purpose of trafficking in dangerous drug
2. Any person who contravenes any of the provisions of subsection (1) shall be punished on conviction with death.

This punishment is implemented not only in Malaysia but also in other countries. Beside that this sentence is implemented not only for the smugglers from outside Malaysia but also for Malaysian citizen. Drug smuggling case also at Indonesian Migrant workers and caused them charged with death penalty.

Ani Anggraeni, IMWs worked as Domestic worker in Penang. She was sentenced to death by Shah Alam Court, Kuala Lumpur, Malaysia on 28 September 2012. She was sentenced to death because she was charged of

\textsuperscript{60} Memorandum of Understanding pasal 5 tahun 2004 dan pasal 7 MoU 2006
smuggling four kilograms of methamphetamine on June 21, 2011.\textsuperscript{62}

The large of number of Death penalty case in Malaysia, Indonesian should make efforts to the protection for Indonesian Migrant Workers in Malaysia. Indonesian Government should act more decisively to the protection of workers who worked abroad and implements Act No. 39 of 2014 on the placement and protection of Indonesian Migrant Workers.

\textsuperscript{62}Rita Hutapea. *TKI Dihukum Mati di Malaysia Atas Penyelundupan Narkoba.*
CHAPTER III

DEATH PENALTY ON INDONESIAN MIGRANT WORKERS IN MALAYSIA 2010 - 2013

This chapter focuses on Death penalty among Indonesian Migrant workers in Malaysia from 2010 until 2013. It will discusses four points that are related to the death penalty case. The first one is Death Penalty in Malaysia as a legal system. This point will be started by describing national law that implemented by Malaysia. Thus, it elaborates the various offences and crimes that should be punished in Death Penalty. The second one is Labor regulations in Malaysia. This point explains the national regulations on labor policy implemented by Malaysian Government. We know that Malaysia and Indonesia have two Memorandums of Understanding regarding the recruitment process and the placement of Indonesian Migrant Workers both formal sector or domestic sector, but there are still happen the problems of IMWs and violence of IMWs’ rights. The third one is the Indonesian migrant workers condition in Malaysia. Then explain about Death Penalty cases among Indonesian Migrant Workers in Malaysia from 2010 to 2013

3.1. Death Penalty in Malaysia Legal System

Malaysia is one of states in the world that still implements the death penalty in Malaysian Legal System. Capital punishment in Malaysia is a legal form of Punishment.\(^6\) This sentence also implemented for several countries in the world.

Image III.1. Map of Abolitionist and Retentionist Countries of Death Sentence

In Malaysia, the death penalty implements to various offences. Malaysia also has mandatory death penalty, which is imposed to Murder offences, drug trafficking, discharging of firearms and terrorism action, kidnapping, treason and war against Yang di Pertuan Agong. A mandatory sentencing scheme is one where the imposition of a death sentence is automatic upon conviction of a crime. The court or other sentencing authority retains no discretion to take into account the facts of the offense or the characteristics of each individual offender; instead, each offender is sentenced to death regardless of any mitigating circumstances that may apply.64

Only High Courts have the jurisdiction to sentence someone to death. Juvenile cases involving the death penalty are heard in High Courts instead of the juvenile court where other juvenile cases are heard. Appeals to the Court of Appeal and the Federal Court are automatic. The last resort for the convicted is to plead pardon for clemency. Pardons or clemency are granted by the Ruler or Yang di-Pertua Negeri (Governor) of the state where the crime is committed or the Yang di-Pertuan Agong if the crime is committed in the Federal Territories or when involving members of the armed forces. Death sentences are carried out by hanging as provided in Section 281 of the Criminal Procedure Code. Pregnant women and children may not be sentenced to death.65

Death penalty is implemented in the case since this offence is considered as serious crime. As stated on Malaysian Penal code 1936, as amended by 574 of 2006 Act 574 section 302 about punishment of murder:66

“302. Whoever commits murder shall be punished with death.”

Based on this act, as considered as mandatory penalty, this is implemented for any individual, both Malaysian or foreign citizen including Indonesian Migrant workers who stayed in Malaysia, that kill someone else. However, the court or other sentencing authority retains no discretion to take into account the facts of the offense or the characteristics of each individual offender.

Besides murder cases, Death penalty in Malaysia also be implemented to

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other crimes such as drug offences, discharging of firearms offence, possession of
fire-arms, ammunition and explosives (terrorism), kidnapping, Treason or
offences against Yang-di-Pertuan Agong.

Drug offence become a serious crime because narcotics and forbidden drugs
have massive effect and harm to human body’ health which led to the death, and
narcotics have a chemicals that affect an addiction for the user. In order to protect
citizen from the dangerous of narcotics and forbidden drugs, then the Malaysian
government determined the Death Penalty punishment for the drugs’ smuggler as
stated on Law of Malaysia: Act 234 Dangerous Drug Act 1954 section 39 (B)

Trafficking in Dangerous Drugs.67

1. No person shall, on his own behalf or on behalf on any other person,
   whether or not such other person is in Malaysia
   a. traffic in dangerous drug;
   b. offer to traffic in a dangerous drug;
   c. or do or offer to do an act preparatory to or for the purpose of
      trafficking in dangerous drug.
2. Any person who contravenes any of the provisions of subsection (1) shall
   be punished on conviction with death.

This punish sentence is implemented not only for the smugglers from
outside Malaysia but also for Malaysian citizen.

Since drug trafficking considered as mandatory death penalty, a court would
not be permitted to consider a defendant’s lack of criminal record or the desperate
circumstances that may have contributed to his decision to traffic in narcotics

67 Law of Malaysia: Act 234 Dangerous Drug Act 1954 section 39 (B) Trafficking in Dangerous
Drugs. Incorporating all amendments up to 2006. The Commissioner of Law Revision, Malaysia
Under the Authority of the Revision of Law Act 1968 in Collaboration with Percetakan National
accessed on February 10, 2015
before imposing sentence.\textsuperscript{68}

Discharging of firearms offence, possession of firearms, ammunition and explosives (terrorism) committed as death sentence. Unlawfully possessing firearms or explosives in a designated security area; and supplying, receiving, or preparing to supply or receive firearms in a designated security area, are punished by death.\textsuperscript{69} Malaysia has amended its penal code to address and further define terrorist acts,\textsuperscript{70} however, terrorist suspects are typically dealt with under the Internal Security Act and are detained without trial.\textsuperscript{71}

Treason is offences against the person of any Malaysian federal or federated head of state are punished by death.\textsuperscript{72} As stated on Malaysian Penal code 1936, as amended by 574 of 2006 Act 574 art. 121 and 121A:

121. Whoever wages war against the Yang di-Pertuan Agong or against any of the Rulers or Yang di-Pertua Negeri, or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life, and if not sentenced to death shall also be liable to fine.

121A. Whoever compasses, imagines, invents, devises or intends the death of or hurt to or imprisonment or restraint of the Yang di-Pertuan Agong or any of the Rulers or Yang di-Pertua Negeri, their heirs or successors, shall be punished with death and shall also be liable to fine.

The various offences that are mentioned above will be punished on the death penalty. This law is implemented for whole who stayed in Malaysia both

\textsuperscript{68} Malaysia. \url{http://www.deathpenaltyworldwide.org/mandatory-death-penalty.cfm} accessed on May 20, 2015
\textsuperscript{69} Internal Security Act of Malaysia, arts. 57(1), 59(1), 59(2), 1960, revised 1972
\textsuperscript{71} U.S. Dept. of State, Country Reports on Terrorism 2008: Malaysia, \url{http://www.state.gov/s/crrls/crt/2008/122413.htm}, Apr. 30, 2009
\textsuperscript{72} Ibid
Malaysian citizen itself or foreign citizen that stayed in Malaysia. So, this is law will also be implemented for those who worked in Malaysia, including Indonesian Migrant Workers in Malaysia. According to Memorandum of Understanding between Indonesia and Malaysia regarding regulations of Indonesian Migrant workers stated Indonesian Migrant Workers are shall comply with all Malaysian law, rules, regulations, policies.\textsuperscript{73}

3.2. Labor Regulations in Malaysia

The employment affair in Malaysia is under Ministry of Human Resources under the Prime Minister’s order. The regulation of labor in Malaysia has arranged in the Law of Malaysia Act 265 Employment act 1955 amended on 1 April 2012. The following types of labor that covered under Malaysian Employment Act are included:\textsuperscript{74}

a. Any labor as long as his month wages is less than RM2000.00;

b. Any labor employed in manual work including artisan, apprentice, transport operation, supervisors or overseers of manual workers, persons employed on vessels and even domestic servants are classified as employees even if their wages is more than RM2000.00 per month.

However even there is an Employment act in Malaysia, as a receiver country of Indonesian migrant workers, Malaysia specifically did not regulate the constitution of foreign workers who worked in Malaysia. In Malaysia, all of

\textsuperscript{73} Memorandum of Understanding pasal 5 tahun 2004 dan pasal 7 MoU 2006
\textsuperscript{74} First Schedule Sunsection 2 (1) http://www.mylabourlaw.net/quick-guides/7-guide-to-employment-act-1955.php accessed on May 21, 2015
labors both from inside and outside the country that worked in Malaysia through the legal contract of employment between the labors and Malaysia are bounded with the provisions on Employment Act, except the informal workers. But, Malaysia did not have the specific constitution that related to informal workers. The Informal Indonesian migrant workers who worked in Malaysia are not covered under the constitution of Malaysia. These informal workers are bounded on the provisions of the Malaysian immigrations rules as foreign citizen who are in Malaysia for certain time.\(^{75}\)

The agreement between employee and employer through the agent that related to work period, salary, and also the rights and responsibilities of the employer and also the employee is the agreement between Malaysia and Indonesia (G to G agreement) with the form of Memorandum of Understanding.\(^{76}\) This memorandum of Understanding is a basic for the protection of the rights and responsibilities of the Indonesian migrant workers.

Unfortunately, this Memorandum of Understanding did not guarantee a protection of Indonesian migrant workers itself even this Memorandum of Understanding about the recruitment and placement the domestic Indonesian migrant workers that signed on 2006 was amended on 2011. There are still a lot of violations on protection rights and responsibilities the employers and also the


\(^{76}\) Ibid
employee. Those violations were lead to another serious problem that committed by Indonesian Migrant workers, in this case is death penalty.

