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**SOCIO-LEGAL FRAMEWORK ON PROTECTING  
MIGRANT WORKERS IN MALAYSIA: CASE STUDY OF  
INDONESIAN MIGRANT DOMESTIC WORKERS**

**MUHAMMAD HELMY HAKIM**



**DOCTOR OF PHILOSOPHY  
UNIVERSITI UTARA MALAYSIA  
2015**

**SOCIO-LEGAL FRAMEWORK ON PROTECTING  
MIGRANT WORKERS IN MALAYSIA: CASE STUDY OF  
INDONESIAN MIGRANT DOMESTIC WORKERS**





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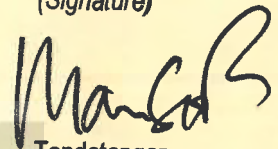
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## **Abstract**

Malaysia has more than 400,000 registered domestic workers from various countries, and Indonesian making up 90% of them. The Indonesian migrant domestic workers (IMDWs) also rate the highest in number of victims. With respect to vulnerabilities, they have fallen victims and entrapped in various discriminations. Unfortunately, they do not get due attention. This research primarily aims to assess legal consciousness of mistreated IMDWs by examining critically the interaction of their socio-cultural contexts and the Malaysian employment law within the framework of legal dispute processing. Given this, on a general basis, this research is to examine why only a few mistreated IMDWs, came forward to file lawsuit for adjudication. Additionally, the study is also undertaken to carry out socio-legal analysis with regard to developing patterns of disputes. Finally this study determines to identify the principal barriers which obstruct access to justice as experienced by mistreated IMDWs. This study employs a qualitative approach using case study techniques which are broadly applied in social science researches. The study reveals that IMDWs who are engaged in disputes have shown reluctance to exercise their rights since they were perceived as "legitimately defeated ". Trigger events, cultural context and personality styles are factors that have blocked their transformation from naming, blaming and initially claiming which ultimately have resulted in the development of strategies by IMDWs. This study provides evidence of various strategies of resistance used by domestic workers, such as dissimulation, murmuring in their mother tongue, swearing honesty against accusation, leaving their workplaces legitimately (desertion), third party mediation and using "zikir". The obstacles that IMDWs face can be grouped into: (1) problems related to justice institutions and (2) problems related to justice seekers themselves.

**Keywords:** Indonesian Domestic Workers, Legal Consciousness, Legal Protection, Malaysian Employment Law

## Abstrak

Malaysia mempunyai lebih daripada 400,000 pembantu asing berdaftar dari pelbagai negara, dan Indonesia membentuk 90% daripadanya. Pembantu asing Indonesia juga merupakan jumlah paling ramai yang menjadi mangsa. Berikutan sifat kerentanan, mereka telah menjadi mangsa dan terperangkap dalam pelbagai bentuk diskriminasi, malangnya mereka tidak diberikan perhatian sepenuhnya. Tujuan utama kajian ini adalah untuk menilai kesedaran undang-undang keatas pembantu asing Indonesia yang dizalimi dengan cara penyelidikan secara kritikal terhadap interaksi konteks sosio-budaya mereka dan undang-undang buruh di Malaysia, dalam rangka pemprosesan pertikaian undang-undang. Dalam hal ini, kajian secara umumnya bertujuan untuk mengkaji sebab musabab mengapa hanya segelintir pembantu asing Indonesia yang dizalimi memfailkan saman bagi membuat tuntutan terhadap layanan buruk yang diberikan. Di samping itu, kajian ini juga menganalisis sosio- undang- undang mengenai kaedah untuk membangunkan corak pertikaian. Akhir sekali, kajian ini cuba mengenal pasti beberapa halangan akses kepada keadilan yang dialami oleh pembantu asing Indonesia yang dizalimi ini. Kajian ini dijalankan melalui pendekatan kualitatif dengan menggunakan teknik kajian kes yang digunakan secara meluas dalam penyelidikan sains sosial. Dapatan kajian mendedahkan bahawa pembantu asing Indonesia yang terlibat dalam pertikaian, sama ada menolak untuk menggunakan undang-undang mahupun menuntut tindakan undang-undang kerana menganggap bahawa diri mereka " sah dikalahkan " (*legitimately defeated*). Terdapat beberapa faktor seperti peristiwa pencetus, konteks budaya dan gaya personaliti yang menghalang transformasi mereka dari menamakan (*naming*), menyalahkan (*blaming*) dan mendakwa (*claiming*) yang mana telah membangunkan beberapa strategi untuk para pembantu yang dizalimi ini. Kajian ini memberikan bukti pelbagai strategi rintangan (*resistance strategy*) yang digunakan oleh pekerja domestik, seperti seperti kepura-puraan, memaki dalam bahasa sendiri, bersumpah kejujuran terhadap tuduhan, meninggalkan tempat kerja yang sah (*desertion*), pengantaraan pihak ketiga dan menggunakan "zikir". Antara halangan yang dihadapi oleh pembantu asing Indonesia boleh digolongkan kepada masalah yang berkaitan dengan institusi keadilan dan masalah yang berkaitan dengan pencarian keadilan itu sendiri.

Kata Kunci: Pembantu Asing Indonesia, Kesedaran Undang-Undang, Perlindungan Hukum, Undang-Undang Buruh Malaysia



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## LIST OF TABLES

Table 1.1 Mistreatment Cases Reported to Police .....	13
Table 1.2 Runaway Maids .....	14
Table 5.1. Outline Profile of Participants of Case Studies.....	134
Table 5.2. Summary Profile of the Case Study Based on Participant's Origin and Educational Background .....	134



## LIST OF FIGURES

Figure 1.: Figure: Pyramid of disputes.....	16
Figure 2.: Legal Dispute Processing Theory.....	60
Figure 3.1: Types of Case Study Research .....	71
Figure 3.2. : Visual Model of Qualitative Data Analysis.....	83
Figure 4.1.: Flows of Indonesian Migrant Workers to Malaysia and Saudi Arabia (1997-2006).....	94
Figure 4.2: Gender Trends in Migrant Flow to Malaysia .....	95
Figure 4.3: Trends in Total Formal and Informal Sector Migrant Flows .....	96
Figure 6.1.: A Dispute Pyramid: The General Pattern No. per 1000 Grievances ....	195
Figure 6.2.: A Dispute Pyramids: Two Deviant Patterns No. per 1000 Grievances	196



## Table of Contents

<b>ACKNOWLEDGEMENTS.....</b>	<b>IV</b>
<b>LIST OF TABLES .....</b>	<b>VI</b>
<b>LIST OF FIGURES .....</b>	<b>VII</b>
<b>CHAPTER 1: INTRODUCTION.....</b>	<b>1</b>
1.1 Introduction.....	1
1.1.1 International labour migration.....	1
1.1.2 Feminization of migration.....	3
1.1.3 Migrant female domestic workers.....	5
1.1.4 Domestic workers are excluded from labour laws.....	8
1.1.5 Legal protection on domestic workers .....	9
1.2 Statement of the research problem.....	12
1.2.1. Research questions.....	18
1.2.2. Objectives.....	18
1.3 The scope of the study .....	19
1.4 The significance of the research.....	20
1.5 Thesis organization .....	22
1.6 Concluding remark.....	26
<b>CHAPTER 2: LITERATURE REVIEW AND THEORETICAL FRAMEWORK.....</b>	<b>28</b>
2.1 Introduction.....	28
2.2 Instrumental and constitutive perspectives .....	28
2.2.1 Scheingold against the instrumentalism .....	30
2.2.2 Bumiller refuses legal protection model .....	32
2.2.3 Discourse of legal consciousness .....	35
2.2.4 Four factors affect legal consciousness .....	40
2.2.5 Three types of legal consciousness .....	43

2.2.5.1 Before the law .....	44
2.2.5.2 With the law .....	44
2.2.5.2 Against the law .....	46
2.3 Legal dispute processing.....	46
2.3.1 How do people respond to dispute.....	48
2.3.2 What happens in and to disputes?.....	50
2.4 Theoretical Framework of Transformational Theory of Litigation .....	57
2.5 Concluding Remark .....	63
 <b>CHAPTER 3: RESEARCH METHODOLOGY .....</b>	<b>65</b>
3.1 Introduction .....	65
3.2 Socio Legal Research.....	65
3.3 Philosophical Assumptions .....	67
3.4 Qualitative Approach .....	68
3.5 Case Study Strategy .....	69
3.5.1 Multiple Case Studies .....	70
3.5.2 Case Selection .....	72
3.6 Data Collection.....	73
3.6.1 Participants of Data Collection .....	73
3.6.1.1 Mistreated Indonesian domestic workers.....	73
3.6.1.2 Employers .....	75
3.6.1.3 Domestic Workers Agencies.....	76
3.6.1.4 Officials of Indonesian Consulate General and Ministry of Malaysian Domestic Affairs.....	77
3.6.1.5 Non Governmental Organizations (NGOs).....	78
3.6.2 Methods of Data Collection .....	79
3.6.2.1 Interview .....	80
3.6.2.1 Documentary .....	81
3.7 Data Analysis .....	81
3.8 Advantages and Limitation .....	83
3.9 Concluding Remark .....	85

<b>CHAPTER 4: RESEARCH BACKGROUND .....</b>	<b>87</b>
4.1 Introduction .....	87
4.2 Malaysia: General context.....	87
4.2.1 Foreign workers in Malaysia.....	89
4.2.2 Indonesian migrants in Malaysia .....	93
4.3 Legal Framework Pertaining to Indonesian Domestic Workers in Malaysia .....	99
4.4 Legal Framework Covering Indonesian Migrant Workers Abroad .....	104
4.4.1 The Constitution .....	104
4.4.2 Policies Before the Enactment of Law of 39/2004 .....	107
4.4.2.1 Ministerial Decree of 204/1999 .....	108
4.4.2.2 Manpower and Transmigration Ministerial Decree of 104A/2002.....	108
4.4.2.3 Introduction of Law No. 39/2004 .....	110
4.4.2.3.1 The Structure of Law No. 39/2004 .....	110
4.4.2.3.2 Limited Scope of Protection .....	111
4.4.2.3.3 Shortcomings of Law No. 39/2004 .....	113
4.4.3 Regulation of the Ministry of Foreign Affairs No. 4/2008 .....	114
4.4.4 The 2011 Indonesian-Malaysian Memorandum of Understanding .....	115
4.5 International Law Pertaining Protection for Migrant Domestic Workers.....	118
4.6 Watered-down law and compromises .....	120
4.7 Concluding Remark .....	125
<b>CHAPTER 5: BECOMING DOMESTIC MIGRANT WORKERS.....</b>	<b>131</b>
5.1 Introduction .....	131
5.2 In-depth interviews .....	132
5.3 Eight case studies of mistreated Indonesian migrant domestic workers.....	134
5.3.1 Case study 1 .....	135
5.3.2 Case study 2 .....	140
5.3.3 Case study 3 .....	146
5.3.4 Case study 4 .....	150
5.3.5 Case study 5 .....	153
5.3.6 Case study 6 .....	156
5.3.7 Case study 7 .....	158

5.4 Concluding remark .....	162
<b>CHAPTER 6: FINDINGS AND DISCUSSION .....</b>	<b>164</b>
6.1 Introduction .....	164
6.2 Indonesian migrant domestic workers within the intersection of gender, class and race .....	165
6.2.1 Domestic Workers as a Unique Workforce Vulnerable to Abuse .....	173
6.2.2 Legal Consciousness of Indonesian migrant domestic workers .....	176
6.2.3 Legal consciousness of injustice .....	183
6.3 Transformation of disputes among Indonesian migrant domestic workers .....	188
6.3.1 Development of Disputes .....	189
6.3.2 The pyramid of disputes .....	193
6.3.3 Indonesian migrant domestic workers trapped at the bottom of pyramid .....	198
6.3.4 factors that affect dispute transformation and block litigation .....	201
6.3.4.1 Trigger event .....	203
6.3.4.2 Cultural context .....	203
6.3.4.3 Personality types .....	206
6.4 Strategies deployed by domestic workers as alternative onto litigation .....	207
6.4.1 Legal hegemony .....	211
6.4.2 Strategies of resistance .....	217
6.5 What obstacles do domestic workers meet when seeking justice .....	231
6.5.1 Problems related to justice institutions .....	231
6.5.2 Problems related to the domestic workers themselves .....	233
<b>CHAPTER 7: CONCLUSION .....</b>	<b>237</b>
7.1 Summary of the Findings .....	237
7.2 The significance of the dissertation and its original contribution .....	243
7.3 Recommendations .....	244
7.4 The limitations of the dissertation .....	246
<b>REFERENCES .....</b>	<b>248</b>
<b>APPENDIX A .....</b>	<b>263</b>



<b>APPENDIX B</b>	<b>.....271</b>
<b>APPENDIX C</b>	<b>.....288</b>



## **Appendix A**

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# **CHAPTER ONE**

## **INTRODUCTION**

### **1.1 Introduction**

This study mainly aims at evaluating the legal awareness of mistreated migrant workers by critically examining how the situation of migrant workers are formed and influenced by social-cultural contexts and the Malaysian employment law and how disputes are legally proceeded. In other words, this kind of research might be considered as the bottom-up approach, which is usually defined in sociology of law literature as the theory of social-legal analysis.

This socio-legal analysis of the situation of Indonesian migrant domestic workers would not be achieved without a prior discussion of the relationship between labor migration, feminization of migration and legal protection of domestic workers. Therefore, a brief overview of these relationships and their implications will be discussed. In addition to some statements, this chapter will include research questions, objectives, and the significance of research. Finally, thesis organization will conclude this chapter.

#### **1.1.1 International Labor Migration**

Globalization within the economic sphere, is not simply characterized by liberalization of trade, services, investment, and capital, but also marked by transnational movements of people in search of better lives and employment opportunities elsewhere. It has been estimated that number of people who have

settled down in a country other than their own is nearly 200 million.<sup>1</sup> The latest United Nations World Migration Report 2003 estimates the number of migrants increased from 84 million in 1985 to 175 million in the year 2000. Moreover, it is projected to increase to 230 million in 2050.<sup>2</sup> In other words, one person out of thirty-five is an international migrant. While international migration has affected almost all countries in the world, Asia is mostly affected. With 57.3% of the global population, the continent's population deserves adequate consideration. The resulted impact may be troublesome for the countries that either send, transit, or receive migrant workers or those with combined practices.

Aside from international migration, according to the International Labor Organization (ILO), there are about 100 million migrant workers worldwide. They are 20 million in Africa, 18 million in North America, 12 million in Central and South America, 7 million in South and East Asia, 9 million in the Middle East and 30 million in Europe. The ILO confirms an increasing number of states that are hiring foreign workers from 42 in 1970 to 90 in 1990.<sup>3</sup>

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<sup>1</sup> Gallya Lahav, "Prospects and Limits of International Cooperation on Migration and Development in a New World Order: A Political Perspective from the European Union," in *International Migration and Development Continuing the Dialogue: Legal and Policy Perspectives* ed. Joseph Chamie and Luca Dall'Oglio (Geneva, Switzerland: Center for Migration Studies (CMS) and International Organization for Migration (IOM), 2008), 59.

<sup>2</sup> United Nations, *World Economics and Social Survey 2004, International Migration* (New York: Department of Economic and Social Affairs, United Nations, 2004).

<sup>3</sup> Scalabrini Migration Center (SMC), *Asian Migration News*, no. 16-31 January 2005 (2005). This is a raw data. A major limitation upon the research on migration, particularly in Asia, has been the amount and quality of data collection about it. It has been highly debatable and problematic due to the widespread occurrence of undocumented migration see Graeme Hugo, "Migration in the Asia-Pacific Region," in *Policy Analysis and Research Programme of the Global Commission on International Migration* (2005a), 1.

### 1.1.2 Feminization of migration

There has been a recent trend within the international labor migrant, where women made up about half of all migrants for several decades. In 2005, the percentage of female migrants has reached nearly 50 percent of all migrants, up from 47 per cent in 1960.<sup>4</sup> This phenomenon – called ‘feminization of migration,’<sup>5</sup> has resulted in an increased number of women who migrate independently, including in Asia.