3.3. Indonesian Migrant Workers’ Conditions in Malaysia

The high demands of Indonesian migrant workers in Malaysia because they are really need Indonesian Migrant workers to work in there. This is the implication of the rapid development of manufacturing sector caused many young Malaysian residents moved to the urban city to fill the jobs in the manufacturing and services sector. The higher level of education of the Malaysian triggered this situation. The higher level of education leading to increased expectations for work in the modern sector that promises the higher wages. As a result, there was a shortage of labor in the agricultural sector. They did not want to work in 3D Sector (Dirty, Dark, and Dangerous).

In addition, the limited of jobs in Indonesia caused many Indonesian Migrant workers come to Malaysia to find a job, even with the high risks. Some of them came to Malaysia as an undocumented Indonesian Migrant Workers without any social accompaniment. They came to Malaysia as an illegal migrant workers that in the end will caused a serious crime committed by them.

Many kind of jobs in Malaysia offered to Indonesian Migrant Workers, such as; a Labor in agricultural sector, construction, factory, and also as Domestic workers. The problem faced by Indonesian migrant workers in Malaysia in the first three months is the adjustment to the environmental and the local habit that

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related to the local custom and culture. The Indonesian migrant workers who has attended the training in PPTKIS and has an experience as a domestic worker in Indonesia, generally they did not have problem with the use of household appliances. Most of the problem came to the Indonesian migrant workers who did not have an experience and undocumented migrant workers. They came to Malaysia with less of knowledge. They often get the violence, sexual abuse and harassment committed by their employer.

The violence experienced by many Indonesian migrant workers, but they afraid to report that violence because if they report to the officer, they will be known by the officer and if the officer known where they are, it is not impossible they will be deported or punished to more severer sanction because their status as illegal migrant workers.

Most of Indonesian migrant workers committed for serious crime such as kill their employer. They killed their employer are for self defense reason. They keep get the violence, sexual harassment, and they did not get their right for example the case that committed by Wilfrida Soik. She was guilty then sentenced to capital punishment by Kota Bharu High Court, Kelantan, Malaysia, because she killed her employer, Yeap Seok Pen, with 42 punctures on whole Yeap Seok Pen’s body on 7 December 2010.\textsuperscript{78} Thus, the demand of the Public Prosecutor under section 300 of Criminal Law of Malaysia has been proven. Since the she was arrested in Pangkal Chepa Prison, Kota Bharu, Kelantan, Malaysia.

As the author said above, according to based on the evidence at the crime scene, the Public Prosecutor, Puan Julia Ibrahim was able to prove the section 300 of Criminal Law of Malaysia, that Wilfrida is the murder of her employer by doing 42 punctures. In addition, Wilfrida Soik is an Indonesian migrant worker who has not legal document as migrant workers in Malaysia with low skill as a worker.

Wilfrida Soik’s case is one of hundred cases of Indonesia Migrant Workers that committed serious crime in Malaysia. In this thesis the author will describe about the diplomatic efforts conducted by Indonesian Government and other parties to free Indonesian Migrant Workers from death penalty.

The lack of knowledge about Malaysian Law also brought many Indonesian migrant workers committed serious crime. This is become serious problem for Indonesian government itself. Beside the obligation to protect them, Indonesian government also has an obligation to educate them before departure.

Most of the Indonesian migrant workers who faced legal problems in Malaysia are the illegal workers. This complicated situation makes Indonesian embassy difficult to identify and detecting the problems faced by Indonesia migrant workers in Malaysia.

79 Kronologi siding Wilfrida di Malaysia
3.4. Death Penalty among Indonesian Migrant Workers in Malaysia from 2010 - 2013

The conditions of IMWs who abused by their employers increase the number of serious crime committed by the Indonesian migrant workers in Malaysia, such as they killed their employers for self defense reason because their employers often tortured them. Beside that many Indonesian migrant workers are lack of knowledge about Malaysian crime such as the prohibition of drugs trafficking. As we know that the person who committed of drugs trafficking is punished by death. This crime that committed by IMWs in Malaysia brought them to the death penalty in Malaysia’s Court.

Based on Migrant CARE’s monitoring since 2010 – 2013 there are 213 Indonesian migrant workers still on trial process facing the death penalty in Malaysia and from over 300 migrant workers threatened by death penalty, Indonesia was released or commuted 67 Indonesian migrant workers from death penalty.\textsuperscript{80}

\textsuperscript{80} Data Kasus Buruh migran Indonesia 2010 – 2013, Data Base Migrant Care. (2013 Jakarta: Migrant Care)
Table III.D The Number of Indonesian Migrant Workers faced Death Penalty 2010 - 2013

<table>
<thead>
<tr>
<th>Case</th>
<th>High Court</th>
<th>Mahkamah Rayuan (Appeal Court)</th>
<th>Mahkamah Persekutuan (Low Court)</th>
<th>Absolute Legal Force</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drugs Offence</td>
<td>36</td>
<td>7</td>
<td>46</td>
<td>43</td>
<td>132</td>
</tr>
<tr>
<td>Murder</td>
<td>45</td>
<td>5</td>
<td>24</td>
<td>3</td>
<td>77</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td>Discharging of firearms</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td><strong>83</strong></td>
<td><strong>13</strong></td>
<td><strong>70</strong></td>
<td><strong>47</strong></td>
<td><strong>213</strong></td>
</tr>
</tbody>
</table>

Source: Migrant CARE and others

As we know that Migrant care is a NGO which is monitoring the activity of Indonesian migrant workers and the Indonesian government policy regarding migrant workers.

These migrant workers threatened by death penalty because they were committed serious offences such drugs trafficking murder, kidnapping and discharging of firearms. Indonesian migrant workers who involved in drugs trafficking are mostly became a drugs courier or smuggler. This condition is usually because of the economic reason. They would get high salary from the brokers. The other hand, Indonesian migrant who conducted murder in Malaysia uses disappointment feeling because they were victims of violence of their rights and also self-defense reason. In Malaysia, there are no Indonesian migrant workers who conduct offences against the person of any Malaysian federal or federated head of state.

81 Jaringan Narkoba Malaysia bidik TKI jadi Kurir, 
The large number of IMWs that threatened by death penalty made Indonesian government should take an action to save them from death penalty. Because government has an obligation to protect its citizen according to the Law of the Republic of Indonesia No. 39 of 2004. Diplomacy is the way to achieve Indonesia’s foreign policy to release Indonesian migrant workers from death penalty.
CHAPTER IV

INDONESIA DIPLOMATIC EFFORTS TO COMMUTE INDONESIAN MIGRANT WORKERS FROM DEATH PENALTY

This chapter focuses on describing Indonesia’s attempts to conduct diplomatic efforts towards Malaysia’s government in order to free Indonesian Migrant workers from death penalty. To analyze the attempts of Indonesian government integrated with other non-state actors’ diplomacy in this issue. This point will be divided into several explanations. First, the diplomatic efforts developed by Indonesian government to commute Indonesian migrant workers in Malaysia from death penalty 2010 – 2013. This point leads to another explanation, which is the implementation of foreign policy conducted by Indonesian government to protect their citizen in overseas. Indonesian government chooses diplomacy as the way to implement its foreign policy towards Malaysia. Beside the diplomacy conducted by Indonesian government, this chapter also will explain the role of non-state actors in conducting the diplomacy to free Indonesian migrant workers from death penalty.

Thus, the diplomacy conducted to commute Indonesian Migrant Workers from death penalty is focusing on multi-track diplomacy. This chapter also describes the challenges in order to commute Indonesia migrant workers who faced death penalty in Malaysia 2010 - 2013.
4.1. Indonesia Diplomatic efforts in order to resolve the Indonesian workers faced death penalty in Malaysia.

To analyze the attempts of Indonesia in conducting diplomatic efforts toward Malaysian government to free Indonesian migrant workers from death penalty, considering the number of IMWs facing death penalty in Malaysia, there are several steps in explaining this efforts;

4.1.1. Diplomatic Efforts Developed by Indonesian Government to Commute Indonesian Migrant Workers from Death Penalty in Malaysia at 2010 – 2013.

On the issue of Indonesian migrant workers committing criminal offenses abroad, the Indonesian government is not able to capture and prosecute those IMWs because it does not have jurisdictions abroad. Therefore, realizing that Indonesia is responsible for the rights and protections of its citizens. Indonesian government and Indonesian representatives take various efforts to protect the citizens abroad, including IMWs who are convicted with death penalty.

With regard to Indonesian migrant workers, in order to commute the death penalty sentence, Indonesia conducted communication through diplomacy. Diplomacy is used to manage the goal of foreign policy focusing on communication. Indonesia conducted the communication with Malaysian government through diplomacy either by central government or Indonesian Representative in Malaysia. In this Government to Government (G to G) diplomacy to commute IMWs from death penalty, Indonesia is involving several
state departments on issues related to IMWs, which are the Ministry of Foreign Affairs as a formulator of national policies in implementing and technical policies in the field of foreign policy and foreign relations; Ministry of Manpower that are responsible for Indonesian manpower as government points of concentrations; and National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI) as an important instrument in committing the protection of Indonesian migrant workers abroad; and also Indonesian representative in Malaysia itself. This intradepartmental collaborates to conduct the diplomacy because there are the relations between one department and the other departments related to Indonesian migrant workers’ cases. Free and active diplomacy will continue to be dedicated to national interest, and will continue to protect Indonesians abroad.

The efforts of Indonesian government in handling the IMWs threatened by death penalty’s cases abroad is providing Legal Assistance for the citizen/migrant workers under sentence of death at every level of the legal process (advocacy) through the mechanism of Special Task force Unit. Then, the Indonesian government provides Retainer Lawyer and allocates budget/funding for legal aid and other commutations efforts. This policy is also applicable for Indonesian migrant workers who faced death penalty in Malaysia. Then approaching through diplomatic channels, whether conducted by the Central Government or Indonesian Representatives in Malaysia.

This Government to Government (G to G) diplomacy is the first track diplomacy that is also involving the role of head of state in conducting diplomatic
President Susilo Bambang Yudhoyono has sent letters to a number of heads of state and governments, including Malaysia, asking for the acquittal or leniency or delay in the execution of death penalty of Indonesian citizen abroad.\(^{83}\)

President Susilo Bambang Yudhoyono also has formed a task force unit to advocate Indonesian citizens that are facing death penalty abroad through the Presidential Decree no. 17 (2011). The Task Force consists of 21 members coming from any institutions – and who are mostly retired – that has mandate to inventory of problems and the cases of Indonesian Citizen/Indonesian Migrant workers abroad who are threatened with death penalty. This task force unit also has responsibility to conduct advocacy and legal aid for Indonesian Citizen/Indonesian Migrant workers abroad who are under trial especially for those who are under sentence of death, then to evaluate the handling of legal cases Indonesian Citizen/Indonesian Migrant Workers, including the cases of adverse Indonesia Migrant workers in the countries where they work. Beside that, they also have mandate to provide recommendations to the President on the steps of completion and handling legal cases of Indonesian Citizen/Indonesian Migrant Workers where they work.\(^{84}\)

As we know that this presidential Decree is the implication of Ruyati’s case, Indonesian migrant workers who worked in Saudi


\(^{84}\) The Implementation of Death Penalty Still Prevails in Indonesia. Migrant Care. Written Submission to the 2012 Report of the Secretary General on the question of the death penalty
Arabia. She was executed by Saudi’s government on June 18th 2010 because of murder case.

In Malaysia, there is a special task force unit to handle the high profile case, such as Indonesian citizen/ Indonesian migrant workers who have faced death penalty. The Special Task force Unit intensively updates the data regarding Indonesian migrant workers who are involved in high profile case, preparing the guidance for the Indonesian representative abroad, and also communicating the progress of handling the case to the family and facilitate family meeting with Indonesian migrant workers faced with death penalty. This special task force unit also conducted several diplomatic efforts, including high-level diplomacy in order to seek the liberation or commutation for the Indonesian migrant workers convicted by death penalty in Malaysia, for example sending the diplomatic notes to the court or formally sending diplomatic notes to the Yang di Pertuan Agong Malaysia for giving forgiveness to Indonesian Migrant workers who convicted capital punishment.

Indonesia’s government also sent their representative to conduct diplomacy with Malaysia government, for example in September 2013, Mr. Muhaimin Iskandar, Minister of Manpower and transmigration, was sent to Malaysia to conduct a diplomacy lobby to Malaysian Government in order to commute Wilfrida Soik from death penalty. In this working visit, Mr. Muhaimin conducted the bilateral meeting with Minister of Home Affairs Malaysia. During this visit,

Mr. Muhaimin conducted the bilateral meeting with Minister of Home Affairs Malaysia. He also discussed with the minister of Home Affairs Malaysia about the attempts to commute the death penalty of Wilfrida. He also asked the minister to give the support in order that the trial of Wilfrida in Malaysian Court could run objectively and fair. Beside that, in this meeting he also discussed the various issues related to the protection of Indonesian migrant workers in Malaysia.86

Indonesia’s representative is not always been individual sent directly from Indonesia. Indonesia Ambassador for Malaysia also contributes as the representatives of Indonesia in commuting the death penalty of Indonesian migrant workers. In 2011, Mr. Ambassador Da’I Bachtiar and Consulate General of Indonesia in Johor were succeeded in liberating the migrant worker that was sentenced to death from Jember, Nur Kholis Sukarno, from death penalty. The Consulate and the Ambassador actively sent the petition letter for his freedom directly to Sultan Johor and approached with the Sultanate of Johor to commute Sukarno from death penalty. Because of the active role of the Consulate General and the ambassador, the Sultan Johor has granted the clemency to freed Sukarno from capital punishment.87

Noor Kholis Soekarno is the migrant worker from Jember who threatened death penalty because of Murder case. He was killed the employer’s child in

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2001. Since that incident he was in prison, but in 2004 he was suffered a mental disorder and he transferred to a Permai psychiatric hospital.\textsuperscript{88}

After having recovered in 2007, the Consulate actively approached the Sultanate of Johor. Even in March 2011, Ambassador to Malaysia, Bachtiar brought the petition letter to be submitted to the Sultan of Johor, Sultan Ibrahim at the courtesy visit. On September 11, there was a letter of forgiveness from the Sultan of Johor. After that the consulate took care of Sukarno’s return to Indonesia.\textsuperscript{89}

Indonesian representative in Malaysia and Ministry of Foreign Affairs of Republic of Indonesia also implemented the diplomatic and consular function to released Indonesian migrant workers from death penalty. Ministry of Foreign Affairs’ efforts through the Kuala Lumpur Indonesian Embassy Retainer Lawyers, Gool and Azura, who succeeded in convincing the Judges Panel that the act of the Hiu Brothers was done in self-defense.\textsuperscript{90}


\textsuperscript{88} Ibid
\textsuperscript{89} KBRI minta sultan Johor ampuni TKI dari hukuman mati
\textsuperscript{90} Ministry of Foreign Affairs Succeeds in Releasing Frans And Dharry from Death Penalty.
Nationals from Pontianak, West Kalimantan. The two of them were accused of the killing a Malaysian National, Khartic Rajah, December 2010.  

The Lawyers Team explained that the reason for the act was triggered by the victim’s inappropriately entering the house where the Hiu brothers lived, with the suspicion of attempted robbery. The victim fell from ceiling onto the Hiu brothers’ bedroom and attacked them first, leading to a fight.

At the High Court in Shah Alam, October 18, 2012, Frans and Dharry Hiu, who were accompanied by Law Firm Yusof Rahman & Co., defense lawyers appointed and paid for by Frans and Dharry Hiu’s employer, received the death penalty verdict. They were released from death penalty on January 2014 after the trial process by the court with fairness and wisdom.

For 2010 until 2013 there are several Indonesian migrant workers in Malaysia who were released from death penalty, one of them is Wilfrida Soik. Wilfrida Soik is a migrant worker from Belu, East Nusa Tenggara. She was sentenced to death penalty by Kota Bharu High Court, Kelantan, Malaysia on charged of premeditated murder of her employer’s parent, Yeap Seok Pen, in the first level court under Article 302 Kanun Keseksaan. She was convicted of

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91 Ibid
92 Ibid
murdering her employer with 42 punctures on whole Yeap’s body on 7 December 2010.\footnote{Akhirnya TKW terancam hukuman mati di Malaysia didampingi pengacara http://www.republika.co.id/berita/breaking-news/nasional/11/01/13/158116-akhirnya-tkw-terancam-hukuman-mati-di-malaysia-didampingi-pengacara accessed on June 5, 2015}

After the incident, since 10 December 2010, Indonesian Embassy had assisted Wilfrida by sending a number of consular and employment staff to Kelantan to handle and investigate the incident. Furthermore, on 11 December 2010, the Indonesian Embassy sent another team to Pasir Mas Prison to meet Wilfrida Soik in order to obtain full information from her.\footnote{Ibid}

A few weeks after the incident, in December, Ministry of Foreign Affairs of Indonesia and Indonesian Embassy in Kuala Lumpur hired the local lawyers, Rafidzi and Rao, immediately help and offer Wilfrida legal protection.\footnote{Personal Interview with Abun Bunyamin, Staff Direktorat PWNIBHI, Ministry of Foreign Affairs of Republic of Indonesia}

According to Abun Bunyamin, Staff from DPWNI Ministry of Foreign Affairs of Indonesia the process of hearing in Malaysia tends to postpone the cases and there is no certainty of hearing the schedule. But Indonesian government did not silent. The Government and the Lawyer sent the letter and diplomatic note to the court and also went to the court, then asked the hearing schedule but they did not receive any answer. According to their policy, the Indonesian government could not interfere with that policy. In 2011 there was a
hearing session with the court and still collecting the evidences, as well as in 2012.\textsuperscript{96}

In 2013, Kota Bharu High Court, Kelantan, Malaysia has held further hearing session five times on Wilfrida case. All the hearing sessions contained a request from Wilfrida’s Lawyer to re-examine the case, as of the Wilfrida age that Wilfrida was underage at that time and also the psychiatric condition of Wilfrida herself.\textsuperscript{97} The re-examination of Wilfrida’s age has been done on October 2013, led by the Head of Health Department of Forensic Penang, Zahari bin Dato Noor. As a result, the age of Wilfrida when she killed her employer in 2010 has not reached yet 18 years.

On April 2014, in the hearing session in Kota Bharu High Court, the Judge conveyed the consideration of the Lawyer of the Indonesian Embassy in Kuala Lumpur has successfully proven that Wilfrida had not reached the age of 18 years yet. According to the Criminal Law of Malaysia, Wilfrida could not be sentenced to death and had to be tried under the Child Act.\textsuperscript{98}

Indonesian government tried hard to protect their citizen abroad because migrant workers are important part of Indonesian diaspora and the protection of Indonesian migrant workers is a priority in Indonesian diplomacy. In May 2011, In an effort to strengthen legal protection for Indonesian migrant workers in Malaysia, Indonesian government also amended

\textsuperscript{96} \textit{Ibid}
\textsuperscript{98} \textit{Ibid}
the Memorandum of Understanding with Malaysian government about the placement and protection of Indonesian migrant worker from the domestic sector in Malaysia. The signing of this MoU of domestic migrant workers is an initial stage lifting the 2009 moratorium policy on the placement of the domestic sector workers and re-opened on sending workers to Malaysia. As the author said above, the moratorium policy was given the bad impact for relation between Indonesian and Malaysia on migrant workers. There were about 20,000 Illegal IMWs came to Malaysia every month during the moratorium period. Even though the purpose of Moratorium on placement IMWs itself is for the protection of IMWs.

Minister of Manpower and Transmigration, Muhaimin Iskandar, said that the signing of this MoU is a manifestation of the commitment of both countries to continue to improve the protection and welfare of Indonesian migrant workers in Malaysia. This policy is very important because the Memorandum of Understanding between Indonesia and Malaysia before amended is not too cover the rights and the protection of IMWs itself that would bring them to commit the serious crimes. This agreement is very important to regulate the issue of protecting Indonesian migrant workers in Malaysia and could also demonstrate the strong of diplomatic relations between Indonesia and Malaysia.

The awareness of Indonesian government over Indonesian migrant workers faced death penalty realized through the concrete efforts and various discussions

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in every levels, including head of state level. In order to increase the protection for Indonesian migrant workers, especially those migrant workers faced death penalty, Indonesian representative and the task force had been evaluated the number of migrant workers, case in Malaysia.