Such a migration for domestic work opportunities overseas has been prevalently practiced for a quite long time but was tremendously apparent in the late 1970s. Nowhere else in the world was the trend as significant as in Asia. The great number of female migrant flow from Asian countries was approximated to be 800,000 each year which steadily increased over years.<sup>6</sup> Such was the case for Indonesia, the Philippines, and Sri Lank, which supplied the great number of female migrants for domestic employment overseas.<sup>7</sup>

In terms of migrant destination, the most popular one for Asian migrants until 1990s was the Middle East. However this trend has shifted from the Middle East to other Asian countries whose economies have boomed in recent decades. Even by 1997, destinations such as Malaysia, Singapore, Japan, Hong Kong, and South Korea had

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<sup>4</sup> UN (United Nations), "Trends in Total Migrant Stock: The 2005 Revision," (2006). [http://www.un.org/esa/population/publications/migration/UN\\_Migrant\\_Stock\\_Documentation\\_2005.pdf](http://www.un.org/esa/population/publications/migration/UN_Migrant_Stock_Documentation_2005.pdf) (accessed June 30, 2010).

<sup>5</sup> Feminization of migration is a recent trend in migration. The term constitutes the changing the gendered patterns of migration and higher rate of women migrating independently. Furthermore, it also denotes that their independent migration is rather in the framework of searching jobs, than merely as family dependents together with their husbands. In fact, the research on gender roles in migration has attracted more attention substantially.

<sup>6</sup> Nana Oishi, *Gender and Migration: An Integrative Approach* (University of California, San Diego: The Center for Comparative Immigration Studies, 2002).

<sup>7</sup> Nancy V. Yinger, "The Feminization of Migration: Limits of the Data," (2007). <http://www.prb.org/Articles/2007/FeminizationofMigrationLimitsofData.aspx> (accessed June 30, 2010).

surpassed the Middle East.<sup>8</sup> These countries rely upon migrant workers to fill labor shortages that arise when the domestic labor force cannot meet the labor demands created by their fast-growing economies. On the other hand, their citizens are unwilling to take up low-paying, labor-intensive jobs with poor working conditions.

The great employment opportunities, although in the field of domestic position, has lured a great number of labor migration particularly in Southeast Asia in the second half of the twentieth century. The increasing labor movement across the state borders had resulted in more complex and significant labor management by Malaysian authorities. It was reported that Indonesians ranked third in labor number below Chinese and Indians during the first half of the 20th century.<sup>9</sup> These developments have been shaped by economic, social, and demographic changes in the region, consistent with accelerated globalization, which has profoundly affected Indonesian labor migration to Malaysia.<sup>10</sup> Thus, there has been an argument that Indonesians in Malaysia make up the largest irregular migration flow in Asia and globally are second only to Mexicans migrating to the United States.<sup>11</sup>

It can be argued that historically, Indonesian migration to Malaysia has started since a long time ago.<sup>12</sup> Currently, Indonesians are the largest group of foreign workers that forms 83 percent of the total foreign labors in Malaysia. They fill up labor

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<sup>8</sup> P. Wickramasekera, *Asian Labour Migration: Issues and Challenges in an Era of Globalization* (Geneva: International Labour Office, 2002).

<sup>9</sup> Hugo, 1.

<sup>10</sup> Amarjit Kaur, "Mobility, Labour Mobilisation and Border Controls: Indonesian Labour Migration to Malaysia since 1900," in *15th Biennial Conference of the Asian Studies Association of Australia* (Canberra 2004a).

<sup>11</sup> According to Liow: "the long-term, undocumented migration flow of Indonesians into Malaysia is arguably the second largest flow of illegal immigrants after the movement across the U.S.-Mexico border." Joseph Liow, "Malaysia's Illegal Indonesian Migrant Labour Problem: In Search of Solutions," *Contemporary Southeast Asia* 25, no. 1 (2003): 44.

<sup>12</sup> T.S. Bahrin, "The Growth and Distribution of the Indonesian Population in Malaya," *Bijdragen* 123, no. 267-286 (1967).

shortages shaped by Malaysia's economic policies of the "New Economic Policy" in 1971 which aggressively chased export-oriented industrialization and public sector expansion. The policies brought about great job growth in urban areas and consequently invited a mass migration of rural Malaysians to the cities. Another contributing factor to the wide-open job opportunities was the booming growth of industries, particularly in manufacturing and construction, which had not lured the local job seekers. The unfavorable employment statuses in both fields attributed with low-paying works have left the job opportunities unoccupied optimally. Another coupling factor is the lack of adequate work opportunities with commensurate income in the domestic state and the rapidly increasing demand for domestic workers among the middle-class group has led to the greater flow of migrant workers into Malaysia.

It has also been commonly believed that globalization has enabled a free movement of labor across the state border to the developed countries that lured them with abundant jobs suitable with their qualification. These migrant workers have secured the unfavorable low-paid jobs that have been left unoccupied by the local employees who enjoy some privilege and practice preference to various kinds of high-status and excellent-pay works and leave the dangerous poor-paid works for migrant workers. In this context, the great majority of Indonesian migrant workers employed in jobs well known as the three D's: dirty, difficult, and dangerous, which are related jobs for working class. Most of them typically find jobs as laborers on plantations, construction sites, workers in factories, and domestic workers.

### 1.1.3 Migrant Female Domestic Workers

As has been stated earlier, since the feminization of Indonesian migrant that market the Indonesia – Malaysia migration, the vast majority of Indonesian female migrant workers are employed as domestic workers. Gender seems to characterize the proportion of migrant workers whereby women outnumber men. More women than men secure the work as domestic workers overseas. As implied in the Report of the National Consultation of Stakeholders on Migrant Domestic Workers conducted in Colombo in 2002, while employment opportunities for other fields of work declined in 1990, domestic workers were constantly needed at relatively unchanged number. It is worth noting that most migrated labor for domestic work employment come from underdeveloped countries with relatively poor economies. Such countries as Sri Lanka and Indonesia, to mention some, have supplied a significant number of migrant domestic workers to Middle East and Southeast Asian countries. For example, it was reported that 78.7 per cent, 79.4 per cent, 77.4 per cent and 55.9 per cent of all Sri Lankans left their home country for overseas employment in domestic work in 1998, 1999, 2000 and 2001 respectively.<sup>13</sup> At almost the same number, Indonesian migrated labor was quite large in 1997-1998 65.7 percent of which was female labors. They secured the commonly perceived lousy and demanding domestic work, the only available for migrant workers with poor schooling and competence, in the economically prosperous Middle Eastern countries and Southeast Asian countries.<sup>14</sup>

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<sup>13</sup> Brenda S. A. Yeoh, Shirlena Huang, and Theresa W. Devasahayam, "Diasporic Subjects in the Nation: Foreign Domestic Workers, the Reach of Law and Civil Society in Singapore," *Asian Studies Review* 28, no. (2004): 8.

<sup>14</sup> Yermias T. Keban, "International Migration, the Strategy for National Development and Globalization," in *Labour Migration in Indonesia : Policies and Practice*, ed. Haris Sukamdi, A.,



Among migrant workers crossing international boundaries, female foreign domestic workers are particularly vulnerable to various forms of discrimination, exploitation and mistreatment in terms of their gender, temporary migrant status, and the nature and location of work within their employers' homes.<sup>15</sup> It has been recorded that about 310,661 or 16.6 percent of some 1.9 million migrant workers holding temporary work permits are domestic workers, of whom some 95 percent from?<sup>16</sup> The Indonesian domestic workers in Malaysia according to the deputy director of strategic planning SAC I Datuk Nooryah Md Anvar said that Malaysia had more than 400,000 registered domestic workers from various countries 90% of whom are from Indonesia. Further she stated that "The Indonesian workers also rank highest in number of victims compared to other foreign workers. "From 2003 to August 2007, a total of 215 servant mistreatment cases were reported and 89% of them involved Indonesians."<sup>17</sup> Of course it may be unfair to generalize that all employers mistreat their servants. There are good and kind employers, who unfortunately, have not been highlighted. Similarly, there are also good domestic workers as there are the bad ones.

To sum up, then, it can be inferred from the discussion above that there are three main characteristics of Indonesian migrant domestic workers. First, most domestic workers are women; second, most of the time they are migrants and, third, most of them belong to underclass. Their belonging to underclass group has clearly manifested in employment discrimination. While housewives can accomplish

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Brownlee, P., & Universitas Gadjah Mada. Pusat Penelitian dan Studi Kependudukan(Yogyakarta: Population Studies Center, Gadjah Mada University in cooperation with Asia Pacific Migration Research Network (APMRN), Japan Foundation, UNESCO-MOST, and CASPTRANS, University of Wollongong., 2000), 195.

<sup>15</sup> Yeoh, Huang, and Devasahayam: 9.

<sup>16</sup> Scalabrini Migration Center (SMC), *Asian Migration News*, no. 31 April 2007 (2007).

<sup>17</sup> The Star Online November 30, 2007

housework, they transfer the work to domestic workers. Wives deserve more glorious works such as providing education for the children and prepare the need of their husbands. With regard to formality and degree of skillfulness, domestic workers are categorized informal and unskilled. Such informal and gender-biased status has made domestic workers vulnerable and are excluded from labor legislation in most countries all over the world. Being domestic workers at private homes has excluded these unfortunate Indonesian labors from the prevailing rules and regulations due to the legally restricted interpretation of the scope of workplaces and employers. In Malaysian law, both workplaces and employers refer to official and formal employment, to which the domestic workers have failed to meet. The discrimination went even further that the domestic workers, being informal workers, fail to secure legal and administrative protection. Such case is true, since the Malaysian workforce exclusively provide administrative supervision and legal protection to those formally employed and leave domestic workers, particularly the migrant domestic workers, unprotected. Since the authority declines equal recognition to migrant domestic workers, such inhuman employment practices as overwork, underpayment, and under-protection have been prevalently found. Only later in 1965 did the ILO recognized the peculiarity of domestic workers and adopted a Resolution on the Condition of Employment of Domestic Workers.

#### **1.1.4 Domestic Workers are Excluded from Labour Law**

The vulnerability among domestic workers is particularly due to the legal fact that their work status is excluded from the national legislation that leads to the denial to any legal protection during their employment service. Belonging to informal category of domestic employment has kept them from any form of inclusion in the

prevailing employment regulation. Therefore, they are consistently left unprotected. The suffering went even further that in addition to the exclusion from the prevailing labor laws, the national law declines any other form of optional protection. Based on this particular position, many countries all over the world exclude domestic work from labor laws partially or completely. This certainly reflects discriminatory social biases that produce dichotomies between work related with men in the formal public sphere, and work related with women in the private sphere.

About excluding domestic workers from the labor law, it is also the case of Malaysia's framework of its employment law. As regulated in the Employment Act 1955, "domestic servants" do not deserve the commonly reserved rights for formal field employees. Consequently, they are not entitled to get rest days, limited hours of work, public holidays, annual leave, sick leave, and maternity protections. Even worse, they are not entitled to receive any form of compensation such as termination, lay-off, and retirement benefits.<sup>18</sup>

Being excluded from any basic employment protection otherwise provided for other work categories has left domestic workers in severely chronic agony. Not only has legal protection been absent for them, other benefits such as minimum wage or work hour limitation have been lacking for them. This discriminative labor practice has caused the domestic work sector, mostly secured by women and girls, has weakened these already chronically gender-biased role holders responsible for such lousy house works as cleaning, child care, and cooking. Still, they may experience some forms of physical, mental, or social abuses predisposed by their socially isolated work domain

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<sup>18</sup> Employment Act 1955 of Malaysia, sections 12, 14, 16, 22, 61, 64 and parts IX, XII, and XIII. Malaysia's Workman's Compensation Act 1952, which provides a mechanism for workers to receive compensation for workplace injuries and occupational illnesses, also excludes domestic workers

while it has always been difficult to find any appropriate legal redress for their problem due to the formal exclusion of their employment in the labor employment. The fact that employment market has higher flexibility in labor assignment and recruitment has resulted in severe exploitation of migrant workers by the exploitative employers. In this case, human rights protection is formally declined and employment protection is legally ignored. It is an irony that while they contribute much to the development of those already wealthy countries through their informal services, they remain poor, weak, and unprotected.

### **1.1.5 Legal Protection on Domestic Workers**

Nowadays, many countries in the world have established a complex system of laws and institutions expected to protect the interest of domestic workers. This model of legal protection has broader significance in legal theory, it also reflects assumptions in dominant research paradigms in law and society, and even this model and its critique have been applied to other areas of law.<sup>19</sup> However, this legal protection model seems to be highly speculative, since employment discrimination has faced a unique problem. Sutton maintains that “Job discrimination is largely, though not wholly, a private sector phenomenon. Effective reform must change the behavior not only of government agencies but also of private employers.” He further asserts that it is definitely difficult project for at least two reasons. The first is ideological, in the sense that family of common law legal system (like Malaysia) have traditionally been suspicious of government intervention in the private sphere, in particular in the economic market place. The second is a matter of legal enforcement, since the maid

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<sup>19</sup> Kristin Bumiller, "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection," *Signs* 12, no. 3 (1987): 422.

mistreatment has likely been occurred in the domestic sphere.<sup>20</sup> An official from the Malaysian Ministry of Human Resources who wish to remain anonymous said: “This issue is difficult to monitor. They are one by one (in individual households), how can we monitor? *It is up to them to report.* To get an organization to monitor maids is unlikely. Who is going to do that?”<sup>21</sup> Further, Schneider pointed out that how to persuade victims to take on a rights defined self is a critical problem. In line with this, Merry underlined that this situation is also profound to a range of other rights-based social reform movements that rely on victim activism and rights claiming in order to promote reform such as disability rights and employment rights.<sup>22</sup>

From the legal protection model perspective, the law is authoritative and effective instrument that offers victims with a tool by which they can use to force perpetrators to comply with legal rules. This model adopts that those who have suffered injuries will recognize their harms and invoke the law through litigation. In brief, they assume that those in the protected class are able and convinced to bear these burdens.<sup>23</sup> This kind of strategy is called as “litigious policies,”<sup>24</sup> or Complaint-Driven Enforcement Model<sup>25</sup>, where the enforcement relies on individuals bringing their rights of action. However, strategies of equal protection may inadequately deliver the burdens imposed on domestic workers because they accept the authoritative discourse of law rather than inquiry the compatibility of legal rules with

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<sup>20</sup> J. R. Sutton, *Law/Society: Origins, Interactions, and Change* (California, USA: Pine Forge Press, 2001).

<sup>21</sup> Human Rights Watch (Organization) and Nisha Varia, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004), 60.

<sup>22</sup> Mark Goodale and Sally Engle Merry, *The Practice of Human Rights : Tracking Law between the Global and the Local*, Cambridge Studies in Law and Society (Cambridge ; New York: Cambridge University Press, 2007), 344.

<sup>23</sup> Bumiller: 106.

<sup>24</sup> Thomas F Burke, *Lawyers, Lawsuits, and Legal Rights* (Berkeley: University of California Press, 2002), 4.

<sup>25</sup> Human Rights Watch (Organization), *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* (New York: Human Rights Watch (Organization), 2001), 32.

their legal conception. For the Employment law, to change social circumstances through the formal legal system, domestic workers must recognize that they have suffered a harm, decide to do something about it, and take action.

As a matter of fact, it is now trite to recapitulate that the modern justice system through aggressive prosecution and legislation of punitive laws against batterers, has failed to respond adequately to crime generally and to domestic mistreatment in particular.<sup>26</sup> Many research showed that strong legal protection makes a difference, but it also displayed that even in the United States of America where legal protection is strong, some victims are not afforded their rights.<sup>27</sup> In other words, amendments of the Malaysian Employment Act 1955 to include domestic workers appears to be insufficient to guarantee the full provision of victims' rights in practice. It can be argued that it appears to be necessary, but not a sufficient condition to guarantee the protection of domestic workers' rights, "... because a host of intervening factors, such as knowledge, funding, and enforcement, mediates the actual "delivery" of victims' rights."<sup>28</sup>

However, despite the widespread adoption of legal protection, the implementation of such protection and its impact on victims have not been widely studied, nor has much research been directed at how the existing Malaysian employment law has influenced

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<sup>26</sup> Randy E. Barnett and John III Hagel, *Assessing the Criminal. Restitution, Retribution, and the Legal Process* (Cambridge: Ballinger Publishing, 1977).

<sup>27</sup> The Human Right Watch Report (2001) concluded that The United States has failed to protect migrant domestic workers' rights and to guarantee that workers have an "effective remedy" if their rights are offended. As a matter of fact, the report indicated that there were only six out of twenty-seven domestic workers attempted to file complaints against their employers. Though most of the workers knew that their employment conditions violated U.S. law they did not wish to or did not know how to file legal complaints against their employers see further Human Rights Watch (Organization), *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States..*

<sup>28</sup> Dean G. Kilpatrick, David Beatty, and Susan Smith Howley, *The Rights of Crime Victims: Does Legal Protection Make a Difference?* (Washington, DC: National Institute of Justice, U.S. Department of Justice, 1998), 2.

victims' views of the justice system. In other words, this kind of research might be considered as the bottom-up approach, which is commonly defined in sociology of law literature as the study of critical legal consciousness.

## **1.2 Statement of the Research Problem**

This research primarily aims to review the legal consciousness of mistreated Indonesian migrant domestic workers by critically examining the interaction of socio-cultural contexts and the Malaysian employment law, within the framework of legal dispute processing.

Among Indonesian domestic workers who migrated to Malaysia and mistreated badly in the host country, their reluctance to use the legal system or justice-related services to deal with the experienced mistreatment is a unique phenomenon.

The current statistics illustrates that number of mistreatment cases reported to the police over the past five years certainly reflect this phenomenon. There were 37 (*thirty seven*) cases in 2005, 45 (*forty five*) in 2006, 39 (*thirty nine*) in 2007 and 42 (*forty two*) in 2008. And there have been 8 (eight) victims since the beginning of 2009.

**Table 1.1 Mistreatment Cases Reported to Police**

Mistreatment Cases Reported to Police				
2005	2006	2007	2008	2009
37	45	39	42	8

On the following, although there have been 171 (*a hundred and seventy one*) cases of mistreatment, only 9 (*nine*) employers have been charged in court since 2005.<sup>29</sup> The current research reveals how domestic workers have been involved in legal proceedings. It was reported that of the 6% of available legal proceedings (110 of 1,732), conviction had been made by 5%, investigation had been reported by 4% and on-going prosecution was represented by 1%. Most domestic workers said that no complaint had been filed (89%, n=98).<sup>30</sup> Given this, it seems to be appropriate when Deputy Home Minister Datuk Wira Abu Seman Yusop said that only 0.05% of Indonesian domestic helpers are mistreated by their Malaysian employers. The resulted percentage was based on the number of Indonesian domestic workers which is more than 300,000 working in Malaysia and those mistreated by their employers.<sup>31</sup>

However, serious reservations may be raised against this assertion. On the contrary, Indonesian media reports had claimed that there had been up to 150 complaints of mistreatment, lodged by maids each month.<sup>32</sup> Moreover, Indonesian diplomats estimate at least 1,500 maids seek help at their offices across Malaysia each year.<sup>33</sup>

The issue even more complicated if the runaway maids are counted. Immigration director-general Datuk Mohd Jamal Kamdi said, the maids, mostly from Indonesia, revealed the figure 17,131 maids left their employers in 2003, while it was 14,400 in 2002, 12,200 in 2001, and 13,857 in 2000.<sup>34</sup>

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<sup>29</sup> The Star, Sunday, June 28, 2009

<sup>30</sup> Hannah Andreovski and Samantha Lyneham, "Experiences of Exploitation and Human Trafficking among a Sample of Indonesian Migrant Domestic Workers," *Australia's national research and knowledge centre on crime and justice* 471, no. (2014): 6.

<sup>31</sup> The Star, July 7, 2009

<sup>32</sup> The Star, June 28, 2009

<sup>33</sup> The Jakarta Post, July 5, 2009

<sup>34</sup> New Straits Times, May 29, 2004



**Table 1.2 Runaway Maids**

Runaway Maids			
2000	2001	2002	2003
13,857	12,200	14,400	17,131

Based on those contradictory data, a big question arises, where does the rest of complaints go and disappear? If the complaint made to the embassy is approximately 1500 cases each year, while mistreatment cases reported to the police is less than 50 cases (3%), and even only pro rata 2 cases resolved every year (only 0,1%), what happens to the rest of more than 1450 complaints, not to count the runaway maids? And last but not least we do not even know the unreported one, which still remain uncovered. In line with this, Wanita MCA chief Datin Paduka Chew Mei Fun said while the wing realised that most Malaysian employers did not mistreat their foreign maids, it expressed concern over many unreported cases of maid mistreatment.<sup>35</sup>

In order to answer those complicated and intriguing questions, the proponents of legal consciousness argue that courts are just one of the many avenues that disputants have in their catalogue of choices. Even though the judiciary is believed to monopolize the enforcement of legal norms, it is not the only source of normative messages in society. Courts are not even the institutions that handle the majority of legal conflicts and neither occupy the center of legal life. To the contrary, only a minimal fraction of disputes that we can label as legal enter the judiciary and from that number is really difficult to know how many are actually resolved.<sup>36</sup> Thirty years

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<sup>35</sup> The Star, June 15, 2009

<sup>36</sup> M. A. Gomez, "All in the Family: The Influence of Social Networks on Dispute Processing (a Case Study of a Developing Economy)," (Stanford University (UMI Number: 3253485) Retrieved August 20, 2009, from Dissertations and Theses database., 2007), 23.

ago, Galanter pointed out that very few cases of dispute were resolved. This minimal resolution was even smaller than the number of cases the court was supposed to deal with, the fraction of which was much smaller than the actual cases of dispute.<sup>37</sup>

One way to explore legal consciousness is to study people's attitudes on bringing lawsuits within the framework of "legal dispute processing". In fact, to raise a grievance in order to seek redress for the mistreatment is not a simple one. What has kept domestic workers from bringing lawsuits to redress their dispute was the complicated mechanism and procedures that they might find it difficult to meet. The complicated stages were beyond their legal knowledge that some of them gave up the process. To have a lawsuit, a domestic worker who had mistreatment had to transform the grievances into a dispute, implying that the mistreated domestic worker identify the existence of a problem (naming the experience), attribute the problem to another party (blaming), and eventually, claim some remedy from the blamed party (claiming).<sup>38</sup> A dispute is signified by the rejection and denial from the blamed and a formal grievance is characterized by public sphere requiring formal grievance procedure. The dispute pyramid depicts the stages by which domestic workers have to pass when making a lawsuit in employment.<sup>39</sup>

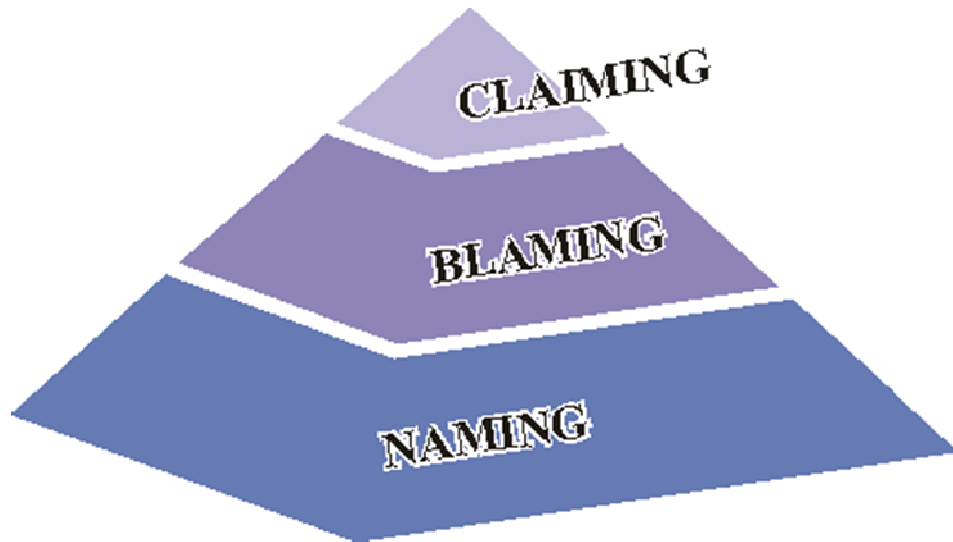
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<sup>37</sup> Bliss Cartwright, Marc Galanter, and Robert Kidder, "Introduction: Litigation and Dispute Processing," *Law & Society Review* 9, no. 1 (1974). Marc Galanter, "Afterword: Explaining Litigation," *Law & Society Review* 9, no. 2 (1975). Marc Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society," *UCLA Law Review* 31, no. 4 (1983). Marc Galanter, "The Day after the Litigation Explosion," *Maryland Law Review* 46, no. 3 (1986). Marc Galanter, "Adjudication, Litigation and Related Phenomena," in *Law and the Social Sciences*, ed. L Lipson and S Wheeler (New York: Russel Sage Foundation, 1987).

<sup>38</sup> W. L. F. Felstiner, R. L. Abel, and A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," *Law & Society Review* 15, no. 3/4 (1980-1981a).

<sup>39</sup> Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society." Yolande Wouters and Francis van Loon, "Civil Litigation in Belgium: The Construction of the Pyramid of Legal Dispute – a Preliminary Report," *Droit et Societe* 20, no. 21 (1992).

### 1.1. Figure: Pyramid of disputes



While a great number of mistreatment among domestic workers are actually occurring, only few have been reported through formal and legal channels due to the poor access to the legal system, limited knowledge about dispute settlement, and complicated mechanism making it difficult to gain appropriate and adequate legal protection.<sup>40</sup> The dispute pyramid has clearly specified with which the stages the domestic workers are not familiar. The complicated process has resulted in minimal legal proceeding. The requirement to transform the case into a strictly-defined dispute has significantly cut down the great number of resolved cases. Even worse, some cases are left unidentified. In fact, Indonesian domestic workers exemplify this type of marginalized people, who are trapped at the bottom of the pyramid. Then we may wonder why legal sue is minimal while there are a great number of perceived unjust and unfair work relation between domestic workers and the employers. Is it the complicated mechanism and procedure that has kept them from filing any legal litigation? Do they permissively take the suffering discrimination, or is there any informal negotiation to deal with the problem?

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<sup>40</sup> Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society."

This study examines the actions the Indonesian domestic workers have taken to have formal grievances, the predicted future behavior, and the anticipated actions of others. To gain such information, subjects were interviewed to measure their legal awareness.<sup>41</sup>

This research is to undertake a socio-legal analysis the various ways in which the Indonesian domestic workers construct and shape their legal consciousness based on their interpretation, tactics, aspiration and sense of identity. It has been highly suggested that their peculiar position within the intersection of cultural gender-biased, racial discrimination as migrants and underclass household work structures will effect and color the pattern of the legal dispute processing they develop.

Since there has been so little research directly involving domestic workers, legal consciousness and legal dispute processing, the current research has a broad scope. The major research questions to be answered are:

#### **1.1.1. Research Questions**

1. Why only small number of Indonesian domestic workers who had experienced employment mistreatment filed lawsuit through litigation to the court?
2. How do Indonesian domestic workers develop, maintain and establish the patterns of dispute processing, as alternatives to the courts?

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<sup>41</sup> Patricia Ewick and Susan S. Silbey, *The Common Place of Law : Stories from Everyday Life*, Language and Legal Discourse (Chicago: University of Chicago Press, 1998).

3. What are barriers of access to justice that effect the patterns of disputes processing they developed;

### **1.1.2. Objectives**

1. To identify the reasons why mistreated Indonesian domestic workers, and migrant workers in general, are reluctant to access the legal justice system and justice related services?
2. To analyze patterns of dispute processing developed by Indonesian domestic workers as alternatives to their reluctances to access the criminal justice system and justice-related services;
3. To identify some of barriers of access into justice experienced by mistreated Indonesian domestic workers involving legal dispute processing;

### **1.3 The scope of the study**

The primary research participants were a small group of returning domestic workers who experienced mistreatment while their service in West Malaysia. Those who had worked in East Malaysia were excluded from the study because of their rather different social-cultural background and employment law from West Malaysia.

The 7 (seven) domestic workers who participated in the research had returned to Indonesia. They were recruited for the research due to the difficult access to get their information while they were in Malaysia. Their being restricted domestically at home had prevented the researcher from exploring in-depth comprehensive information when they were working in Malaysia.

Furthermore, the participants of this research are limited to legally employed workers in Malaysia considering that it is only legal workers who receive legal protection both from the sending country and the receiving country. This research reviews the legal awareness of mistreated Indonesian domestic workers to the positive law intended to provide legal protection to them.

Different from generally conducted legal researches that apply doctrinal research which is concerned with the formulation of legal 'doctrines' through the analysis of legal rules, this research applies non-doctrinal research more popularly known as socio-legal research. Doctrinal research is concerned with the discovery and development of legal doctrines for publication in textbooks or journal articles and its research questions take the form of asking 'what is the law?' in particular contexts. The non-doctrinal approaches constitute a new approach of examining law in the wider social and political context using a range of other methods adopted from fields of study in the social sciences and humanities

#### **1.4 The significance of the research**

At the moment, protection of migrant labor and in particular migrant domestic workers' rights has become an important aspect of national and international discourse.<sup>42</sup> This deserves a scholarly inquiry into the legal framework of the country, either the sending or receiving one. At present time, there has been a serious

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<sup>42</sup> Graziano Battistella, "The Human Rights of Migrant Workers: Agenda for Ngos. Vol. 27, No. 1, Pp. ," *International Migration Review* 27, no. 1 (1993); Gloria Moreno-Fontes Chammartin, "Women Migrant Workers' Protection in Arab League States," in *Gender and Migration in Arab States: The Case of Domestic Workers.* : , ed. Simel Esim and Monica Smith(Beirut: Regional Office for Arab States, ILO, 2004); Human Rights Watch (Organization) and Nisha Varia, *Globalization Comes Home: Protecting Migrant Domestic Workers' Rights* (Geneve: Human Rights Watch, 2007b); Ivy Josiah, "Protection for Migrant Domestic Workers," in *Lawasia Labour Law Conference* (Kuala Lumpur 2006); Ivy Josiah, Lee Shook Fong, and Jaclyn Kee, "Protection of Foreign Domestic Workers in Malaysia: Laws and Policies, Implication and Intervention," in *Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking* (Hongkong: 2003).

dearth of legal analytical research on this group. Therefore, it is hoped that this dissertation make a significant contribution to research on international labor migration of women by focusing on the migration experience of Indonesian domestic workers in Malaysia within the socio-legal perspectives.

It can be argued that much of the literature on migrant worker has focused on groups of the Philippines.<sup>43</sup> There is no doubt that this group has fascinated the most scholarly attention. In fact, it is not only because of the significant proportion of female domestic workers from the Philippines, but also because Filipinos have the strongest transnational advocacy networks, compared to other national groups.<sup>44</sup> In contrast, the study explains the experiences of Indonesian domestic workers in receiving country are few and far between. Thus, it is not surprising that the literature about Indonesian domestic workers is very limited. They are only few to mention like Chin,<sup>45</sup> Ford,<sup>46</sup> Ford & Parker,<sup>47</sup> Mei.<sup>48</sup> Furthermore, there is also little research

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<sup>43</sup> M. M. B. Asis, S. Huang, and B. S. Yeoh, "When the Light of the Home Is Abroad: Unskilled Female Migration and the Filipino Family," *Singapore Journal of Tropical Geography* 25, no. 2 (2004); Nicole Constable, *Maid to Order in Hong Kong : Stories of Migrant Workers*, 2nd ed., Cornell Paperbacks (Ithaca: Cornell University Press, 2007); R. S. Parrenas, "Migrant Filipina Domestic Workers and the International Division of Reproductive Labor," *Gender and Society* 14, no. 4 (2000); R. S. Parrenas, *Servants of Globalization: Women, Migration and Domestic Work* (Stanford, USA: Stanford University Press, 2001); Lan Pei-Chia, "Remapping Identities across Borders and at Home: Filipina Migrant Domestic Workers and Taiwanese Employers," in *The Fifth Annual Conference on the History and Culture of Taiwan* (Los Angeles: 2000); Lan Pei-Chia, *Among Women: Migrant Domestic Workers and Their Taiwanese Employers across Generations* ((Working Paper No. 30). Berkeley: Center for Working Families, University of California, 2001); Lan Pei-Chia, "Maid or Madam? Filipina Migrant Workers and the Continuity of Domestic Labor," *Gender and Society* 17, no. 2 (2003a); Lan Pei-Chia, "Negotiating Social Boundaries and Private Zones: The Micropolitics of Employing Migrant Domestic Workers," *Social Problems* 50, no. 4 (2003b).