However since the restricted access imposed public to get data about the achievements of Indonesian government, it is hard for the public to verify the data showed in mass media or data from non-governmental parties. Because of their limited access the data, the author get the data about Indonesian migrant workers who were released from death penalty in Malaysia until 2013 is from Migrant Care. From almost 300 IMWs who convicted to death sentence, there are 67 migrant workers who have been release from death penalty in Malaysia.

4.1.2. The Role of Non-State Actors

In the process of commuting Indonesian migrant workers from death penalty, Indonesian government also receives support from non-government parties, which are:

4.1.2.1. Migrant CARE

Migrant Care is a non-governmental organization with objections to defend and seek the protection of Indonesian migrant workers and their family in order to enforce the principles of human rights, democracy, and gender equality. As a non-governmental organization that is focused on migrant workers, Migrant Care was monitored, criticized, and supported

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Indonesian government in order to seek the protection for Indonesian Migrant workers. In regional level, Migrant Care was collaborated with Migrant Forum in Asia, South East Asia Peoples for Advocacy (SAPA), and Asian Forum. At an international level Migrant Care is a part of International Platform on Migrant Workers Convention (IPMWC), GCAP, and Walk Free. Between 2010 – 2013, Migrant Care had a lot to in advocating the rights of migrant workers. Migrant Care also maximizes the collaboration with other international NGO which is concerned with human rights such as Human Rights Watch and Amnesty Internationals. Their study and researches about migration issues has given a pressure on Indonesian government and IMWs destination courtiers to revise the migration policy oriented on human rights implementation.

The purpose of this track two diplomacy conducted by non-governmental parties to analyze prevents, resolve, and manage international conflicts. In this case, to commute Indonesian migrant workers from death penalty in Malaysia from 2010 – 2013, Migrant Care build a public campaign and also maximizing to advocate and accompaniment Indonesian migrant workers were sentenced to death penalty. Migrant Care also evaluated the government’s efforts to commute IMWs from death penalty and encourage the government to change the policy about Indonesian migrant workers in Malaysia. Some substance changed in MoU between Indonesia and Malaysia regarding domestic migrant workers protection in May 2011, where Malaysia and Indonesia finally agreed that passport of
migrant workers must be kept by the owners and the availability of day off for IMWs. Where in the previous MoU signed in May 2006, passports of Indonesian migrant workers were kept by the employer and with no day off for migrant workers.

In Wilfrida Soik’ case, Migrant Care collaborated with House of Representative RI, DPD, DPRD Belu, Church in Belu when Wilfrida was baptized, Change.org community, Across Religions Community, Melani Soebono, and the #SaveWilfrida Petition supporters to advocate Wilfrida. From 2010, Migrant Care in Indonesia and Malaysia were pressed by the Indonesian government into liberating Wilfrida from death penalty. Since February 2011, Migrant Care always followed and monitored Wilfrida trial. Along the trial process, Mr. Alex Ong, Malaysian citizen and country representative in Malaysia always monitored the trial and also supported Wilfrida. In September 2012, Migrant Care established advocacy team for Wilfrida and prepared the Wilfrida document to prove that she was underage when the incident at work happened. In September 2013, Advocacy Team met and discussed with Lawyer team of Indonesian Embassy. Migrant Care also triggered the campaign #SaveWilfrida through media social twitter. As we know that media social power could change a policy. In October 2013, Migrant Care garnered the support #SaveWilfrida in UN
High Level Dialogue on Migration and Development in New York and also garnered the support of BBC 100 Women Conference in London.101

4.1.2.2. Prabowo Subianto

In Wilfrida case, there is another party which got involved to release Wilfrida from death penalty. He is Prabowo Subianto, the chairman of Gerindra Party. Prabowo’s effort to conduct diplomacy is another track of Multi-track diplomacy. Prabowo is a private citizen who became involved in the development of activities through citizen diplomacy.

Prabowo asked Ministry of Foreign Affairs to get involve in this case. Then Ministry of Foreign Affairs agreed together to save Wilfrida Soik from death penalty on behalf of Indonesian government.102

Prabowo said he gave the assistance for Wilfrida in order to alleviate her legal case and also to help Indonesian government and Indonesian Embassy in Malaysia.103 Trying his best to commute Wilfrida from death penalty, Prabowo came to Malaysia to accompany Wilfrida during the trial process. Besides that, Prabowo hired the Lawyer, Tan Sri Dr Muhammad Shafee Abdullah with his assistant Ms Tania Scivett accompanied and supported Wilfrida’s trial process. Prabowo also consolidated with the

101 Anis Hidayah at al Refleksi 10 TAhun Migrant Care Mengembalikan Kedaulatan Buruh Migrant Indonesia. (Jakarta: Yellow printing Migrant Care, 2014) Jakarta P 42
102 Personal Interview with Abun Bunyamin, Staff Direktorat PWNIBHI, Ministry of Foreign Affairs of Republic of Indonesia
lawyer team in preparing Wilfrida interim decision defense in Kota Bharu Court, Klantan, Malaysia.\textsuperscript{104}

In September 2011, Prabowo met Tan Sri Muhammad, the confidant of Prime Minister of Malaysia, Najib Rajak to discuss and lobbying Malaysian Government to release Wilfrida from death penalty. Besides lobbying the Prime Minister, Prabowo also lobbied the Minister of Home Affairs Malaysia, Ahmad Zahid Hamidi. In that meeting with Minister of Home Affairs, Prabowo expected Wilfrida to be freed from death penalty.\textsuperscript{105}

As an influential person Prabowo used his equally famous and influential close relations and he also used his connections to help Indonesian migrant workers from having serious problems, such as death penalty. This made Indonesian government become stronger because many parties got involved in attempt to commute Wilfrida from death penalty.

These efforts from private citizen made Indonesia government became strong because many parties get involve in attempts to commute Wilfrida from death penalty.

\textsuperscript{104} 4 Cara Prabowo Subianto Selamatkan Wilfrida Soik  \url{http://www.merdeka.com/peristiwa/4-cara-prabowo-subianto-selamatkan-wilfrida-soik/} accessed on June 7, 2015
\textsuperscript{105}  Ibid
4.2. Challenges Faced by Indonesian Government in Commuting the Death Penalty on Indonesian Migrant Workers in Malaysia 2010 -2013

The challenges which came up during the diplomatic efforts had been conducted by Indonesian Government to commute IMWs. This part describes two challenges faced by Indonesian Government, which they are: The different legal system between Indonesia and Malaysia an undocumented Indonesian migrant workers.

4.2.1. Difference of Legal System between Indonesia and Malaysia

The difference of legal system became a challenge of Indonesian Government in conducting diplomacy to commute Indonesian migrant workers from death penalty. As a sovereign state, Indonesian government could not interfere with their legal system even if the defendant was an Indonesian citizen. Every single state adopted the sovereignty of law, including Malaysia. In assisting IMWs, who committed serious crimes, Indonesian government hired the retainer lawyer. Indonesian government could not hired Indonesian lawyer to resolve the problem in Malaysia. The Malaysian law was implemented for those who stayed in Malaysia, both Malaysian citizen themselves or foreign citizens who stayed in Malaysia. Malaysia has its own rules for dealing with criminal cases which occurred on its territory. Indonesian government was not able to capture and prosecute those IMWs because the Indonesian government did not have jurisdictions abroad, including in Malaysia.
The legal system in Malaysia especially in proceedings the trial process that involving foreigners, including Indonesian migrant workers is known to be very slow. The accomplishment of one criminal case at the court usually takes 2 to 5 years, whereas for civil cases it takes between 1 to 4 years. Thus it gives the impression that the Indonesian government is slow in resolving cases, especially, the death penalty case in Malaysia.\textsuperscript{106}

\textbf{4.2.2. Undocumented Indonesian Migrant Workers}

There are so many undocumented Indonesian migrant workers or Illegal IMWs in Malaysia that they became a serious problem for the Indonesian government. The government could not calculate a number of Illegal IMWs in Malaysia, because they did not report themselves to Indonesian Embassy of Indonesian representative in Malaysia. Thus, when they have problems or commit a serious crime that brings them to receive capital punishment, Indonesian embassy and Indonesian government handle their case with great difficulty because they did not stated on the legal report or document.

The mechanism of protection to commute them from death penalty could run effectively, if the IMWs must be recorded by the government, legally, and guaranteed insurance.\textsuperscript{107}

\textsuperscript{106} Personal Interview with Abun Bunyamin, Staff Direktorat PWNIBHI, Ministry of Foreign Affairs of Republic of Indonesia

Indonesia is among the world’s largest countries by population, with a total of up to 253,609,643 people but with limited job opportunities. This situation makes Indonesia become a country which is sending too many migrant workers to other countries, one of the destination countries is Malaysia. Indonesian workers in Malaysia are involved in many problems which are difficult to be solved. Many IMWs became victims of violation or they commit several serious crimes which leads to punishment with death penalty.

Indonesian government has the responsibility to protect its citizen abroad. In 2009, Indonesia launched a moratorium policy of sending Indonesian migrant workers to Malaysia, but there are still many cases of IMWs that are sentenced to death penalty.

Between 2010 – 2013 there are several diplomatic actions in attempt to commute IMWs from death penalty. In 2011, President Susilo Bambang Yudhoyono established a special task force to save Indonesian migrant workers from death penalty abroad. This policy is implication of Ruyati’s death execution in 2011 and this policy was also implemented to all countries that still applied death penalty, including Malaysia. To save and protect its citizen from death penalty in Malaysia, Indonesian government, through various channels, conducted diplomatic strategies to the Malaysia’s side.
Trying the best to commute Indonesian migrant workers from death penalty, President Susilo Bambang Yudhoyono has sent letters to Malaysian government asking for the acquittal or leniency or delay in the execution of death penalty of Indonesian migrant workers abroad.

The diplomatic effort to save IMWs from death penalty is not only by G to G diplomacy, but also Indonesia implemented multi-track diplomacy towards Malaysia for some cases. Here there are Migrant Care as a non-governmental Organization and also private influential citizen in dealing with cases of IMWs, as the author stated before that Mr. Prabowo, Chairman of Gerindra party involved to commute Wilfrida from death penalty. The role of non-governmental organization and private citizen did not replace first track diplomacy. The attempts of other tracks of diplomacy opened the space for negotiation and agreement for high-official rankings on the first track diplomacy.