<sup>44</sup> Robyn Iredale and Nicola Piper, *Identification of the Obstacles to the Signing and Ratification of the Un Convention on the Protection of the Rights of All Migrant Workers: The Asia-Pacific Perspective*. (UNESCO, 2003).

<sup>45</sup> Christine B. N. Chin, "Walls of Silence and Late Twentieth Century Representations of the Foreign Female Domestic Worker: The Case of Filipina and Indonesian Female Servants in Malaysia," *International Migration Review* 31, no. 2 (1997); Christine B. N. Chin, *In Service and Servitude : Foreign Female Domestic Workers and the Malaysian "Modernity" Project* (New York: Columbia University Press, 1998); Christine B. N. Chin, "Neither at Work nor at Home: Asian Transnational Domestic Workers in Malaysia," in *Asian Women as Transnational Domestic Worker*, ed. S. Huang, B. S. Yeoh, and N. A. Rahman (Singapore: Marchall Cavendish Academic, 2005).

<sup>46</sup> Michele Ford, " Indonesian Women as Export Commodity: Notes from Tanjung Pinang," *Labour and Management in Development Journal* 2, no. 5 (2001).

on Indonesian domestic workers in destination areas and much of this is in a narrow range of destinations like Singapore.<sup>49</sup> While in other destination areas, it is very difficult to gain access into this group of migrant for research purposes.<sup>50</sup>

Despite the fact that only few amount of research collection concerning female domestic workers, most researches that have been done on this subject, have generally studied on social-economic problems which views migrants as 'commodities'<sup>51</sup> or security/immigration control by policing borders and criminalizing 'illegal' migrants.<sup>52</sup> Currently, the new 'rights-based approach' to labor migration issues has increasingly come to underpin the work of researchers.<sup>53</sup> However, it is worth noting that a broader socio-legal analyses of migrant workers in

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<sup>47</sup> Michele Ford and Lyn Parker, eds., *Women and Work in Indonesia*, Asaa Women in Asia Series (New York, NY: Routledge, 2008).

<sup>48</sup> Lin Mei, *A Study on Indonesian Labor Migrants in Malaysia* (Kuala Lumpur: University of Malaya, Institute of China Studies, 2006).

<sup>49</sup> N. A Rahman, "Negotiating Power: A Case Study of Indonesian Foreign Domestic Workers (Fdws) in Singapore" (Curtin University of Technology, 2003).

<sup>50</sup> Graeme Hugo, "Indonesian International Domestic Workers: Contemponry Developments and Issues," in *Asian Women as Transnational Domestic Workers*, ed. S. Huang, B. S. Yeoh, and N. A. Rahman (Singapore: Marchall Cavendish Academic, 2005c), 55.

<sup>51</sup> Raúl Hernández-Coss and others, *The Malaysia-Indonesia Remittance Corridor: Making Formal Transfers the Best Option for Women and Undocumented Migrants* (World Bank Working Paper No. 141). Washington, USA: The International Bank for Reconstruction and Development / The World Bank, 2008); Rachel Silvey, "Transnational Domestication: Indonesian Domestic Workers in Saudi Arabia," *Political Geography*, 23, 23, no. (2004); Rachel Silvey, "Consuming the Transnational Family: Indonesian Migrant Domestic Workers to Saudi Arabia," *Global Networks* 6, no. 1 (2006).

<sup>52</sup> Elspeth Guild and Joanne van Selm, *International Migration and Security : Opportunities and Challenges*, Transnationalism (London ; New York: Routledge, 2005); A Kassim, "The Unwelcome Guest: Indonesian Immigrants and Malaysian Public Responses," *Southeast Asian Studies* 25, no. 2 (1987); Kaur; Liow.

<sup>53</sup> M. L. Alcid, "The Multilevel Approach to Promoting Asian Migrant Workers' Rights: The Mfa Experience," *International Migration* 42, no. 5 (2004); J Elias, "Women Workers and Labour Standards: The Problem of 'Human Rights'," *Review of International Studies* 33, no. (2007); J Elias, "Struggles over the Rights of Foreign Domestic Workers in Malaysia: The Possibilities and Limitations of 'Rights Talk'," *Economy and Society* 37 no. 2 (2008); Jennifer S. Hainsfurther, "A Rights-Based Approach: Using Cedaw to Protect the Human Rights of Migrant Workers," *American U. International Law Review* 24, no. (2009); Nicola Piper, "Rights of Foreign Workers and the Politics of Migration in South-East and East Asia," *International Migration* 42, no. 5 (2004); José Maria Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective*. (Geneve: International Labour Organization, 2003); M. D. P Santos, *Human Rights and Migrant Domestic Work: A Comparative Analysis of the Socio-Legal Status of Filipina Migrant Domestic Workers in Canada and Hong Kong* (Leiden/Boston: Martinus Nijhoff Publishers, 2005).



general and migrant domestic workers in particular have been much rarer, not to say no one.

One other advantage of this dissertation, it introduces a new version of the "gap study." What is meant by gap studies are a time-honored tradition in controversial research on law and society which elaborates the "gap" between the law on the books and the law in action.<sup>54</sup> Unlike any other mainstream research of pure legal studies, this research proposes the *socio-legal approach*. This kind of approach is chosen, based on the understanding that, empirically, law is a component part of the wider social structure, and is therefore inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that context.<sup>55</sup>

It has been acknowledged that the study of "legal consciousness" has responded to the chronic failure of legal and social studies to portray the underlying determinants of such low legal consciousness in everyday life. Such a failure has been due to the adoption of inappropriate questions. Therefore, using the interpretive methods to individual narratives, this study aims at describing how various social actors experience and understand the law. Legal consciousness of average citizens<sup>56</sup>, working-class<sup>57</sup>, the poor<sup>58</sup>, victims of racial and gender discrimination<sup>59</sup>, social

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<sup>54</sup> Anna Maria Marshall and S. Barclay, "In Their Own Words: How Ordinary People Construct the Legal World," *Law & Social Inquiry* 28, no. 3 (2003a): 623-625.

<sup>55</sup> Susan S. Silbey, "Law and Society Movement," in *Legal Systems of the World: A Political, Social and Cultural Encyclopedia*, ed. Herbert M. Kritzer (Santa Barbara, California: ABC CLIP, 1987); Susan S. Silbey and Austin Sarat, "Critical Traditions in Law and Society Research," *Law & Society Review* 21, no. 1 (1987).

<sup>56</sup> Marshall and Barclay; Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," *Law & Society Review* 34, no. 4 (2000); Boaventura de Sousa Santos, "The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada," *Law & Society Review* 12, no. 1 (1977).

<sup>57</sup> Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," Vol. 26/731, *New England Law Review* 26, no. (1992); Elizabeth Ann Hoffmann, "Compromise, Confrontation, and Coercion: Formal and Informal, Dispute Resolution in Cooperative and Hierarchical Worksites," (Unpublished doctoral dissertation, University of

activists<sup>60</sup>, people with disabilities<sup>61</sup> and lawyers and their clients<sup>62</sup> have been widely explored. To expand the knowledge to the previous studies in legal consciousness on socially oppressed actors such as the poor, women, and racial minorities, this study focuses on Indonesian Female Domestic Workers with regard to the consciousness among the people who have suffered from dual or even multiple mistreatments due to the class- and gender-discriminative employment practices.<sup>63</sup>

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Wisconsin-Madison (UMI Number: 3020743) Retrieved September 12, 2009, from Dissertations and Theses database, 2001a); Elizabeth Ann Hoffmann, "Confrontations and Compromise: Dispute Resolution at a Worker Cooperative Coal Mine," *Law & Social Inquiry* 26, no. 3 (2001b); Elizabeth Ann Hoffmann, "Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies," *Law & Social Inquiry* 28, no. 3 (2003); Elizabeth Ann Hoffmann, "Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice," *Law & Society Review* 39, no. 1 (2005).

<sup>58</sup> Austin Sarat, "The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2, no. (1990).

<sup>59</sup> Bumiller; Kristin Bumiller, *The Civil Rights Society : The Social Construction of Victims* (Baltimore: Johns Hopkins University Press, 1988); Kristin Bumiller, *In an Abusive State : How Neoliberalism Appropriated the Feminist Movement against Sexual Violence* (Durham: Duke University Press, 2008); Anna Maria Marshall, "Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment," *Law & Social Inquiry* 28, no. 3 (2003b); Anna Maria Marshall, *Confronting Sexual Harrasment: The Law and Politics of Everyday Life* (Hants, UK: Ashgate Publishing Company, 2005b); Anna Maria Marshall and S. Barclay, "Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies," *Law & Society Review* 39, no. 1 (2005a).

<sup>60</sup> Michael McCann, *Rights at Work* (Chicago: University of Chicago Press, 1994).

<sup>61</sup> David M. Engel and Frank W. Munger, *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (Chicago: University of Chicago Press, 2003).

<sup>62</sup> W. L. F. Felstiner and Austin Sarat, "Lawyers and Legal Consciousness: Law Talk in the Divorce Lawyer's Office," *The Yale Law Journal* 98, no. 8 (1989).

<sup>63</sup> Theory of Intersectionality accommodates that the classical models of discrimination within society, such as those grounded on gender, race/ethnicity, and class do not act independently of one another. Rather, these kinds of discrimination interrelate one to another, producing a system of discrimination that meditates the "intersection" of multiple forms of discrimination. For further discussion on this theory see Judith H. Aks, "Re-Evaluating Rights at the Intersections of Power: Indigenous Women's Legal Mobilization in the Us and Canada" (University of Washington, 2000); Irene Browne and Joya Misra, "The Intersection of Gender and Race in the Labor Market," *Annual Review of Sociology* 29, no. (2003); Mignon Duffy, "Reproducing Labor Inequalities: Challenges for Feminists Conceptualizing Care at the Intersections of Gender, Race, and Class," *Gender and Society* 19, no. 1 (2005); Valerie P. Hans and Ramiro Martinez Jr, "Intersections of Race, Ethnicity, and the Law," *Law and Human Behavior* 18, no. 3 (1994); Lenore Lyons, "Transient Workers Count Too? The Intersection of Citizenship and Gender in Singapore's Civil Society," *Sojourn* 20, no. 2 (2005); Julissa Reynoso, "Perspectives on Intersections of Race, Ethnicity, Gender, and Other Grounds: Latinas at the Margins," *Harvard Latino Law Review* 7, no. (2004); Karen Brodtkin Sacks, "Toward a Unified Theory of Class, Race, and Gender," *American Ethnologist*, 16, no. 3 (1989); Carroll Seron and Frank Munger, "Law and Inequality: Race, Gender...And, of Course, Class," *Annual Review of Sociology* 22 no. (1996); Ryan A. Smith, "Race, Gender, and Authority in the Workplace: Theory and Research," *Annual Review of Sociology* 28 no. (2002); Natalie J. Sokoloff and Ida Dupont, "Domestic Violence at the Intersections of Race, Class, and Gender," *Violence Against Women* 11, no. 1 (2005); Maura I Toro-Morn, "Gender, Class, Family, and Migration: Puerto Rican Women in Chicago,"

Assessment of immigrant domestic workers would lead to a better insight on how class and racial-ethnic discrimination among women comes into practice.<sup>64</sup>

## **1.5 Thesis Organization**

The thesis consists of 7 (seven) independent yet interrelated chapters

Chapter 1 sets out the background, research problem, research significance, outline of the dissertation. It presents the prevalent mistreatment suffered by migrant domestic workers and the unique phenomenon of their reluctance of using legal protection system. Further, it reveals the forms of mistreatments practiced by the employers and the common reasons of why migrant domestic workers would rather not sue complaints. Another part deals with the contribution of this research to the law literature in relation to the prevailing problems.

Chapter 2 reviews the literature on three theoretical frameworks utilized in this study. Those are review on legal consciousness scholarship, legal hegemony and resistance among domestic workers who are trapped within the intersection between class, gender and race, and finally the discussion on dispute processing.

Chapter 3 describes research design. This chapter also present information on research and case study strategy, details about data collection and analysis for the study

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*Gender and Society* 9, no. 6 (1995); Fiona Williams, "Intersecting Issues of Gender, 'Race', and Migration in the Changing Care Regimes of Uk, Sweden and Spain," in *Annual Conference of International Sociological Conference Research Committee* (Northwestern University, Chicago: 2005)..

<sup>64</sup> Doreen J. Mattingly, "The Home and the World: Domestic Service and International Networks of Caring Labor," *Annals of the Association of American Geographers* 91, no. 2 (2001).

Chapter 4 reviews the historical and legal framework of labour migration in Malaysian context. It reveals the historical process that has bound the long-lasting employment relation between the two countries and the seemingly unfair application of the Malaysian employment act.

Chapter 5 outlines findings of the research. This includes the answers to the research questions to be compared to the findings of previous studies.

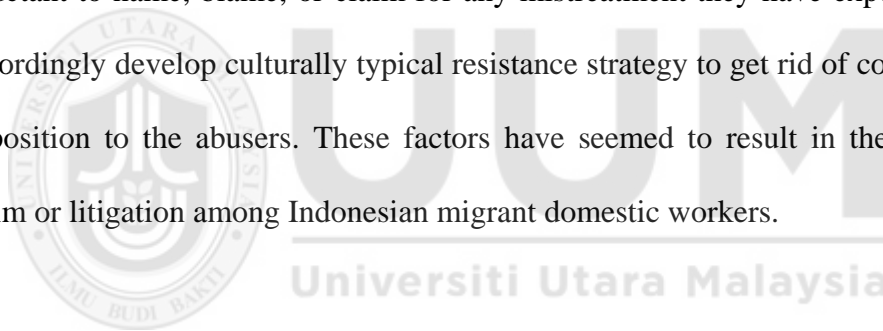
Chapter 6 provides a more in-depth discussion of the findings of the research.

Chapter 7 concludes with a summary of major arguments in this study. It synthesizes all the preceding chapters and the concluding remarks and add some implications of the study. It assesses each of the chapter in relation to its objectives and research questions.

## **1.6 Concluding Remark**

The influx of Indonesian workers to other countries is predominantly due to the lack of work opportunities in Indonesia. While some opportunities are available, they fail to absorb all job seekers. Less-educated women, in particular, are likely to lose the competition for works and are professionally marginalized in low-paid works. Even worse, they find it difficult to secure a work with minimal pay. This has been one among other factors that contribute to the increasing rate of Indonesian workers' migration to more prosperous countries like Malaysia. With the rapid and sustainable growth of economy, Malaysia has opened up a great number of work opportunities. Most local residents are absorbed in highly-paid jobs and leave low-paid dirty, difficult, and dangerous jobs, such as domestic workers, unoccupied.

Becoming domestic workers is nearly the only available work for the less-educated female workers from Indonesia. While some workers are properly treated and earn commensurate economic return, majority of them have such poor experiences as mistreatment and abuses. The abuses seem to result from the facts that they are female, less educated, and isolated. Moreover, they have no legal access to channel their grievance or claim against the perpetrators, who are mostly the employers. While formally government support is available at the embassy, being less knowledgeable, they do not know where and how to complain. The problem gets even more complicated by the discriminative exclusion of domestic workers from any legal protection. Equally dominant, Indonesian domestic workers are culturally reluctant to name, blame, or claim for any mistreatment they have experienced, and accordingly develop culturally typical resistance strategy to get rid of confrontational opposition to the abusers. These factors have seemed to result in the low rate of claim or litigation among Indonesian migrant domestic workers.



## **CHAPTER TWO**

### **LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

This part will provide a brief review of three bodies of research that tell this research project. First, the research reviews the changing perspective of law and society research from an instrumental view of law to the view of law as an integral part of society. This more expansive view of the role of law in society has led to the study of legal consciousness, which is the focus of my research as it relates to legal dispute processing. Next, it reviews some of the innovative work of legal consciousness scholarship, which covers the legal hegemony and resistance, in particular among female domestic workers. The research continues to explore the opportunities for, or limitations on, the ability of domestic workers to use the legal dispute mechanism as a form of power to challenge the status quo and create social change. The project builds on this work by examining the space between law and domestic workers' lives in individual. It then examines the importance of legal consciousness for domestic workers' relationship to law and the potential domestic workers to challenge the entrenched legal and social power structure.

#### **2.2 Instrumental and Constitutive Perspectives**

There has been a shift the law and society research from instrumental to constitutive perspective. The former treats law as a separated entity and thus autonomous from social life while the latter implies the existence of different competing forces that contribute to shape social life and normative system. Constitutive perspective puts law in the interconnection to and embeddedness in different other fields to allow holistic consideration of law-influencing cultural and social aspects.

Sarat and Kearns<sup>1</sup> introduced these two different perspectives in this area of research, the instrumental and the constitutive. Although these two perspectives are in similar way in favoring law in studying society, they hold opposing views by which law affects society: whether by imposing external sanctions or by shaping internal meanings. Subsequently, they likely to fail to notice the variety of ways in which society responds to law, occasionally by ignoring it, reconstructing it, or using it in unusual and unanticipated ways. It is the response to law that becomes the main object of this project. This project identifies the response of the domestic workers who had 3-layered discrimination of being women, being domestic workers without professional recognition, and being migrant workers.

These two perspectives, the instrumental and constitutive, represent two basic views of the relationship between law and society. Instrumentalist scholarship, which sees law as different from, and acting on society, focuses on legal norms, legal rules, and legal actors. And this separation has been an attempt to make out the power of law as a tool for creating or supporting social change. Instrumentalist tries to “... search for the conditions under which law is effective, that is, when legislation or judicial decisions can be counted on to guide behaviour or produce social changes in desired ways.”<sup>2</sup> In short, the instrumentalism, emphasizes sharp distinction between legal standards, on the one hand, and non-legal human activities, on the other. It then hypothesizes the effectiveness the legal standard upon society.

On the other view, the constitutive perspective assumes that social life is run through with law, or in other words, “law shapes society from the inside out, by providing the

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<sup>1</sup> A. Sarat and T. R. Kearns, *Law in Everyday Life* (Michigan: University of Michigan, 1995).

<sup>2</sup> Ibid., 27.

principal categories that make social life seem natural, normal, cohesive, and coherent.”<sup>3</sup>

### 2.2.1 Scheingold against the instrumentalism

However Scheingold<sup>4</sup> argues against the idea of instrumentalism which assume that legal standard with litigation and courts decisions can produce effective social change. He proposes that declaration of rights from courts has been the focus of a great number of law reformers. Effective declaration realizes these rights which lead to equivalently meaningful change. Put in different words, "the *myth of rights* is directly related to litigation, rights, and remedies with social change."<sup>5</sup> The underlying ideology is that "the American political order indeed takes similar patterns of rights and obligations specified in the Constitution."<sup>6</sup>

Scheingold proposes the legal paradigm which views human interaction largely about rules and rights dominates the ideology of the **myth of rights** and mischaracterizes the interplay of legal, political and social forces. Surely these views have, at least until lately, dominated the literature on law and politics in the United States. As a matter of fact, Scheingold rejects the myth of rights and proposes the constitutive understanding of law and legal mobilization as he moves from the myth of rights into his discussion of the political significance of the ideology of rights. He puts forward the concept of the **politics of rights**: “The politics of rights implies a

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<sup>3</sup> Ibid., 22.

<sup>4</sup> Stuart A Scheingold, *The Politics of Rights* (Michigan: University of Michigan Press, 2007).

<sup>5</sup> Ibid., 5.

<sup>6</sup> Ibid., 17.



much more comprehensive assessment which includes but transcends the simple straight-line projection from judicial decision to compliance.”<sup>7</sup>

Scheingold is skeptical of the emphasis on litigation as a tool for redistributing power. He notes the tendency of law and politics to reinforce the status quo, embedded as they are in the existing power structures. Nevertheless, he asserts the ideology of rights can play a significant role in mobilizing action. “The myth of rights provides political ideals [which] influence the behaviour of government and private citizens. The politics of rights is, in short, concerned with the interplay between ideology and action in American politics.”<sup>8</sup>

It is the recognition of the relationship between law, politics, ideology and action that characterizes the constitutive view of law and society. Sarat and Kearns highlight that constitutive perspective of law decline the instrumentalist picture of law as outside to social practices. They attempt to draw the way legal power and legal forms exist in social relations. Constitutive perspective claim that instrumentalism brings about a falsified impression of the role of law in everyday life. By centering on law as a distinct tool, or efforts of law to change behaviour, instrumentalists diverts attention from the deep, often invisible, but pervasive effects of legal concepts on social practices.<sup>9</sup>

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<sup>7</sup> Ibid., 8.

<sup>8</sup> Ibid., 83.

<sup>9</sup> Austin Sarat, "The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2, no. (1990): 50.

### 2.2.2 Bumiller refuses legal protection model

Bumiller<sup>10</sup> shows the seeming failure of anti-discrimination doctrine. She contradicts the instrumental concept of law and in the contrary examines the individual attitudes and behaviour which can serve to oppose the apparent goal of civil rights legislation and litigation. She states that the traditional model of legal protection, which supposes law to be a powerful tool to end discriminatory practices, is flawed because it fails to take into account the way individual actions and attitudes are influenced by law. Bumiller takes a firm stand that the view the primacy of the legal order produces the illusion that law is a source of power and authority disconnected from other power structures in society. In fact, the deep logic of the law does not reflect the complex social reality of discrimination in society, but rather restricts legal resolution to social problems appropriate for litigation.<sup>11</sup>

Bumiller argues that the 1964 Act and subsequent legislation generally have failed to rectify earlier forms of injustice, discrimination, and inequality. She notes that the conventional wisdom generally attributes these failures to inadequate resources, entrenched cultural biases, and the slow progress in attaining real economic and social gains. To the contrary, Bumiller says that the model of legal protection that forms the basis for civil rights law itself discourages social victims from emancipating themselves from oppressive conditions. She further argues that protective legislation may serve to perpetuate patterns of behaviour (among both victims and victimizers) that maintain discriminatory practices. Modern law is said to embody and reproduce a socially constructed, dehumanized victim. Bumiller further

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<sup>10</sup> Kristin Bumiller, *The Civil Rights Society : The Social Construction of Victims* (Baltimore: Johns Hopkins University Press, 1988).

<sup>11</sup> Ibid., 10.

proposes that there is a current proliferation of antidiscrimination strategies. This proliferation is seen as a coherent extension of the universalization of rights, which is itself a result of the civil rights model of legal protection. She concludes that "by including all groups, it further dilutes the benefits received by the historically most disadvantaged groups."<sup>12</sup>

Bumiller refuses the traditional model of legal protection and relies on stories told by victims of discrimination to explore the complications of anti-discrimination law. In order to better understand the relationship between law and social change, she creates a paradigm for **legal consciousness** research by opposing the perspectives and experiences of individuals against the traditional, instrumentalist view of legal protection. Bumiller's position on the role of law deduces from Foucault's explanation of law and social control. She notes that Foucault's conception of law and ideology moves us away from the conventional view of anti discrimination law as a command directed at its perpetrators to acknowledgement of the law as a form of knowledge and power that shapes its subjects. This brings up the inquiry of how law practices its authority on victims and creates victims views of themselves and their position.<sup>13</sup>

The essential claim of the constitutive approach to the study of law is the assertion that, "Law exercises its power by less obvious means than can be discerned from formal and visible decision making in court."<sup>14</sup> Bumiller detects evidence of the mutual nature of law as constitutive of social relations and the importance of examining the gap between legal doctrine and law in everyday life. She affirms the

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<sup>12</sup> Ibid., 117.

<sup>13</sup> Ibid., 33.

<sup>14</sup> Ibid., 37.

power of legal ideas and concepts to influence social relationships even in the absence of a legal claim. She points out that the introduction of legal themes may shape behaviour at all stages of the conflict - from its creation to its settlement. The situation is metamorphosed by the introduction of law even if the parties do not talk to lawyers or take the case to a legal forum.<sup>15</sup>

The theoretical change from the instrumental view of law to the constitutive view of law leads scholarship toward a acknowledgement of the importance of analysing the ways that law comes out of and is constituted by specific historical, cultural, social situations and attitudes. Discrimination is in the end a social, rather than a legal, problem - premised on centuries of social and cultural stereotypes and beliefs. Decades of research on race and anti-discrimination law has demonstrated that producing a legal definition and response to discrimination is not, in and of itself, a solution.

The change in our understanding of the meaning of law needs a significant change in the way we study the relationship between law and society, from a focus on institutions to individuals. Consequently, Bumiller maintains the importance of interviewing individual subjects about their thoughts and experiences with law. "An important premise of this book, therefore, is that neither the potentialities nor the troubles deriving from social conflict can be fully understood outside the changes of an individual life."<sup>16</sup> Constitutive studies of law have extended to the understanding that law is more than a set of rules and procedures, law constitutes a belief system which is imbedded in, and perpetuates, a certain power structure. It is the study of

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<sup>15</sup> Ibid., 36.

<sup>16</sup> Ibid., 35.

law as a set of beliefs, and the significances of those beliefs that forms the basis of legal consciousness research.

### 2.2.3 Discourse of legal consciousness

Legal consciousness has been an important topic in socio-legal research because it represents the intersection of law as an institutional force and individuals as legal agents. Traditionally, the sociology of law has been related with the legitimacy of law, which finally is rooted in individuals' belief in and adoption of legal order.<sup>17</sup> However, this traditional conceptualization of legal consciousness which emphasizes on the acceptance of official power by individuals has moved away into the notions of justice and rights that people convey in their minds and practice in their every-day life. Hence, scholars have begun to investigate whether and why people invoke the law in disputes<sup>18</sup> or in social movements aimed at broader social change.<sup>19</sup>

Merry<sup>20</sup> defines consciousness as “people’s conception of the “natural” and normal method of work accomplishment, habitual patterns of talk and action, and commonsense in understanding of the world.” Further she asserts that consciousness is not only the realm of “deliberate, intentional action but also that of habitual action and practice.”<sup>21</sup> In line to Merry, Ewick & Silbey define consciousness as the part of a reciprocal process through the patterned, stabilized, and objectified meanings given by individuals to their world. The already institutionalized meaning becomes part of the material and discursive systems to limit and constrain the making of new

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<sup>17</sup> Roberto Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (New York: Free Press, 1985).

<sup>18</sup> Sally Engle Merry, "Anthropology, Law, and Transnational Processes," *Annual Review of Anthropology* 21, no. (1992).

<sup>19</sup> Michael McCann, *Rights at Work* (Chicago: University of Chicago Press, 1994).

<sup>20</sup> Sally Engle Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, Language and Legal Discourse (Chicago: University of Chicago Press, 1990).

<sup>21</sup> *Ibid.*, 5.

meanings in future time.<sup>22</sup> Nielsen puts that their commonsense understanding of the way law works”. In other words, legal consciousness refers to the way people think about the law. This includes the prevailing norms, day-by-day practices, and commonly adopted ways of legal problem solving. Put differently, this results from legally- and ideologically-related experiences.<sup>23</sup>

In relation to consciousness, Max Weber introduced “the subjective meaning-complex of action” which can be implemented to the intersection of social agency and legal consciousness. Opposed to Marx, Weber proposes that culture can influence agency while agency can influence culture. Weber describes the subjective interpretation of action as an effect to understand human behaviour in terms of “the concepts of collective entities.”<sup>24</sup> This suggests that for Weber a dual character of action/consciousness in which thoughts or concepts “have a meaning in the minds of individual persons, partly as of something actually existing, partly as something with normative authority.”<sup>25</sup>

Consciousness is subjective, the product of an interaction between the observer and the observed.<sup>26</sup> Jean Comaroff defines that consciousness is "inherent in the daily-life practical constitution and is integrated in the process in which external social and cultural factors have constituted the subject."<sup>27</sup> Consciousness may appear in subtle and different ways of how people act and speak and what their utterance

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<sup>22</sup> Patricia Ewick and Susan S. Silbey, *The Common Place of Law : Stories from Everyday Life*, Language and Legal Discourse (Chicago: University of Chicago Press, 1998), 39.

<sup>23</sup> Laura Beth Nielsen, *License to Harass: Law, Hierarchy, and Offensive Public Speech* (Princeton: Princeton University Press, 2004), 7.

<sup>24</sup> Max Weber, *The Theory of Social and Economic Organization* (New York: Oxford University Press, 1947), 102.

<sup>25</sup> Ibid., 101-102.

<sup>26</sup> Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, 4.

<sup>27</sup> J. Comaroff, *Body of Power: Spirit of Resistance: Culture and History of a South African People* (Chicago: Univ. Chicago Press, 1985), 5.

contain.<sup>28</sup> This becomes an integrated part of practical knowledge to which people refer when doing things. The construct of consciousness is much more dynamic than a mere social entity. This "type of social practice"<sup>29</sup> assigns meanings to social structures, which is not an end. The assigned meaning will undergo further refinement, reproduction, and development along individual experience that occurs within the social structures by which one's life is defined. Of equal importance, it changes with contradictory experiences. People question what they are doing and shift directions if it appears that their way of acting either is not working or contradicts what happens to them.<sup>30</sup>

Time has played an important role in the process of individual's consciousness changes. One's consciousness is likely to change along with their experience in social process. Such this change in consciousness constitutes a great interaction of social and structural entities. Comprehension about how consciousness changes will help a systematic discussion of legal consciousness. Nielsen asserts that consciousness, is simultaneously created and communicated; it is contingent, meaning that it changes based on the knowledge and experiences of individuals, as well as context.<sup>31</sup>

Legal consciousness refers to "how people understand and use the law" and "participate in legality construction process."<sup>32</sup> Recently many legal consciousness

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<sup>28</sup> J. Comaroff and J. L. Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa*, vol. 1 (Chicago: Univ. Chicago Press, 1991).

<sup>29</sup> Ewick and Silbey, 225.

<sup>30</sup> Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, 5.

<sup>31</sup> Laura Beth Nielsen, "License to Harass: Offensive Public Speech, Legal Consciousness, and Hierarchies of Race, Gender and Class," (University of California, Berkeley (UMI Number: 9931344) Retrieved August 21, 2009, from Dissertations and Theses database, 1999), 39.

<sup>32</sup> Ewick and Silbey, 35; Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*.

studies have merely emphasized on law conceptualization and its impacts on the individuals' daily lives.<sup>33</sup> They reveal the dynamic nature of legal consciousness concept. It is not the external enforcement that counts in legal consciousness establishment, but rather, it is internally learned process through which individuals gain their legal consciousness. They are in active engagement to form their individual specific legal consciousness. First, social consciousness becomes the foundation of individual legal consciousness. Second, with legal experiences and reactions they develop their legal consciousness. The dynamic nature of legal consciousness construct and its socially related process are manifested in words or actions, a multifaceted, contradictory, and variable legal consciousness."<sup>34</sup>

Establishment of legal consciousness does not stand alone. Different aspects play a role in the establishment of legal consciousness. They are, among others, the perceptions of lawmaking bodies, the court system, law enforcement and other "meanings, sources of authority, and cultural practices commonly recognized as legal."<sup>35</sup> As it is common in other schemas, legality is not exclusively inherent in individual's ideas and attitudes. To be always vital, individuals and groups have to continually produce, work, invoke, and deploy it."<sup>36</sup> As suggested by some legal consciousness studies, legal ideas may be pushed and pulled, which implies the texture of law in our everyday existence in order to construct legality.<sup>37</sup>

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<sup>33</sup> Erik W. Larson, "Institutionalizing Legal Consciousness: Regulation and the Embedding of Market Participants in the Securities Industry in Ghana and Fiji " *Law & Society Review* 38, no. 4 (2004).

<sup>34</sup> Susan S. Silbey, "Making a Place for Cultural Analyses of Law," *Law & Social Inquiry* 17, no. 1 (1992): 46.