There were some challenges faced by Indonesian government in commuting IMWs from death penalty. However, this research concludes that Indonesian government succeeded in commuting 67 Indonesian migrant workers from death penalty. The efforts of Indonesian government to protect Indonesian migrant workers from death penalty are good enough, but there are still many Indonesian migrant workers under trial process. This situation makes Indonesian government take a massive action in order for the IMWs that are under trial process and sentenced to death penalty to be resolved immediately. As we know that the law process in Malaysia is very slow, strong law enforcement in the field will guarantee the success of this solution.
Indonesian government has the obligation to secure and protect its citizen. However, the government also has the obligation to educate its people. The government should prepare the budget for the incentive mechanism and public education program, and build strong partnership with BP3TKI, BNP2TKI and also NGO.

There should be an improvement in sending Indonesian workers abroad to prevent the problems both for Indonesian government and for IMW itself. Indonesian government should recheck the IMW recruitment agencies, especially private agencies that always send many Illegal Indonesian migrant workers to Malaysia and maintain the good agency to prevent to send Illegal IMWs. With repairing system inside the country over the placement of IMW, at least could decrease the bad effect for Indonesian Migrant Workers.
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Appendix I

DRAFT INTERVIEW
1. Mengapa banyak pekerja migran asal Indonesia memilih Malaysia sebagai Negara tujuan mereka untuk mencari pekerjaan?

Karena mungkin dekat yah deeket, serumpun, bahasanya mereka gak perlu susah susah belajar bahasa lain. Terus yang pasti iming-iming dari sponsor. Sponsor itu namanya peluncur kalau di Malaysia mah yaitu orang yang mencari cari TKI dan iming iming gaji disana besar karena mata uang ringgit lebih tinggi. Tapi kalau sesampainya disana sebenarnya gak seperti yang di janji janjikan.


2. Faktor apa saja yang menyebabkan banyaknya pekerja migran Indonesia kerap kali mengalami pelanggaran HAM seperti penganiayaan, pelecehan seksual sampai hukuman mati di Malaysia?

Pertama karena mereka gak punya leverage. **Leverage** itu sesuatu yang bisa menjadikan mereka itu dihargai. Misalnya kaya mereka **skillnya** kurang. **Skill** kurang, kerja jadi gak bener, majikan jadi mungkin kecewa, jadi semena-mena, gajinya dikurangi gitu kan. Terus yang paling penting mereka gak punya dokumen resmi, gak punya paspor ke sana, gak punya visa kerja. Itu itu tuh TKI. Ini ini bicara TKI yangan illegal yah. Kalau yang legal itu sama juga, tapi mereka punya paspor, punya visa kerja tapi skillnya kurang. Kenapa skillnya kurang? Karena waktu diberangkatkan dari sini yang seharusnya mereka diberi pelatihan 200 jam tapi cuma 1 hari langsung diberangkatin, jadi gak sesuai prosedur. Jadi unprosedural dari sisi bukan dokumen. Dari persiapan...

3. Sebenarnya Labor conditions di Malaysia itu seperti apa? Apakah ada culture slavery atau seperti apa?


4. Kalau Indonesian Labor Conditionnya TKI kebanyakan seperti apa?

Kalau yang professional ya bagus ya kalau yang illegal ya begitulah. Untuk jumlahnya sendiri pastinya banyak yang illegal. Kita gak akan pernah tau yang jumlah TKI illegal itu, Perwakilan, KBRI, konsulat juga gak akan pernah tau jumlahnya berapa banyak yang illegal tenaga kerja kita yang disana. Lebih banyak itu pasti.

5. Adakah respon khusus dari pemerintah Indonesia dalam menangani kasus – kasus pelanggaran HAM di sana?

Nah disini diplomasisnya bermain. Jadi perwakilan Indonesia yang ada di Malaysia itu kita gunakan Undang Undangnya Malaysia sendiri karena kita tidak bisa menggunakan peraturan Indonesia kan?

kita ke majikan untuk pemenuhan hak haknya pekerja kita sama ke instansi perundang undangan Malaysia. Ke imigrasi kita adukan, majikannya ada yang melanggar hak hak pekerja ni.

6. Sebenarnya bagaimana pandangan pemerintah Malaysia terhadap TKI yang bekerja disana?


7. Apa penyebab TKI terancam hukuman mati di Malaysia

Ya karena mereka melanggar undang undang Malaysia khusunya pelanggaran berat ya, seperti, narkoba. Narkoba itu lebih dari 1 gr, terus pembunuhan, pemberontakan, terus kepemilikan senjata api illegal. Ya itu melanggar undang – undang Malaysia yang hukumannya itu hukuman mati.

8. Bagaimanakah upaya pemerintah Indonesia dalam menangani hal tersebut mengingat cukup banyak jmlah TKI yang terancam hukuman mati?


.. menurut bapak itu sudah maksimal belum pak?..

9. Sejauh ini ada berapa orang TKI yang sudah dibebaskan oleh pemerintah Indonesia


Appendix II

DRAFT INTERVIEW
Informant: Abun Bunyamin  
Position: Staff Subdit Perlindungan WNI bagian Malaysia  
Agency: Ministry of Foreign Affairs, Republic of Indonesia  
Direktorat Perlindungan Warga Negara Indonesia dan Badan Hukum Indonesia  
Date: Tuesday, April 21, 201

1. **Adakah Stagas khusus penanganan TKI di Malaysia?** misalkan TKI yang terancam hukuman mati?

Perwakilan Indonesia di Malaysia itu sudah ada yang namanya unit kerja khusus. Itu Unit kerja khusus atau disebut juga dengan satgas pelayanan perlindungan itu terdiri dari semua fungsi yang ada disitu di SK kan dengan SK Kepri untuk khusus menangani mengenai *high profil case*, diantaranya adalah hukuman mati, karena high profil case tidak hanya hukuman mati saja. Satgas itu ada disetiap perwakilan RI di Malaysia.

2. **Apa saja kendala yang dihadapi pemerintah Indoensia dalam membebaskan TKI hukuman mati?**


3. Apakah upaya pemerintah Indonesia dalam melindungi TKI di luar negeri dalam kasus ini berarti perlindungan TKI di Malaysia sudah maksimal?


Salah satu sumber yang kita gunakan adalah turunan dari UUD 1945 itu ada Undang Undang hubungan luar negeri. Terus kita juga punya peraturan menteri luar negeri mngenai pelayanan perlindungan warga. Disitu sudah di jelaskan apasaja yang menjadi kewajiban untuk memberi perlindungan kepada WNI. Selama iniseluruh perwakilan kita di luar negeri khusus di Malaysia sudah melakukan sesuai dengan guidance nya yang kita punya.

4. Ada berapa banyak kasus TKI yang terancam hukuman mati di Malaysia?

Untuk data nanti saya sampaikan ke pimpinan dulu yang namanya instansi ya. Untuk hukuman mati WNI sendiri sekitar 50% lebih lah itu kasusnya narkoba dan jangan lupa kita pun menerapkan hukuman mati untuk drugs trafficking. Selama ini tindakan kriminal dengan hukuman paling maksimal itu iya ada empat pertama membunuh, pengedaran narkoba, kalau pemakai adalagai hukumannya di bawah ini, penculikan dan kepemilikan senjata api. Itu empat kriminal yang dikenakan maksimalnya hukuman mati. Tingkatan pengadilan di Malaysia itu ada empat, Mahkamah tinggi, Mahkamah Banding, mahkamah itu pengadilan ya, Mahkamah kasasi yang terakhir adalah pengampunan dari Yang di Pertuan Agung. Ketika terdakwa sudah divonis di ketiga mahkamah tersebut masih ada upaya yang masih kita lakukan yaitu minta pengampunan.

5. Lalu bagaimana upaya pemerintah mengenai kasus Wilfrida Soik?


Appendix III

MEMORANDUM OF UNDERSTANDING
ON
THE RECRUITMENT OF
INDONESIAN WORKERS
BETWEEN
THE GOVERNMENT OF REPUBLIC INDONESIA
AND
THE GOVERNMENT OF MALAYSIA

The government of the Republic of Indonesia and the government of Malaysia, hereinafter referred to singularly as ‘the Party’ and collectively as ‘the Parties’

REFERRING to the Agreed Minutes of the Seventh Meeting of Joint Commission for Bilateral Cooperation between the Parties held in Kuala Lumpur on 18 – 20 February 2002 concerning the need for the relevant authorities of both countries to jointly review the “Exchange of Notes of the Procedures of Placement of Indonesian Workers to be employed in Malaysia other than Housemaids of 1 August 1998”;

BELIEVING that the employment of workers from the Republic of Indonesia in Malaysia shall be an area of mutually beneficial cooperation to both countries;

REALIZING the need to establish a framework to facilitate the selection, conveyance and recruitment of workers from the Republic of Indonesia to work in Malaysia;

PURSUANT to the prevailing laws and regulations of the respective countries;

HAVE REACHED AN UNDERSTANDING on the following matters:

Article 1

For the purpose of this Memorandum of Understanding:

(a) “Employer” means a company incorporated under the laws of Malaysia or a sole proprietor, providing or offering to provide employment to workers from the Republic of Indonesia in this Memorandum.

(b) "Worker" means a citizen of the Republic of Indonesia who is contracting or contracted to work in Malaysia for a specified period of time excluding domestic workers.

(c) "Domestic Worker" means a domestic servant as defined in the Employment Act 1955, Labour Ordinance Sabah (Chapter 67) and the Labour Ordinance Sarawak (Chapter 76).

(d) "Indonesian Mission" means the Indonesian Embassy and/or Consulate/Consulate General in Malaysia.
Words and expressions in the singular include the plural, and words and expressions in the plural include the singular.

**Article 2**

The Parties agree that the recruitment of workers for employment in Malaysia shall be conducted in accordance with this Memorandum as per flow charts annexed as Appendix A.