<sup>35</sup> Ewick and Silbey, 22.

<sup>36</sup> *Ibid.*, 43.

<sup>37</sup> Anna Maria Marshall and S. Barclay, "In Their Own Words: How Ordinary People Construct the Legal World," *Law & Social Inquiry* 28, no. 3 (2003a): 617.



Law may be pulled to construct and restrict what people may act and decide. The restriction is elaborated into the elaborated regulations, conduct-prohibition codes, and social norms. They are all designed to reserve the already arranged power and order. Through their familiarity these codes, lay people will be used to adopting and obeying the formal regulations. Such this acceptance by the people has opened a way for the law to shape the everyday life of the people and rule some courses of action without which they would have been taken otherwise. In this way, law has created natural, normal, cohesive, and coherent society based on the principal categories."<sup>38</sup>

At the same time, law may be pushed by individuals' own readings of law." This kind of process has enriched the variants of legality. In this perspective, law indeed dynamically develops. Through legality context in daily life, ordinary people contribute to shape and assign meaning to an "abstract but binding form."<sup>39</sup> The legality enacted everyday in turn, will result in the establishment of a theory for legal, institutional, and social changes. Any decision that may have impacts on the law will result in new meaning and a new legal claim. Therefore, while it restricts what action individuals may have taken, opportunities of redefinition of and challenge against the restraints are wide open.<sup>40</sup> With legality, individuals may also anticipate on the vast resources of the state by mobilizing the law. The accumulated of individual's needs for legal system is likely to result in great effects on other people through the creation of new legal rights and novel legal claims.<sup>41</sup> Thus, in spite of the fact that law has colonized everyday existence through oppression and

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<sup>38</sup> Sarat and Kearns, *Law in Everyday Life*, 22.

<sup>39</sup> Marshall and Barclay.

<sup>40</sup> Ewick and Silbey.

<sup>41</sup> Frances Zemans, "Legal Mobilization: The Neglected Role of the Law in the Political System," *APSR* 77, no. (1983).

inequality, legality provides a means of resistance.<sup>42</sup> Legal consciousness studies have revealed that the law provides schemas and frames to construct the meaning of what people have experienced.<sup>43</sup> Using the existing legal concepts and resources, people assign meaning to their disputes with their neighbors, their family problems, even their experiences with street harassment.<sup>44</sup> Studies of legal consciousness deals with "how, where, and with what effect law is produced in and through commonplace social interactions within neighborhoods, workplaces, families, schools, community organizations and the like."<sup>45</sup>

#### 2.2.4 Four factors affect legal consciousness

Though legal consciousness is contingent, it can be considered as having a particular "shape and pattern."<sup>46</sup> There are multiple forces determine the shape of legal consciousness. Ewick and Silbey call legal consciousness a process. Part of this process is negotiating sometimes complimentary, sometimes contradictory forces. At the start, Nielsen stated that four forces that affect the legal consciousness of her respondents with reference to offensive public speech, they are: legal doctrine, experience with law, social position, and attitudes about the law as an instrument for

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<sup>42</sup> Michael McCann and Tracey March, "Law and Everyday Forms of Resistance: A Socio-Political Assessment," *Studies in Law Politics and Society* 15, no. (1995); Sally Engle Merry, "Culture, Power, and the Discourse of Law," *New York Law School Law Review* 37, no. (1995a); Sally Engle Merry, "Resistance and the Cultural Power of Law " *Law & Society Review* 29, no. 1 (1995b); Sarat and Kearns, *Law in Everyday Life*.

<sup>43</sup> Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness. , Vol. 26/731," *New England Law Review* 26, no. (1992); Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*.

<sup>44</sup> Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*; Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," *Law & Society Review* 34, no. 4 (2000).

<sup>45</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*, 20.

<sup>46</sup> *Ibid.*, 46.

change. These forces should not be viewed as isolated, for they are interconnected in diverse ways.<sup>47</sup>

The first factor is legal doctrine or law in books. Nielsen suggests, if a particular activity is illegal, people are generally more potential to think that it should be illegal. Knowledge of what is or is not forbidden by law, or knowledge about what activity is likely to lead to a legal response, is knowledge that forms legal consciousness. She further puts forward that legal doctrine is not a neutral, natural element which forms legal consciousness. Legal doctrine is not communicated straightaway from legislative act, regulation or judicial opinion directly into the consciousness of average people. Rather, it is filtered, interpreted, and sometimes mistaken as it is communicated through institutional and popular channels and between people in a community.<sup>48</sup>

The second factor which shapes legal consciousness is "law in action, in the sense of previous experience with law. The law in action here, may be previous experiences with law, legal actors, legal or political institutions with which individuals have come in contact. Previous experiences have a dramatic effect on individual legal consciousness. They are events that an individual has lived and remembers. They serve as the basis for attitudes and opinions about the law, its efficacy, and its inherent justice. These may be even more powerful shaping forces than knowledge of "law on the books." For instance, many people realise that driving up to 7 miles per hour in excess of the speed limit is technically an offence of the law. But they also know that it is very unlikely that a police officer will bother stopping a car traveling

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<sup>47</sup> Nielsen, "License to Harass: Offensive Public Speech, Legal Consciousness, and Hierarchies of Race, Gender and Class," 39..

<sup>48</sup> Ibid., 39-40.

at that rate. It is even less likely to result in a speeding ticket. These previous experiences with the law (not getting arrested) teach the individual more about law than "law on the books" does. In the alternative, it is not difficult to imagine a previous experience with legal actors that is less benign, such as being profiled exclusively on the basis of race for harassment or arrest. This type of previous experience is also a very powerful influence on legal consciousness. It teaches the individual that some legal actors, and perhaps law itself, is corrupt and should not be trusted.<sup>49</sup>

The third factor is social position. One's positions in race, gender, and class hierarchies powerfully impacts one's experiences with law and legal actors, when they intersect. Racism and sexism also take place outside legal institutions. For many white women and people of color, these experiences have dramatic impressions on everyday life. They may shape their legal attitudes about offensive public speech. There are many ways that these issues could manifest. For example, if a woman has a history of being sexually harassed, she might assume that legal actors such as judges and administrators will treat her likewise. In the alternative, she may believe that legal actors do not behave in such a manner.<sup>50</sup>

The fourth factor that could bear on legal consciousness is attitudes about law as a remedial instrument. This conception of law treats law as a normative expectation for justice. The law is the way in which various social injustices can be relieved. People have experiences and opinions that affect their assessment of the efficacy of remedial

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<sup>49</sup> Ibid., 40.

<sup>50</sup> Ibid., 40-41.

statutes. In the case of offensive public speech, the boundary between the law and good manners is difficult to recognise.<sup>51</sup>

### **2.2.5 Three types of legal consciousness**

Ewick and Silbey illustrated the different potency in legal consciousness of Millie Simpson. The African-American Ms. Simpson had an odd job as a housekeeper to earn extra income. Initially she was found guilty because she operated a car without insurance. The car was driven by a friend of his son when it had a traffic accident. She gained legal consciousness after having interactions with the legal system. Although she was innocent, initially did not protest against the punishment because she recognized the institutional power of the court. As time went by, however, she slowly gained awareness about the illegitimate rule of the court. Eventually she started to engage in subtle forms of resistance. She arranged community service at a church and served regular volunteering. Legal representation was arranged by her employer. The case was finally reopened and she was found not guilty. This story depicts how legal consciousness is varied and contingent.<sup>52</sup>

Ewick and Silbey offer a three classification systems that puts units of individual actors' legal consciousness. As mentioned, given the dynamic nature of legal consciousness, it is unlikely that an individual's consciousness will be entirely bound within any one of these categories, and often seemingly contradictory forms are embraced simultaneously.

Law is conceptualized as an abstract entity away from the everyday life experiences. It is believed that law is autonomous, objective, hierarchical, rational and stable. Law

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<sup>51</sup> Ibid., 41.

<sup>52</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*, 6.

operates in a "formally ordered, rational, and hierarchical system of known rules and procedures."<sup>53</sup> Considered truly neutral law treats individuals equally whatever the characteristics are. With the majestic and formalized systems, law becomes a static quality. This has resulted in the perceived legitimacy.

#### **2.2.5.1 Before the Law**

Dwayne Franklin, one of Ewick and Silbey's respondents describes Before the Law legal consciousness. Franklin had a home in a small "respectable island"<sup>54</sup> in an urban area of Newark, New Jersey. It was gradually deteriorating. Crime was everyday problem. He was disappointed with the poor law enforcement and the poor courts. However, he fundamentally believed in the legal system. Mr. Franklin perceived "good police performance in the community" and legal system being an appropriate way for a dispute resolution mechanism."<sup>55</sup> In his opinion, the courts had a good performance to deal with the problems of ordinary people"<sup>56</sup> and that people of different ethnic background were not discriminatorily disadvantaged in the legal process. Franklin perceived that the court is a place for everybody to get justice. Mr. Franklin stands Before the Law.

#### **2.2.5.2 With the Law**

With the Law legal consciousness resembles to a game or "a terrain for tactical encounters."<sup>57</sup> People mobilize resources and use particular strategies to win the battle. Purposeful actions characterize the play. Struggle of own interests and legal rule manipulation are commonly practiced. The legal system is a place where

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<sup>53</sup> Ibid., 47.

<sup>54</sup> Ibid., 64.

<sup>55</sup> Ibid., 66.

<sup>56</sup> Ibid., 67.

<sup>57</sup> Ibid., 28.

interests are contested, and only people with legal proficiency will turn out to be the champion."<sup>58</sup>

In their study, Ewick and Silber reveal that legal proficiency requires toughness and/or determination. How one is able to hire lawyers is very critical to achieve the expected results of legal game. It demystifies a great deal of the lofty ideals expressed in *Before the Law*, "...When playing with the law, the time of law is human rather than eternal time. People create the space of law. It is common rather than hallowed, vulgar rather than magisterial. It resembles a game."<sup>59</sup>

The consummate storyteller, Nikos Stavros,<sup>60</sup> was a Greek immigrant in USA. When Ewick and Silber interviewed him, he was thirty two and had lived in the U.S. for more than ten years. He lived in New Jersey but he had to commute everyday to work in Manhattan. He perceived that being experienced and knowledgeable of law is absolutely needed to take legal advantages. "When you are in trouble, law can favour you."<sup>61</sup> Mr. Stavros had a legal dispute after he purchased an automobile. He sued the dealer under the New Jersey Lemon Law. He was satisfied with the legal outcome. He perceived that law was not an abstract, mechanical, decision making syllogism. To gain success, individual has to be efficacious, "...One's persuasion ability is therefore important..."<sup>62</sup> According to Mr. Stavros in personification of *With the Law* legal consciousness, "It is looking at the system differently by

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<sup>58</sup> Ibid., 131.

<sup>59</sup> Ibid., 163.

<sup>60</sup> Ibid., 120.

<sup>61</sup> Ibid., 125.

<sup>62</sup> Ibid., 125.

identifying the right loopholes...You'll be amazed to see what we can do and what we cannot do with...within the law."<sup>63</sup>

### **2.2.5.3 Against the Law**

*Against the Law* is the third and most combustible point of Ewick and Silbey's<sup>64</sup> legal consciousness model. An *Against the Law* consciousness is depicted in the perception that law is a commodity of power that ineffective for dispute resolution, truth recognition, or response to injustice."<sup>65</sup>

The typology introduced by Ewick and Silbey is instructive. However, it does not specifically describe the legal consciousness of particular individuals at particular times. Instead, when describing the terrain of legal consciousness, Ewick and Silbey suggest that these prototypes are culturally available and thus may be differently referred and employed in ways and times. Whether "law" is invoked or not, ignored, and resisted, law lives in people's everyday lives. These legality creation processes implies that there is a contingent and changing process of legal consciousness.<sup>66</sup>

## **2.3 Legal Dispute Processing**

In line with the objective of this research of evaluating the legal awareness of mistreated migrant workers by critically examining how the situation of migrant workers are formed and influenced by social-cultural contexts and how disputes are legally proceeded, the discussion will be focused on legal dispute processing and how people respond to dispute and find out what happens in and to disputes.

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<sup>63</sup> Ibid., 129.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid., 196.

<sup>66</sup> Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," 1060.



Research on disputes suffers from the difficulties of defining and measuring disputes.<sup>67</sup> The dispute itself is a social construct, whose definition shifts with the audience to whom it is presented, who may actively redefine it.<sup>68</sup> That is why Abel must start defining a dispute in a minimal definition, a concept that will, as far as possible, incorporate all empirical instances of disputing, and also permit the differences between those instances to be described in terms of continuous variables. In this way, Abel calls a dispute is nothing more than *a form of social relationship, a developmental stage through which any relationship may pass*. By characterizing conflict as a common developmental stage in any relationship, Abel seeks to emphasize that it is not an instance of deviance.<sup>69</sup> In fact, conflict between individuals and between groups is a normal part of social life<sup>70</sup>, since no human society is free of disputes.<sup>71</sup> It is not an exaggeration to say that social life is inevitably conflictual.<sup>72</sup> It is a normal, unavoidable part of everyday human activity.<sup>73</sup> Trouble, problems, personal and social dislocation are everyday occurrences.<sup>74</sup> They are found in every society.<sup>75</sup>

Conflict occurs as individuals with different interests, goals, problems and perspectives seek to achieve a maximum share of the values which any society

<sup>67</sup> Lawrence Meir Friedman, "Litigation and Society," *Annual Review of Sociology* 15, no. (1989b): 19.

<sup>68</sup> Sally Engle Merry, "Disputing without Culture," *Harvard Law Review* 100, no. 8 (1987): 2060-2061.

<sup>69</sup> Richard L. Abel, "A Comparative Theory of Dispute Institutions in Society," *Law & Society Review* 8, no. 2 (1974): 226-227.

<sup>70</sup> K. F. Koch, J. A. Sodergren, and S. Campbell, "Political and Psychological Correlates of Conflict Management: A Cross-Cultural," *Law & Society Review* 10, no. 3 (1976): 443.

<sup>71</sup> Oscar G. Chase, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context* (New York: New York University Press, 2005), 1.

<sup>72</sup> A. Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court," *Law & Society Review* 10, no. 3 (1976): 339.

<sup>73</sup> P. A. Gwartney-Gibbs and H. Lach, "Gender and Workplace Dispute Resolution: A Conceptual and Theoretical Model," *Law & Society Review* 28, no. 2 (1994): 267.

<sup>74</sup> W. L. F. Felstiner, R. L. Abel, and A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," *Law & Society Review* 15, no. 3/4 (1980-1981a): 633.

<sup>75</sup> Chase, 4.

provides.<sup>76</sup> However, disputes are generally taken as givens. The origins and content of disputes are seldom considered. The occurrence of disputes or the social context of disputing is seldom a subject of inquiry. One result has been a virtually complete isolation from theories which themselves focus on the meaning of disputing and its consequences in American society.<sup>77</sup>

The bias in the sociology of law whose studies are predominantly on official and formal institutions has determined how people understand and portray disputes. Accordingly, they simplify the cases to mean mere records that can be studied retrospectively in the economic and legal context using the way the lay person and officials perceive the cases.<sup>78</sup> What is inappropriate about that is that disputes are social constructs whose shapes depict the conceptual definition. Of equal importance, some of the disputes are subjectively held by the disputants.<sup>79</sup>

### **2.3.1 How do people respond to dispute**

A variety of dispute resolution mechanism exists in any given society which reflects the nature of the conflicts that arise in the social and cultural environment of the community.<sup>80</sup> Man is an ingenious social animal. Responses are institutionally channeled and range from song duels and witchcraft to moots and mediation to self-conscious therapy and hierarchical, professionalized courts. The process of dispute settlement with which people use to resolve the dispute depicts how their own values, their psychological urge, their history and their economic, political and social

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<sup>76</sup> Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court," 339.

<sup>77</sup> R. E. Miller and A. Sarat, "Grievances, Claims, and Disputes: Assessing the Adversary Culture," *Law & Society Review* 15, no. 3/4 (1980-1981): 525-526.

<sup>78</sup> Richard Danzing and Michael J. Lowy, "Everyday Disputes and Mediation in the United States: A Reply to Professor Felstiner," *Law & Society Review* 9, no. 4 (1975).

<sup>79</sup> Felstiner, Abel, and Sarat: 633.

<sup>80</sup> Chase.

life are organized.<sup>81</sup> Conventionally we have thought of people reacting to disputes through negotiation, self-help, mediation, adjudication, feuds and appeals to the supernatural. These are the categories employed in the classic descriptions provided by legal anthropology.<sup>82</sup>

Once a situation is labeled as a dispute, those involved in it may either be compelled or voluntarily choose to react in different ways. We know from experience that there are other reactions. After disputing for a time, one may choose to ignore the dispute entirely, thus, in a sense, resolving it. We may also sell our share in a dispute. And we may resort to avoidance. Avoidance occurs when a party changes his behaviour after a particular dispute that leads to either temporary or permanent shrunk and terminated relationship with other disputant. In this way, dispute is not resolved but is no longer a matter for the disputants. Avoidance as dispute processing is different from avoidance behaviour adopted to prevent disputes from arising in the first instance, a distinction which a few of my earlier examples failed to make clearly.<sup>83</sup> Or, they could also take a specific action and attempt to negotiate directly to others, or try to impose their will by using coercive force, violence, or any other form that enables them to "square their accounts with others"(self-help). After deciding to take action, disputants may seek the intervention of a third party whose role may be that of a neutral decision-maker with authority to decide and enforce his or her ruling, or a mediator capable of assisting the parties in reaching an outcome amenable to both. In some instances, disputants may even appeal to the supernatural hoping that this will help them find a solution to the quarrel.

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<sup>81</sup> W. L. F. Felstiner, " Influences of Social Organization on Dispute Processing," *Law & Society Review* 9, no. 1 (1974): 63.

<sup>82</sup> W. L. F. Felstiner, "Avoidance as Dispute Processing: An Elaboration," *Law & Society Review*, 9, no. 4 (1975): 695.

<sup>83</sup> *Ibid.*, 695.

This is of course, an oversimplification of the different attitudes that individuals may take towards conflict, since the possibilities vary greatly. However, most processing models fall into two major categories depending on the presence or absence of a third party. As a result, a dispute process in which a third neutral party is involved is called triadic and, when the contending parties or disputants are the only ones involved in the process we talk about a dyadic model.

The course of choosing the appropriate method to handle a dispute often occurs in a sequence that goes from low cost and less formal approaches to more expensive, structured and formal means. In other words, the parties usually start by using methods that are simple, informal, and relatively inexpensive; and whenever these fail, they move towards the more complex and structured ones. However, it is not uncommon that due to the presence of certain factors, disputants end up selecting several mechanisms simultaneously, in different order, or simply use the same technique throughout the whole process.

### **2.3.2 What happens in and to disputes?**

Naming, blaming, and claiming can have a variety of outcomes, only some of which imply disputing. Complete acquiescence by the other party, or complete rejection by the other party immediately accompanied by "lumping" or avoidance by the first, are examples of non-disputing consequences. Disputing may involve a variety of processes in a variety of contexts or arenas. Moreover, the importance of outsiders in many of these processes can be considerable. There can be a wide range of outcomes to disputes.

**Forum:** Parties to a dispute or outsiders can take the dispute to a context or forum which is different from that in which the parties normally interact. Such a movement is in itself expected to have some crucial influence upon the dispute—for example, by changing the respective disputants' sense of being in control or at least intimate and comfortable with the context. The notion of forum has geographical components, but the social elements are prevailing in the disputing contexts. Put differently, the notion of forum not only refers to the facility (e.g. court or arbitration center) but more broadly construed, to the place or environment.

The ways in which disputing arenas vary have received considerable attention in the literature at both a theoretical and conceptual level. Authors have argued that arenas possibly differentiated from one another by formality, accessibility, the conception of what is crucial, decisional style, and the character of authority sticking to actors within the arena.<sup>84</sup> Some of the insights of this theoretical and conceptual development have been employed to analysis of the disputing process in third-world societies and to research on arenas in western societies which might be took to be officially established, relatively formal, specialized, and bureaucratic (such as courts and neighbourhood justice centres). There have been few attempts to apply them to other semi-official or unofficial, less formal and specialized arenas in modern western societies (such as local government offices, media complaint solicitors, and gossip networks). In this regard the pioneering work of Merry<sup>85</sup> is in urgent need of replication and expansion.

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<sup>84</sup> Abel; Marc Galanter, "Why the Haves" Come out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, no. 95-127 (1974); Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court."

<sup>85</sup> Sally Engle Merry, "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood," *Law & Society Review* 12, no. 1 (1979).

Any particular dispute possibly adopted to a variety of forum or contexts in the course of its "life history." The possibility of entry into other contexts may be an important element in the way the parties dispute in any particular forum, and possibly crucial to an interpreting of what is happening. There are also boundaries in the movement of disputes between certain contexts. For example, "trial by newspaper" certainly delivers very dangerous problems for contemporary or even subsequent trial by jury. But we also know that in different jurisdictions quite different degrees of tolerance for such dual arena disputing are to be found. The scope, basis, and significance of such limits are a accommodating subject for future research.

**Processes:** The actual processes of disputing are many and varied. They range across physical contests and economic warfare, to a variety of more social processes. The latter appear largely verbal. One suspects that were more attention paid to nonverbal forms of interaction, their importance for the disputing processes would not be inconsiderable. To date, apart from Merry<sup>86</sup>, there appears to have been relatively little research on the use of physical and economic processes of disputing in modern Western societies. One possible exception to this are the studies on the use of strikes in industrial disputes. There is a most urgent need to extend research so that we know more about the importance of such physical and economic processes for a more comprehensive range of disputes.

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<sup>86</sup> Ibid.

Considerable attention has been paid to some of the verbal processes involved in disputing. Images such as the negotiation, transformation, and rephrasing<sup>87</sup> of the subject matter of the dispute have been proposed as important elements of the disputing process. Each of these images has its own power. The detailed analysis of the processes of negotiation which have been presented by both Strauss and Gulliver deserve serious study. In this comment, however, it is only practicable to focus upon the more limited, but important process of rephrasing.

The importance of rephrasing arises from the model of a dispute, not as simply occurring static event," [but as undergoing] ... changes or ... transformation over time. Transformations results from the fact that participants urge different interests a perspectives in the disputing process; they assert their interests and perspectives accommodated and attended during the definition and shaping of the object of dispute. This implies that negotiation, which may take longer time, will be about what the disputed matter is, whether it is even a dispute or not, and whether it is properly a "legal" dispute.<sup>88</sup>

"Rephrasing" refers to the process of modifying the statement of what is in contention while the dispute is in progress.<sup>89</sup> The modification can take a variety of forms. It may simply involve the translation of the dispute into another "language" (e.g. into an official legal idiom) without really changing the substance or the object of the dispute. On the other hand, the modifications may be more radical. In this regard, one essential distinction which has been drawn is between "narrowing" and

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<sup>87</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."; Lynn Mather and Barbara . Yngvesson, "Language, Audience, and the Transformation of Disputes," *Law & Society Review* 15, no. 3/4 (1980 - 1981).

<sup>88</sup> Mather and Yngvesson: 776.

<sup>89</sup> *Ibid.*, 776.

"expansion". Narrowing refers to the provision of amenable categories in the classification of events and relationships to make it more adjustable to the existing conventional management procedures.... Expansion, in contrast ... refers to the extension of the established categories in the classification of events and relationships to separate but related subjects or issues. In other words, expansion refers to the "stretch" or changes in accepted frameworks to meet organizational reality. In narrowing and expansion [therefore] . . . dispute object may be redefined either in terms of an accepted normative framework or a new framework.<sup>90</sup>

The distinction between narrowing and expansion is undoubtedly most significant, and it should be most valuable in analyzing disputes taken to the legal system. It should be noticed, however, that in the foregoing quotation, "narrowing" and "expansion" refer to the established frameworks for managing disputes, not necessarily to the scope of the particular dispute. It would be quite possible to broaden the substance of a particular dispute by redefining it within an alternative, but still acceptable, legitimate and normal framework in a way that involves no stretching of accepted frameworks at all, i.e. no expansion in the above sense. This would be so where, within this alternative framework, there were many more points of controversy between the parties than there were under the initial framework. It possibly valuable to use words such as "broadening" and "confining" to bear on to the significances of rephrasing for the scope of particular disputes. It is likely that expansion will unavoidably imply "broadening," but not vice versa. The overall relationship between narrowing and "confining" may be less easy to take.

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<sup>90</sup> Ibid., 777.



**Outcomes:** There have been variety of terms employed to describe the situation prevailing at the end of a dispute, like "resolution," "termination," and "outcome." In this study, "outcome" is preferred since disputes have outcomes rather than resolutions for the same reason that they are processed rather than settled.<sup>91</sup> Naturally, all disputes have an "end"; some persist in across over generation without any reduction in intensity and strength. Others may be more cyclical and regularly repeated not an intensive mode, with periods of low-keyed, or even ceased-fire. In short, an outcome of dispute can range from a overall victory for one of the parties to a reciprocally acceptable compromise via mediation.<sup>92</sup> However, for some others, the outcome can be qualified as "lumping it" or as avoidance on the part of one or more of the parties. What is meant by avoidance here is restricting the relationship with the other disputant sufficiently so that the dispute no longer continues striking. But avoidance, unlike exit behaviour, does not connote a switch of relations to a new object, but may simply imply withdrawal from the dispute-producing relationship.<sup>93</sup>

Conflicts, disputes, and difficulties are often engendered by the desire for, and are necessary in order to obtain, complete satisfaction.<sup>94</sup> However, it is also worth noticing that disputants as well as other participants may have different goals in mind when processing a conflict situation. The general assumption that individuals' main purpose is to actually solve the conflict is not always true. Very often people do not intend to find a solution, and the reason why they use a particular process is merely to reshape or renegotiate the status quo, or because it helps them gain something else; some even take advantage of conflict situations and do not desire a solution. Hayden

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<sup>91</sup> Felstiner, " Influences of Social Organization on Dispute Processing," 69.

<sup>92</sup> Miller and Sarat: 543-544.

<sup>93</sup> Felstiner, " Influences of Social Organization on Dispute Processing," 69-70.

<sup>94</sup> Miller and Sarat: 544.

and Anderson<sup>95</sup> asserted that: "The people who create a dispute-processing institution, the people who staff it, the advocates (if any) who appear in it and the parties who use it may all have very different objectives. Further, all of them may also have very different views as to what would constitute a resolution of the dispute."

In other cases, it is not possible to discover the parties' objectives, but it is still very difficult to know if such determination has actually solved the conflict. Felstiner, proposed that "A significant amount of dispute processing is not intended to settle disputes, that a greater amount does not do so and that it is often difficult to know whether a dispute which has been processed has been settled, or even what the dispute was about in the first place". Moreover, Sarat added that, "neither the initiation of a lawsuit nor its termination always puts and end to the trouble which gave rise to the suit. A decision or settlement in one forum may do no more than provide the occasion for moving the conflict into another forum in which the drama of seeking settlement can be repeated".<sup>96</sup> Having this in mind, it seems reasonable to use the term dispute processing instead of dispute resolution. Further, referring to the results achieved by using a given process it may better talk about outcomes rather than resolutions.

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<sup>95</sup> Robert M. Hayden and Jill K. Anderson, "On the Evaluation of Procedural Systems in Laboratory Experiments: A Critique of Thibaut and Walker," *Law and Human Behavior* 3, no. 1/2 (1979): 23.

<sup>96</sup> Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court," 343.

## 2.4 Theoretical Framework of Transformational Theory of Litigation

Felstiner, et al.<sup>97</sup> outlined a model of the transformation of disputes that dominates socio-legal research<sup>98</sup>, and justice research.<sup>99</sup> This model assumes that "disputes are . . . social constructs . . . , [that] exist only in the minds of the disputants".<sup>100</sup> Felstiner, et al. indicated that perceptual experience and interpretation are all important in making up one's mind whether an accidental injury is "transformed" into a conflict.

Simply said, disputes are not "static things" at a particular moment. Instead, they are "dynamically developed processes". Consequently, it is necessary, as Felstiner, et al. argues, to identify the underlying conditions and the way people respond to the experience of injustice and conflict".<sup>101</sup> Although Felstiner, et al's study is not a specific study on on legal-disputes, their parts of work have been referred by some researchers.<sup>102</sup>

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<sup>97</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."

<sup>98</sup> see Herbert M Kritzer, W. A. Bogart, and N. Vidmar, "Context, Context, Context: A Cross-Problem, Cross-Cultural Comparison of Compensation Seeking Behaviour," in *Law and Society* (Amsterdam: 1991a); Herbert M Kritzer, W.A. Bogart, and N. Vidmar, "The Aftermath of Injury," *Law & Society Review* 25, no. 3 (1991d); Herbert M Kritzer, N. Vidmar, and W. A. Bogart, "To Confront or Not to Confront: Measuring Claiming Rates in Discrimination Grievances," *Law & Society Review* 25, no. 4 (1991c); Herbert M Kritzer and others, "Legal Mobilization in Canada and the United States: Consumer Problems in North America," in *Midwest Political Science Association* (Chicago: 1991b).

<sup>99</sup> R. Bies, J. and T. R. Tyler, "The "Litigation Mentality" in Organizations: A Test of Alternative Psychological Explanations," *Organization Science* 4, no. 3 (1993); Kwok Leung and E. Allan Lind, "Procedural Justice and Culture: Effects of Culture, Gender, and Investigator Status on Procedural Preferences," *Journal of Personality and Social Psychology* 50, no. 6 (1986); E. Allan Lind and others, "The Winding Road from Employee to Complainant: Situational and Psychological Determinants of Wrongful-Termination Claims," *Administrative Science Quarterly* 45, no. 3 (2000); E. Allan Lind, Yuen J Huo, and Tom R Tyler, " ... And Justice for All: Ethnicity, Gender, and Preferences for Dispute Resolution Procedures," *Law and Human Behavior* 18, no. 3 (1994); K. Törnblom, *Distributive and Procedural Justice: Research and Social Applications* (Hampshire: Ashgate Publishing Limited, 2007).

<sup>100</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," 632-633.

<sup>101</sup> Ibid.

<sup>102</sup> Lind and others, "The Winding Road from Employee to Complainant: Situational and Psychological Determinants of Wrongful-Termination Claims."

The transformation process takes a three-step chronological sequence of stages. First, is the process of naming, in which a person identifies a particular experience has been injurious. Taking for granted that injury is sensed to have happened, the next step is the process of blaming. Blaming is attributing responsibility for the injury to someone. If naming and blaming has passed, then the injured party may engage in claiming. The theoretical analysis presented by Felstiner, et al. made it clear that transformation of disputes does not consist simply of a decision by an injured party to turn to legal claiming. Instead, the process is complex, with the stages from injury to legal claiming cluttered with barriers and alternative ways.<sup>103</sup>

In the following section, other model of transformational process of litigation will be proposed. This model extends the theoretical framework introduced by Felstiner, et al. of naming, blaming, claiming, and disputing. This model also resembles the model used by Silberman<sup>104</sup> in his study of the "reactive mobilization of lawyers in civil matters".<sup>105</sup> Apart from that, the model also modifies theory introduced by Kritzer, et al.<sup>106</sup>, and Goldman, et al.<sup>107</sup> However, while Silberman concentrated his attention on the contacting of lawyers as an indicator of transformation process, Kritzer, et al. and Goldman, et al. focused more on the claiming stage. And the purpose of the present model focuses on the transitions between each of these stages, or the transformational stages (see Figure 2)

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<sup>103</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."

<sup>104</sup> Matthew Silberman, *The Civil Justice Process: A Sequential Model of the Mobilization of Law* (Orlando, FL: Academic Press, 1985).

<sup>105</sup> Ibid., 1.

<sup>106</sup> see Kritzer, Bogart, and Vidmar, "Context, Context, Context: A Cross-Problem, Cross-Cultural Comparison of Compensation Seeking Behaviour."; Kritzer, Bogart, and Vidmar, "The Aftermath of Injury."; Kritzer, Vidmar, and Bogart, "To Confront or Not to Confront: Measuring Claiming Rates in Discrimination Grievances."; Kritzer and others, "Legal Mobilization in Canada and the United States: Consumer Problems in North America."