**Article 3**

(a) The Government of the Republic of Indonesia recognizes the right of the employer to determine the terms and conditions of employment of the Indonesian workers such as wages, allowances, other benefits and hours of work;

(b) The Government of Malaysia recognizes that the workers shall be accorded the terms and conditions of employment as provided under the relevant laws and regulations relating to employment in Malaysia.

**Article 4**

The Government of the Republic of Indonesia agrees to ensure that the workers who are offered for selection by the employer to work in Malaysia shall satisfy the following conditions prior to their entry into Malaysia:

i. be at least 18 years of age but not more than 40 years of age;
ii. possess the required qualifications and skills specified by the employer;
iii. possess sufficient knowledge of Malaysian culture and social practices;
iv. possess the ability to communicate either in English or Malay language;
v. satisfy Malaysian immigration procedures in Malaysia;
vi. comply with Malaysian medical requirements; and
vii. do not possess any previous criminal records.

**Article 5**

The workers under employment in Malaysia shall comply with all Malaysian laws, regulations and directives in their conduct as workers and temporary residents in Malaysia.

**Article 6**

The workers who are recruited under this Memorandum of Understanding shall work in Malaysia for a specified period of time in accordance with the contract of employment and subject to the approval of the relevant authority in Malaysia.

**Article 7**

Subject to Article 6, a worker will be allowed to continue working in Malaysia after the specified period subject to the approval of the relevant authority in Malaysia.
Article 8

Employment of workers in Malaysia shall be governed by the terms and conditions specified as follows:

A. Responsibilities of the Employer

i. The employer shall recruit workers through the licensed Recruitment Agencies in the Republic of Indonesia and inform Indonesian Mission in Malaysia. The employer is also responsible for obtaining the approval of the relevant authorities in Malaysia for that purpose;

ii. The employer shall not be required to pay any payment for such recruitment other than workers' transportation cost from the entry point in Malaysia to the place of employment in Malaysia. For this purpose the entry point for Sabah and Sarawak is the first entry point in the respective state. The employer shall not receive any form of payment from workers or any other persons. However, if the employer is willing to pay the cost of transportation of the worker from the exit point in the Republic of Indonesia to the entry point in Malaysia, the employer may pay such cost;

iii. The basic wages offered shall be clearly stated in the terms of the contract of employment and shall be similar to the basic wages offered to Malaysian workers in the same capacity;

iv. The terms and conditions of the contract of employment must be clearly stated and must be fully explained and understood by the workers during the selection exercise;

v. The employer shall provide a sample of the contract of employment to the licensed Recruitment Agency in the Republic of Indonesia stating that the terms and conditions of employment will be the same as the contract of employment which has been extended to the Indonesian Mission in Malaysia and the Department of Labour in Malaysia and will be signed in Malaysia by the workers and the employer;

vi. A copy of the contract of employment shall be given to the workers and signed in Malaysia before or at the time of commencing of employment and shall be the same as which was explained to the workers during the selection exercise. The basic terms to be included in the contract of employment shall be as in the Appendix B;

vii. The employer shall be responsible to provide a security deposit as required by the Immigration Department of Malaysia;

viii. The employer shall be responsible for the arrangement of the entry of the workers as soon as practicable upon their arrival at the point of entry and thereafter;

ix. The employer shall be required to provide appropriate accommodation in accordance with the existing rules and regulations in Malaysia;

x. The employer shall provide coverage for each worker under the Workmen's Compensation Act 1952;

xi. The employer shall be responsible to ensure that each worker receives the foreign worker card from the Immigration Department of Malaysia as soon as possible and the card shall be kept by the worker;
xii. The employer shall be responsible to renew the workers' work pass at least one month before the expiry date. Any penalty or compound due to the failure of the employer to do so shall be borne by the employer;

xiii. The employer shall be responsible for the safe keeping of the worker's passport and to surrender such passport to the Indonesian Mission in Malaysia in the event of abscondment of

xiv. the worker;

xv. The employer shall bear the cost of using a recruitment agency in Malaysia in the event the employer chooses to engage a recruitment agency in Malaysia in dealing with the licensed Recruitment Agency in the Republic of Indonesia;

xvi. In the event of death of the workers, the funeral or the repatriation of the remains shall be arranged at the expense of the employer as provided for under the Workmen's Compensation Act 1952.

B. Responsibilities of the licensed Recruitment Agency in the Republic of Indonesia

i. The licensed Recruitment Agency in the Republic of Indonesia shall be responsible in providing potential workers according to the employers' specification to be interviewed or selected by the employers;

ii. The licensed Recruitment Agency in the Republic of Indonesia shall conduct the interview if authorized by the employers;

iii. The licensed Recruitment Agency in the Republic of Indonesia shall facilitate workers to obtain the necessary travel documents and to arrange for medical check-up at the designated medical centers in the Republic of Indonesia accredited by both the Ministries of Health of the Republic of Indonesia and Malaysia;

iv. The licensed Recruitment Agency in the Republic of Indonesia shall be responsible to ensure that the terms and conditions of the contract of employment are fully explained to and understood by the workers during the selection exercise.

C. Responsibilities of the Workers

i. The workers shall be responsible for the payment of levy, pass, visa, processing fee and any other charges imposed by the Government of Malaysia in accordance with its relevant laws and regulations. However, for the first year of the employment, the employer may advance such payment and shall be allowed to deduct not more than fifty percent from the workers' monthly wages for all types of deduction to recover such advances subject to the approval of the Department of Labour in Malaysia. The amount and duration of deduction must be clearly stated in the contract of employment;

ii. The workers shall bear all expenses incurred in the Republic of Indonesia in accordance with Indonesian laws;

iii. The workers shall bring along a copy of the medical examination report and to be shown upon request at the entry point. All medical
examinations and procedures shall be governed by the terms and conditions determined by both the Ministries of Health of the Republic of Indonesia and Malaysia;

iv. The workers shall not be involved in any marital knot during their stay in Malaysia. The workers shall not be allowed to bring in their family members. The employer shall report to the Immigration Department of Malaysia immediately in the event of contravention of these conditions;

v. The workers shall be responsible to produce the foreign worker card to the enforcement agency whenever required as the identity document for the workers during their stay in Malaysia; and

vi. The workers shall abide by all Malaysian laws and respect Malaysian traditions and customs during their stay in Malaysia

D. Miscellaneous

i. The Parties shall facilitate the repatriation of the workers upon the termination of their contract of service;

ii. The repatriation cost of the workers shall be borne as follows:
   a. at the completion of contract - by the employer
   b. termination due to misconduct - by the worker of the worker
   c. resignation of the worker
   d. termination by the employer
   e. termination due to failure of the employer to fulfill the terms and conditions of the contract of employment - by the worker - by the employer

iii. The respective Party shall take appropriate action against employers or licensed Recruitment Agencies of the Republic of Indonesia that contravene the provisions under this Memorandum of Understanding.

Article 9

This Memorandum of Understanding may be amended or revised by exchange of letters of mutual consent between the Parties through diplomatic channels. Such amendment or revision shall come into force on such date as determined by the Parties.

Article 10

Each Party reserves the right for reasons of security and public order to suspend temporarily either in whole or in part the implementation of this Memorandum of Understanding which shall take effect thirty (30) days after notification has been given to the other Party through diplomatic channels.

Article 11

Either Party may terminate this Memorandum of Understanding by notification through diplomatic channels, which shall enter into force six (6) months after the date of such notification.
Article 12

The Parties agree to meet from time to time at officials' level to discuss and to find a solution on any matter arising from the implementation of this Memorandum of Understanding.

Article 13

This Memorandum of Understanding substitutes the "Exchange of Notes on the Procedure for the Recruitment of Indonesian Workers to be Employed in Malaysia other than Housemaids of 1 August 1998".

Provided that workers employed under the "Exchange of Notes on the Procedure for the Recruitment of Indonesian Workers to be Employed in Malaysia other than Housemaids of 1 August 1998" shall not be affected by this Memorandum of Understanding, except in the case of subsequent extension of the contract of employment of such workers which shall be governed by the provisions of this Memorandum of Understanding.

Article 14

This Memorandum of Understanding shall enter into force three (3) months after the date of signing by the Parties.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Memorandum of Understanding.

Done at Jakarta on the tenth day of May in the year two thousand and four, in Bahasa Indonesia and the English language, both texts being equally authentic. In case of any divergence of interpretation of this Memorandum of Understanding, the English text shall prevail.


On Behalf of the Government of Malaysia.

Signed

Signed

Jac b Nuwa Wea, Minister for Power and Transmigration

DatukiVVfff/Dr. Fong Chan Onn, Minister of Human Resources

Appendix IV

Penal code 1936, as amended by 574 of 2006 Act 574
Murder

300. Except in the cases hereinafter excepted, culpable homicide is murder—

(a) if the act by which the death is caused is done with the intention of causing death;

(b) if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death, or such injury as aforesaid.

ILLUSTRATIONS

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z’s death.

(d) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1—Culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

(a) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person;
(b) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant;

(c) that the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

**ILLUSTRATIONS**

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z’s child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A’s deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z’s nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B’s rage, and to cause him to kill Z, puts a knife into B’s hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

**Exception 2**—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

**ILLUSTRATION**

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A
has not committed murder, but only culpable homicide.

Exception 3—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent.

ILLUSTRATION

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

Culpable homicide by causing the death of a person other than the person whose death was intended

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder

302. Whoever commits murder shall be punished with death.

303. (There is no s. 303).

Punishment for culpable homicide not amounting to murder

304. Whoever commits culpable homicide not amounting to murder shall be punished—

(a) with imprisonment for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or
(b) with imprisonment for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Causing death by negligence

304A. Whoever causes the death of any person, by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Abetment of suicide of child or insane person

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Abetment of suicide

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder

307. (1) Whoever does any act with such intention or knowledge and under such circumstances, that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable to imprisonment for a term which may extend to twenty years.

(2) When any person offending under this section is under sentence of imprisonment for life or for a term of twenty years, he may, if hurt is caused, be punished with death.

ILLUSTRATIONS

a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

b) A, with the intention of causing the death of a child often, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if by such firing he wounds Z, he is liable to the punishment by the latter part of this section.

d) A, intending to murder Z by poison, purchases poison and mixes the same
with food which remains in A’s keeping; A has not yet committed the
offence defined in this section. A place the food on Z’s table or delivers it
to Z’s servants to place it on Z’s table. A has committed the offence
defined in this section.

**Attempt to commit culpable homicide**

308. Whoever does any act with such intention or knowledge and under such
circumstances that if he by that act caused death he would be guilty of
culpable homicide not amounting to murder, shall be punished with
imprisonment for a term which may extend to three years or with fine or
with both; and if hurt is caused to any person by such act, shall be punished
with imprisonment for a term which may extend to seven years or with fine
or with both.

**ILLUSTRATION**

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances
that if he thereby caused death he would be guilty of culpable homicide not
amounting to murder. A has committed the offence defined in this section.

**Attempt to commit suicide**

309. Whoever attempts to commit suicide, and does any act towards the
commission of such offence, shall be punished with imprisonment for a
term which may extend to one year or with fine or with both.

**Infanticide**

309A. When any woman by any wilful act or omission causes the death of her
newly-born child, but at the time of the act or omission she had not fully
recovered from the effect of giving birth to such child, and by reason thereof
the balance of her mind was then disturbed, she shall, notwithstanding that
the circumstances were such that but for this section the offence would have
amounted to murder, be guilty of the offence of infanticide.

**Punishment for infanticide**

309B. Whoever commits the offence of infanticide shall be punished at the
discretion of the Court, with imprisonment for a term which may extend to
twenty years, and shall also be liable to fine.

310–311. (There are no ss. 310–311). **Causing Miscarriage; Injuries to Unborn
Children; Exposure of Infants; and Concealment of Births**

**Causing miscarriage**

312. Whoever voluntarily causes a woman with child to miscarry shall be
punished with imprisonment for a term which may extend to three years or with
fine or with both; and if the woman is quick with child, shall be punished with
imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Explanation—A woman who causes herself to miscarry is within the meaning of this section.

Exception—This section does not extend to a medical practitioner registered under the Medical Act 1971 [Act 50] who terminates the pregnancy of a woman if such medical practitioner is of the opinion, formed in good faith, that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or injury to the mental or physical health of the pregnant woman, greater than if the pregnancy were terminated.

Causing miscarriage without woman’s consent

313. Whoever commits the offence defined in section 312, without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Death caused by act done with intent to cause miscarriage. If act done without woman’s consent

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished with imprisonment for a term which may extend to twenty years.

Act done with intent to prevent a child being born alive or to cause it to die after birth

315. Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act is not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to ten years or with fine or with both.

Causing death of a quick unborn child by an act amounting to culpable homicide

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

ILLUSTRATION
A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

**Exposure and abandonment of a child under twelve years by parent or person having care of it**

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, exposes or leaves such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

*Explanation*—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

**Concealment of birth by secret disposal of dead body**

318. Whoever by secretly burying or otherwise disposing of the dead body of a child, whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Appendix V

**MEMORANDUM OF UNDERSTANDING ANTARA PEMERINTAH**
REPUBLIK INDONESIA DAN PEMERINTAH MALAYSIA
TENTANG REKRUITMEN DAN PENEMPATAN PEKERJA
DOMESTIK INDONESIA

MERUJKU pada Agreed Minutes Pertemuan Ketujuh Komisi Gabungan untuk
Kerjasama Bilateral antara pihak-pihak yang diadakan di di Kuala Lumpur pada
tanggal 18-20 Februari 2002 mengenai kebutuhan otoritas terkait kedua negara
untuk bersama-sama membahas Nokta Kesepakatan pada Panduan
Memperkerjakan Pelayan Indonesia antara Indonesia dan Malaysia tertanggal 30
Januari 1996;

MENIMBANG Pernyataan Bersama Pertemuan Tahunan antara Perdana Menteri
Malaysia dan Presiden republik Indonesia di Bukittinggi, Indonesia pada tanggal
12-12 Januari 2006;

MEYAKINI bahwa penempatan pekerja domestik asal Republik Indonesia di
Malaysia merupakan area kerjasama dimana keuntungan bersama untuk kedua
negara;

MENYADARI bahwa penempatan pekerja domestik membutuhkan framework
yang berbeda untuk memfasilitasi seleksi, perjanjian dan rekrruitmen pekerja
domestik asal Republik Indonesia ;

BERDASAR pada hukum-hukum yang berlaku, aturan-aturan, kebijakan-
kebijakan dan petunjuk-petunjuk negara bersangkutan;

TELAH MENCAPAI PEMAHAMAN tentang soal-soal berikut :

Pasal 1

Untuk tujuan Memorandum Of Understanding (MOU) ini :

“Pekerja Rumah Tangga” berarti warga negara Republik Indonesia yang
bekerja atau dikontrak untuk bekerja di Malaysia untuk periode waktu tertentu
untuk individu tertentu sebagai pekerja rumah tangga sebagaimana ditetapkan
dalam Undang-undang Pekerja tahun 1955, Peraturan Buruh Sabah (Bab 67) dan
Peraturan Buruh Sarawak (Bab 76).

“Majikan” berarti individual yang mendapat persetujuan oleh otoritas terkait di
Malaysia untuk memperkerjakan Pekerja Domestik asal Indonesia.

“Perwakilan Indonesia” berarti Kedutaan Republik Indonesia dan/atau Konsulat
Umum Republik Indonesia dan /atau Konsulat Republik Indonesia, di Malaysia.

“Perwakilan Indonesia” berarti Kedutaan Malaysia dan/atau Konsulat Umum
Malaysia dan/atau Konsulat Malaysia, di Indonesia.

“Badan Perekutan Indonesia” (BPI) berarti badan perekruit Indonesia yang
disetujui oleh Pemerintah Indonesia untuk tujuan merekrut Pekerja Rumah
Tangga Indonesia

“Badan Perekruit Malaysia” (BPM) berarti badan pekerja swasta yang

"Ijin Kerja" berarti ijin kunjungan (pekerja sementara) yang dikeluarkan oleh Departemen Imigrasi Malaysia (DIM) untuk mengijinkan Pekerja Domestik untuk bekerja di Malaysia.

Kata-kata dan pernyataan-pernyataan dalam tunggal mencakup plural, dan kata-kata dan pernyataan-pernyataan dalam plural mencakup tunggal.

**Pasal 2**

Tujuan MOU ini adalah untuk mengembangkan kerjasama yang ada antara Pihak-pihak untuk tujuan memperkuat mekanisme perjanjian dan rekruitmen Pekerja Rumah Tangga Republik Indonesia.

**Pasal 3**

Pihak-pihak menyepakati bahwa perekrutan Pekerja Rumah Tangga untuk pekerja di Malaysia dapat dilakukan sesuai dengan MOU ini.

**Pasal 4**

Pemerintah Malaysia mengakui bahwa Pekerja Rumah Tangga harus dipekerjakan sesuai dengan syarat-syarat dan kondisi pekerja sebagaimana ditetapkan dibawah hukum, peraturan, regulasi kebijakan dan petunjuk relevan terkait pekerja di Malaysia.

**Pasal 5**


2. Pihak-pihak sepakat bahwa implementasi pekerja sebagaimana amanuver pada paragraf 1, harus mengatur dengan Kelompok Kerja Gabungansebagaimana ditetapkan dalam Pasal 12.

**Pasal 6**

Pemerintah Republik Indonesia sepakat untuk menegaskan bahwa Pekerja Rumah Tangga yang mendapat tawaran untuk seleksi oleh majikan untuk bekerja di Malaysia harus memenuhi kondisi-kondisi awal berikut untuk memasuki Malaysia.

a) berusia setidaknya 21 tahun dan tidak lebih dari 45 tahun;

b) memiliki pengetahuan yang memadai tentang hukum-hukum, budaya dan praktek sosial di Malaysia.

c) memiliki kemampuan untuk berkomunikasi baik bahasa Malaysia dan/atau Inggris.
d) memenuhi prosedur imigrasi Malaysia di Malaysia;
e) harus dinyatakan sehat dan kuat terkait dengan persyaratan otirtas terkait di Malaysia dan Indonesia; dan
f) tidak memiliki catatan kriminal apapun.

Pasal 7
1. Pekerja Domestik yang bekerja di Malaysia harus mentaati seluruh hukum, aturan, regulasi, kebijakan dan petunjuk Malaysia; dan menghormati tradisi dan budaya Malaysia dalam tingkah laku mereka sebagai Pekerja Rumah Tangga di Malaysia.
2. Majikan harus mematuhi hukum, aturan, regulasi, kebijakan dan petunjuk Malaysia.

Pasal 8
Kedua Pihak mengakui bahwa tanggungjawab Majikan, BPM, BPI dan Pekerja Rumah Tangga untuk tujuan implementasi MOU ini harus sesuai dengan Appendix A.

Pasal 9
Pekerja rumah tangga yang dierekrut dibawah MOU ini adalah yang bekerja di Malaysia:
a) untuk periode tertentu sesuai dengan Kontrak Pekerja sebagaimana disetiap Appendix B.
b) Subyek syarat-syarat dan kondisi-kondisi Kontrak Pekerja sebagaimana di setiap Appendix B.

Pasal 10
Subyek Pasal 9, Pekerja Domestik diperbolehkan melanjutkan bekerja di Malaysia sebagaimana diminta Majikan.

Pasal 11

Pasal 12
1. Pihak-pihak setuju untuk menetapkan Kelompok Kerja Gabungan terdiri atas petugas-petugas terkait dari Pemerintah masing-masing untuk membahas persoalan apapun yang muncul dari pengimplementasian MOU ini.
2. Kelompok Kerja Gabungan harus bertemu dari waktu ke waktu dan mendesain tempat dan waktu pertemuan.

Pasal 13
Tiap-tiap pihak mempunyai hak dengan alasan keamanan nasional, kepentingan nasional, permintaan publik atau kesehatan publik untuk menunda secara sementara baik secara keseluruhan atau bagian implementasi MOU ini yang berdampak seketika setelah pemberitahuan yang diberikan Pihak lainnya melalui hubungan diplomatik.

Pasal 14

MOU ini merupakan mengganti atau penghapus Nota Kesepakatan pada Panduan MOU tentang Memperkerjakan Pelayan Indonesia antara Malaysia dan Indonesia tertanggal 30 Januari 1996.

Pasal 15

MOU ini dapat di amandemen, dimodifikasi atau direvisi dengan pertukaran surat persetujuan bersama antar Pihak-Pihak melalui hubungan diplomatik. Amandemen, modifikasi atau revisi harus diberlakukan sebagaimana ditetapkan pihak-pihak.

Pihak 16

Perselisihan apapun yang muncul dari interpristasi atau implementasi MOU ini harus diselesaikan secara damai melalui konsultasi atau negosiasi antara Pihak-Pihak tanpa pengaruh pihak ketiga.

Pasal 17

1. MOU ini harus diberlakukan menjadi kesepakatan bersama atas kedua Pihak- pihak, harus memberitahukan melalui pertukaran Nota Diplomatik.
2. MOU harus tetap diberlakukan untuk periode lima (5) tahun dari tanggal penandatanganan subyek hingga perpanjangan oleh kesepakatan bersama kedua Pihak.

DALAM KESAKSIAN TENTANG, yang bertandatangan, sebagaimana otoritas yang diberikan oleh Pemerintah terkait mereka, telah telah menandatangni MOU ini

DISELENGGARAKAN, di Bali, Indonesia pada 13 Mei Tahun 2006, Dalam Bahas Indonesia, Bahasa Malaysia dan Inggris, seluruh teks autentik secara sama. Seandainya terdapat perbedaan interpretasi MOU ini, teks Inggris harus diberlakukan

Appendix VI

General penalty

39. Every person convicted of an offence under this Act for which no penalty is specifically provided shall, in respect of each offence, be liable to a fine not exceeding *five thousand ringgit or to imprisonment for a term not exceeding *two years or to both.

Increased penalty where the subject matter is the prescribed amount of certain dangerous drugs

39A. (1) Every person found guilty of an offence against this Act where the subject matter of the offence is—

(a) 2 grammes or more but less than 5 grammes in weight of heroin;
(b) 2 grammes or more but less than 5 grammes in weight of morphine;
(c) 2 grammes or more but less than 5 grammes in weight of monoacetylmorphines;
(d) a total of 2 grammes or more but less than 5 grammes in weight of heroin, morphine and monoacetylmorphines or a total of 2 grammes or more but less than 5 grammes in weight of any two of the said dangerous drugs;
(e) 5 grammes or more but less than 15 grammes in weight of cocaine;
(f) 20 grammes or more but less than 50 grammes in weight of cannabis;
(g) 20 grammes or more but less than 50 grammes in weight of cannabis resin;
(h) a total of 20 grammes or more but less than 50 grammes in weight of cannabis and cannabis resin;
(i) 100 grammes or more but less than 250 grammes in weight of raw opium;
(j) 100 grammes or more but less than 250 grammes in weight of prepared opium;
(k) a total of 100 grammes or more but less than 250 grammes in weight of raw opium and prepared opium;
(l) 250 grammes or more but less than 750 grammes in weight of coca leaves;
(m) 5 grammes or more but less than 30 grammes in weight of 2-Amino-1-(2, 5-dimethoxy-4methyl) phenylpropane;
(n) 5 grammes or more but less than 30 grammes in weight of Amphetamine;
(o) 5 grammes or more but less than 30 grammes in weight of 2, 5-Dimethoxyamphetamine (DMA);
(p) 5 grammes or more but less than 30 grammes in weight of Dimethoxybromoamphetamine (DOB);
(q) 5 grammes or more but less than 30 grammes in weight of 2, 5-Dimethoxy-4-ethylamphetamine (DOET);

(r) 5 grammes or more but less than 30 grammes in weight of Methamphetamine;

(s) 5 grammes or more but less than 30 grammes in weight of 5-Methoxy-3, 4-Methylenedioxyamphetamine (MMDA);

(t) 5 grammes or more but less than 30 grammes in weight of Methylenedioxyamphetamine (MDA);

(u) 5 grammes or more but less than 30 grammes in weight of N-ethyl MDA;

(v) 5 grammes or more but less than 30 grammes in weight

(w) 5 grammes or more but less than 30 grammes in weight of N-methyl-1-(3, 4-methylenedioxyphenyl)-2-butanamine

(x) 5 grammes or more but less than 30 grammes in weight of 3, 4-Methylenedioxyamphetamine (MDMA);

(y) 5 grammes or more but less than 30 grammes in weight of Paramethoxyamphetamine (PMA);

(z) 5 grammes or more but less than 30 grammes in weight of 3, 4, 5-Trimethoxyamphetamine (3, 4, 5-TMA); or

(aa) a total of 5 grammes or more but less than 30 grammes in weight of any combination of the dangerous drugs listed in paragraphs (m) to (z), shall, instead of being liable to the punishment provided for that offence under the section under which the person has been so found guilty, be punished with imprisonment for a term which shall not be less than two years but shall not exceed five years, and he shall also be punished with whipping of not less than three strokes but not more than nine strokes.

(2) Every person found guilty of an offence against this Act where the offence is not punishable with death and where the subject matter of the offence is—

(a) 5 grammes or more in weight of heroin;

(b) 5 grammes or more in weight of morphine;

(c) 5 grammes or more in weight of monoacetylmorphines;

(d) a total of 5 grammes or more in weight of heroin, morphine and monoacetylmorphines or a total of 5 grammes or more in weight of any two of the said dangerous drugs;

(e) 15 grammes or more in weight of cocaine;

(f) 50 grammes or more in weight of cannabis;
(g) 50 grammes or more in weight of cannabis resin;
(h) a total of 50 grammes or more in weight of cannabis and cannabis resin;
(i) 250 grammes or more in weight of raw opium;
(j) 250 grammes or more in weight of prepared opium;
(k) a total of 250 grammes or more in weight of raw opium and prepared opium;
(l) 750 grammes or more in weight of coca leaves;
(m) 30 grammes or more in weight of 2-Amino-1-(2, 5- dimethoxy-4-methyl) phenylpropane;
(n) 30 grammes or more in weight of Amphetamine;
(o) 30 grammes or more in weight of 2, 5- Dimethoxyamphetamine(DMA);
(p) 30 grammes or more in weight of Dimethoxybromoamphetamine (DOB);
(q) 30 grammes or more in weight of 2, 5-Dimethoxy-4- ethylamphetaminem (DOET);
(r) 30 grammes or more in weight of Methamphetaminem;
(s) 30 grammes or more in weight of 5-Methoxy-3, 4- Methyleneoxyamphetamine (MMDA);
(t) 30 grammes or more in weight of Methyleneoxyamphetamine (MDA);
(u) 30 grammes or more in weight of N-ethyl MDA;
(v) 30 grammes or more in weight of N-hydroxy MDA;
(w) 30 grammes or more in weight of N-methyl-1-(3, 4- Methylenedioxyphenyl)-2-butanamine;
(x) 30 grammes or more in weight of 3, 4- Methylenedioxymethamphetamine (MDMA);
(y) 30 grammes or more in weight of Paramethoxyamphetamine (PMA);
(z) 30 grammes or more in weight of 3, 4, 5- Trimethoxyamphetamine (3, 4, 5- TMA); or
(za) a total of 30 grammes or more in weight of any combination of the dangerous drugs listed in paragraphs (m) to (z), shall, instead of being liable to the punishment provided for that offence under the section under which the person has been so found guilty, be punished with imprisonment for *life or for a term which shall not be less than five years, and he shall also be punished with whipping of not less than **ten strokes.

**Trafficking in dangerous drugs**
39B. (1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia—

(a) traffic in a dangerous drug;
(b) offer to traffic in a dangerous drug; or
(c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug.

(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death.

(3) A prosecution under this section shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.

(4) When a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

Increased penalty where person has prior admissions or convictions

39C. (1) Where a person who has not less than—

a) two previous admissions;

b) two previous convictions under paragraph 10(2)(b) or paragraph 15(1)(a) or any combination of the sections;

c) one previous admission and one previous conviction under paragraph 10(2)(b) or paragraph 15(1)(a);

d) one previous admission and two previous convictions under section 31A; or

e) one previous conviction under paragraph 10(2)(b) or paragraph 15(1)(a) and two previous convictions under section 31A,

is found guilty of an offence under paragraph 10(2)(b), paragraph 15(1)(a) or section 31A, he shall, instead of being liable to the punishment provided for that offence under the section under which he has been found guilty, be punished with imprisonment for a term which
shall not be less than five years but shall not exceed seven years, and he shall also be punished with whipping of not more than three strokes.

(2) Where a person who has been punished under subsection (1) is convicted of a subsequent offence under paragraph 10(2)(b), paragraph 15(1)(a) or section 31A, he shall, instead of being liable to the punishment provided for that offence under the section under which he has been found guilty, be punished with imprisonment for a term which shall not be less than seven years but shall not exceed thirteen years, and he shall also be punished with whipping of not less than three strokes but not more than six strokes.

(3) A certificate to be signed by an officer authorized in writing by the Director General and purporting to relate to a person’s admission to a Rehabilitation Centre shall be admissible in evidence in any proceedings under this section, on its production by the prosecution without proof of signature; and, until the contrary is proved, that certificate shall be evidence of all matters contained in the certificate.

(4) For the purposes of this section—

“admission” means an admission to undergo treatment and rehabilitation at a Rehabilitation Centre by an order of a magistrate under paragraph 6(1)(a) of the Drug Dependents (Treatment and Rehabilitation) Act 1983;

“Director General” means the Director General appointed under subsection 2(2) of the Drug Dependents (Treatment and Rehabilitation) Act 1983;

“Rehabilitation Centre” means the Rehabilitation Centre established under section 10 of the Drug Dependents (Treatment and Rehabilitation) Act 1983.
Appendix VII

First Schedule - Section 2(1)

1. Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person’s wages do not exceed RM2000 a month.

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which

   (1) He is engaged in manual labour including such labour as an artisan or apprentice; Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work to such wage period;

   (2) He is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;

   (3) He supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;

   (4) He is engaged in any capacity in any vessel registered in Malaysia and who:

      (a) is not an officer certificated under the Merchant Shipping Acts of the United Kingdom as amended from time to time;

      (b) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance, 1952; or

      (c) has not entered into an agreement under Part III of the Merchant Shipping Ordinance, 1952; or

      (d) he is engaged as a domestic servant.

3. For the purpose of this Schedule “wages” means wages as defined in section 2, but shall not include any payment by way of commission, subsistence allowance and overtime payment.