<sup>107</sup> Barry M Goldman, E. Layne Paddock, and Russel Cropanzano, "A Transformational Model of Legal-Claiming," *Journal of Managerial Issues* XVI, no. 4 (2004).

Figure 2 indicates a model of transformation process, which is called by the Transformational Theory of Litigation. Every box in Figure 1 may be regarded as a *stage*, while the lines connecting the boxes as *transitions* marked by *barriers* (shown as dotted lines). Felstiner, Abel, & Sarat<sup>108</sup> posited that the factors determine transformation on every stage should be paid more attention. Therefore Felstiner, et al. emphasized that learning about the existence, absence, or reversal of these basic transformations will increase our understanding of the disputing process. Thus, based on this model, the focus of analysis is the transformation from one stage to the next sequential level. It also concentrates on both the frequency of those transitions and the factors that influence the occurrence of transitions in individual cases.<sup>109</sup> The key question in the study of the transformation process is how injurious experiences eventually become legal claiming by "getting over" the barriers that separate each of the stages, and passing over each of the sequential stages.<sup>110</sup>

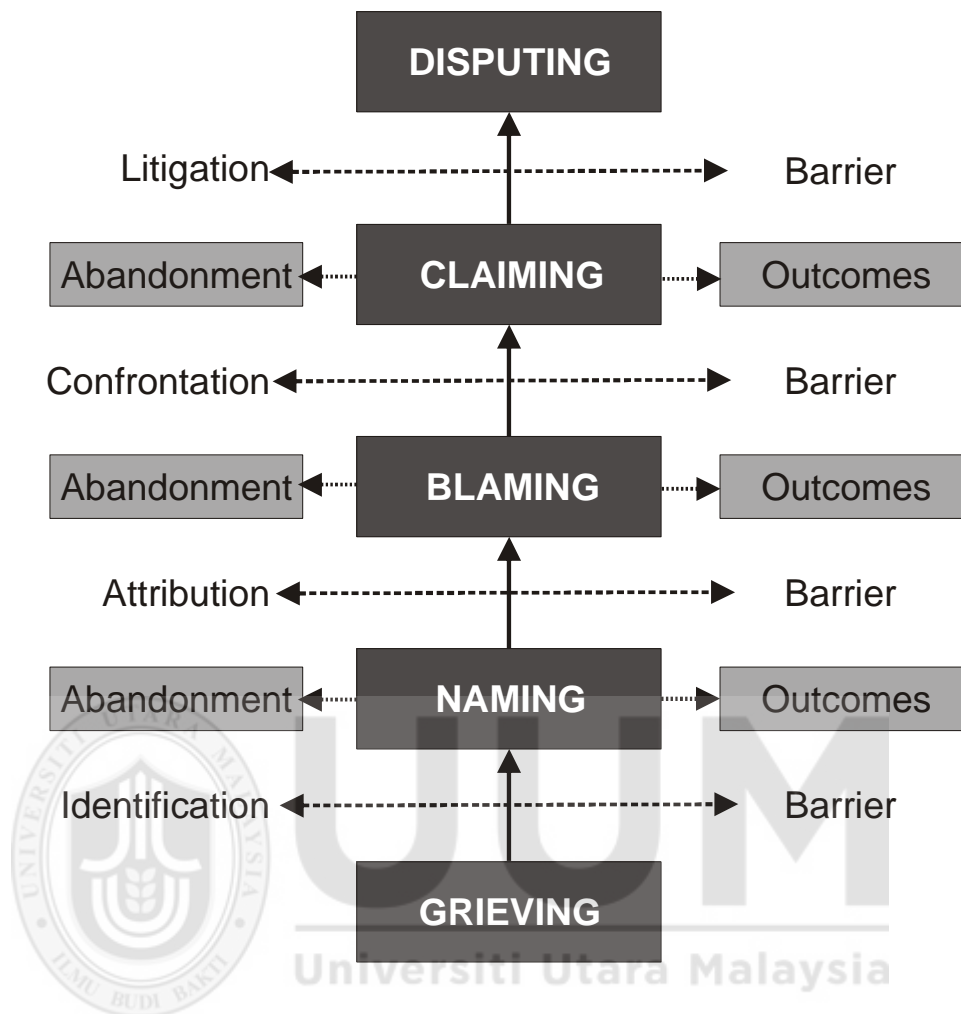
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<sup>108</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," 636.

<sup>109</sup> see Kritzer, Vidmar, and Bogart, "To Confront or Not to Confront: Measuring Claiming Rates in Discrimination Grievances," 2.

<sup>110</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," 636; Kritzer, Bogart, and Vidmar, "The Aftermath of Injury," 501.

## LEGAL DISPUTE PROCESSING THEORY



**Figure 2: Legal Dispute Processing Theory<sup>111</sup>**

The first stage is **naming**. This transformation occurs from unperceived injurious experiences (unPIE) into injurious experiences (PIE). In fact, this first stage typically becomes the starting point for transformation into its subsequent development, but seldom considered.<sup>112</sup> According to Felstiner, et al.<sup>113</sup>, problems (injurious experiences) are everyday common occurrences which are most likely tolerated, though sometimes not easily accepted. Even further, many occurrences might be

<sup>111</sup> Adapted and modified from the model introduced by Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."; Silberman.; Kritzer, Vidmar, and Bogart, "To Confront or Not to Confront: Measuring Claiming Rates in Discrimination Grievances."; Goldman, Paddock, and Cropanzano.

<sup>112</sup> Miller and Sarat: 525-526.

<sup>113</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."

perceived as injurious experiences by one person but not recognized as such by others. When an injury is perceived to exist, and the recognition barrier is crossed, the process will turn into the next stage. However, some disputants prefer to choose to “lump it” to avoid potential conflict.<sup>114</sup> Some others accept that injury as a normal part of life.<sup>115</sup> When this happens, the process then stops before the subsequent transformation occurs.

The second stage is **blaming**, which is characterized by transforming the perceived injurious experience into a grievance through the attribution of one's suffered injury to the fault of another. This step needs to cross the attribution barrier which requires a combination of information and a willingness to externalize the cause of an injury. On one hand, a disputant candidate must be aware that there is an external source for the injury. On the other hand, a potential disputant also must be prepared to attribute the responsibility for the injury to an external source. Attribution Theorists and Blaming Theorists and researchers have long been interested in how people form causal explanations, and their work has important implications for understanding the blaming transformation in dispute development.<sup>116</sup> Once an injured party blames someone else for the problem, the problem becomes a grievance and is ripe for a claim.<sup>117</sup>

The third process is claiming. This transformation occurs when someone with a grievance step across into the claiming stage. Claiming stage, according to Felstiner, et al. takes place, when the disputant with grievance articulates it to other people

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<sup>114</sup> Felstiner, " Influences of Social Organization on Dispute Processing."; Felstiner, "Avoidance as Dispute Processing: An Elaboration."; Miller and Sarat.

<sup>115</sup> Lawrence Meir Friedman, "Civil Wrongs: Personal Injury Law in the Late 19th Century," *American Bar Foundation Research Journal* (1987).

<sup>116</sup> D. Coates and S. Penrod, "Social Psychology and the Emergence of Disputes," *Law & Society Review* 15, no. 3/4 (1980-1981): 662.

<sup>117</sup> Kritzer, Bogart, and Vidmar, "The Aftermath of Injury," 501-502.

believed to be responsible then asks for some remedy. Rejection on claim does not have to be expressed by words. Even postponement that is construed as resistance may be considered as a rejection just the same as a compromise offer (deemed as partial rejection or straight-out refusal).<sup>118</sup> The decision to step across a claiming stage refers to a variety of factors. For example, the injured person may think that he or she may not be able to face up the other side, at least psychologically. Or possibly, the injured person might not have enough resources to seek the claim. Another factor might come from the 'injury' itself which is so slight and does not worth to seek compensation. And last but not least, there may be non-pecuniary personal or other social costs that foster a hesitation to claim.<sup>119</sup> In more systematic way, Goldman, et al. argue that individuals will transform from blaming into claiming is influenced by their perceptions of process and outcome unfairness.<sup>120</sup> To support their stance, Goldman, et al. introduce two types of justice which are significant predictors of legal-claiming:<sup>121</sup> (1) distributive justice, that concerns to the fairness of results accepted and (2) procedural justice, which centers on the fairness of the procedures utilised to attain results.<sup>122</sup>

The final stage is **disputing** where a potential litigant must cross the litigation barrier. Some researchers have often discussed the leap from claiming to disputing just like someone fell swoop. In fact, legal disputes are difficult and stressful processes, full with risks and sacrifice even for successful claimants. Even

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<sup>118</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," 635-636.

<sup>119</sup> Kritzer, Bogart, and Vidmar, "The Aftermath of Injury," 501-502.

<sup>120</sup> Goldman, Paddock, and Cropanzano: 423; *ibid.*, 423.

<sup>121</sup> Barry M Goldman, "Toward an Understanding of Employment Discrimination Claiming: An Integration of Organizational Justice and Social Information Processing Theories," *Personnel Psychology* 54, no. (2001); Goldman, Paddock, and Cropanzano, "A Transformational Model of Legal-Claiming."

<sup>122</sup> Lind, Huo, and Tyler, " ... And Justice for All: Ethnicity, Gender, and Preferences for Dispute Resolution Procedures."; compare it to Törnblom.



individuals who see their claims as meritorious are often reluctant to incur the costs and gambles of seeking a remedy. Accordingly, conflicts tend to escalate gradually, starting small and-if the underlying problem is not addressed-growing worse over time. For a many instances, the issue of crossing this barrier never arises because the claimant is offered an acceptable resolution by the responsible party. In many cases individuals seem to tolerate injustice without doing any action. One way to understand this reluctance to move across may come from a close examination of litigation stage.<sup>123</sup>

In addition to conflict escalation stated above, again Goldman, et al. propose social information processing (SIP) theory which embraces that processing information from the social surroundings instead of individual sensitivity that affect work attitudes and behaviours. The social surroundings which potentially affect attitudes and behaviour might be the encouragement or discouragement from friends, family, co-workers.<sup>124</sup> However, when a claim is not satisfied, the potential litigant faces a number of troubles. First, the claim must be one for which redresses are in fact available through the courts. Second, legal representation is usually unavoidable, and this has to be paid for somehow. Third, the potential litigant must be willing to invoke the legal process and take over the difficulties such as delay, frustration, monetary expense, etc.<sup>125</sup>

## **2.5 Concluding Remark**

Considering the important role of historical, cultural, social, and attitudinal aspects in the study of law, there has been a shift from instrumental law to constitutive law.

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<sup>123</sup> Goldman, Paddock, and Cropanzano, "A Transformational Model of Legal-Claiming."

<sup>124</sup> Goldman, "Toward an Understanding of Employment Discrimination Claiming: An Integration of Organizational Justice and Social Information Processing Theories."

<sup>125</sup> Kritzer, Bogart, and Vidmar, "The Aftermath of Injury," 503.

While instrumental law considers law beyond the social and cultural spheres, constitutive law integrally embraces law, politics, ideology, and action. In attempt to identify the three questions of this study, constitutive law perspective seems to be appropriate since this study concerns the legal consciousness of Indonesian migrant domestic workers in building the proper and appropriate response to mistreatments and abuses. Legal consciousness will be effectively established when domestic workers perceive law as part of the system with which they live. When law is internalized through daily experience, domestic workers will find it beneficial and advantageous to be legally conscious.

Legal consciousness is an important asset for domestic workers who are at high risk of discriminative treatments in occupational and social life. Not only will they are legally aware of their rights and obligations at works, they will have adequate knowledge of where and how to name, blame, and claim in case mistreatment do occur. Legally proficient will allow them build legal protection which is not adequately provided by the authorized bodies.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

This study employed socio legal research in conducting the research on the protection of Indonesian domestic workers in Malaysia. Since the socio legal research has adopted methods commonly used in social science researches, the following discussion will focus on qualitative methods and case study techniques which are broadly applied in social science researches.

This chapter also describes the participants of the project, methods of data collection, data analysis, as well as the advantages and limitations of methodological approach selected for this project.

#### **3.2 Socio Legal Research**

The second legal tradition which emerged in the late 1960s is related to as non-doctrinal or applied interdisciplinary legal research<sup>1</sup> or commonly known as ‘socio-legal research.’<sup>2</sup> In this type of research, law itself turns problematical both in the sense that it may be a contributor to the social problem, and in the sense that although law may offer an answer or part of an answer, other non-law answers,

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<sup>1</sup> Paul Chynoweth, "Legal Research," in *Advanced Research Methods in the Built Environment*, ed. Andrew Knight and Leslie Ruddock (Chichester, West Sussex, United Kingdom ; Ames, Iowa: Wiley, 2008).

<sup>2</sup> Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research*, Oñati International Series in Law and Society (Oxford ; Portland, Oregon: Hart Publishing, 2005).

including political and social re-arrangement, are not prevented and may so be selected.<sup>3</sup>

The non-doctrinal approaches constitute a new approach of examining law in the wider social and political context using a range of other methods adopted from fields of study in the social sciences and humanities. The relevance of using other fields of study such as sociology, political science, economics, psychology, history and feminism as helps to legal research have been widely accepted. Interdisciplinary or socio-legal research widens legal discourse in terms of its theoretical and conceptual framework which direct the way of the studies and its specific research methodologies are able to generate empirical evidence to answer research questions.<sup>4</sup>

A variety of methods are used in socio-legal research ranging from the statistical analysis of survey research to the analysis of transcripts from tape-recordings of judicial hearings. There are socio-legal researchers who have used quantitative methods, qualitative methods or a combination of both in turning to socio-legal questions. There are also researchers who have employed discourse analytic methods in studying legal texts, or conducted in-depth interviews with judges, or spent time as fieldworkers looking at law in non-western societies. Much of this work has been of high quality, and is comparable with the best research in other sociological sub-fields.<sup>5</sup> Perhaps one has to accept that law is not necessarily the property of scholars based in law schools. Since law, as we are often told, is everywhere, and relevant to

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<sup>3</sup> Mike McConville and Wing Hong Chui, eds., *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007); *ibid.*

<sup>4</sup> *Ibid.*, 5.

<sup>5</sup> Banakar and Travers, 17-18.

most social topics, it is inevitable that it can be studied from many disciplinary perspectives.<sup>6</sup>

### 3.3 Philosophical Assumptions

The option of which method to employ is subject to the nature of the research problem. Morgan and Smircich<sup>7</sup> argue the actual suitability of a research method comes from the nature of the social phenomena to be researched. The methodological approach adopted in this study had been that of a non-positivist or known as constructivist. Furthermore, Michael Crotty<sup>8</sup> made a strong statement for the importance of coherent consistency among one's epistemology, theory, methodology, and methods. Therefore, this research was designed in consistent with the respective.

The study employed relativism as an ontological premise. This assumption understands that many local and specifically constructed realities exist. They are multiple for they are embedded into a specific context or person. This paradigm stipulates subjectivist or interpretivist *epistemological* perspective. According to this perspective, understanding during the research process is co-created by the participant and researcher. Then later on, the researcher grasps the subjective significance of social activity. In addition, qualitative methodology is consistent with

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<sup>6</sup> Ibid., 18.

<sup>7</sup> G. Morgan and L. Smircich, "The Case for Qualitative Research," *Acad. Manag. Rev* 5, no. 4 (1980).

<sup>8</sup> M. Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (Thousand Oaks, CA: SAGE Publications, 1998).

respect to the given paradigm. This means that the method of interpretation of human action is driven by the perspective of the actor.<sup>9</sup>

### 3.4 Qualitative Approach

Based on the above philosophical assumptions, it can be argued that this research was primarily a qualitative. It designed to discover then analyzed mistreated Indonesian domestic workers' legal consciousness in accessing legal justice. The qualitative approach is more suitable to be applied in this research since human experience is contextually shaped and accordingly, is contextually integrated. This perspective puts qualitative research in naturalistic style which prohibits construction and modification of context to keep research in normal everyday context.<sup>10</sup>

Similarly, Lincoln and Guba<sup>11</sup> asserted that the context has implication in meaning, thus, naturalistic inquiry is arranged in the natural setting. Further, qualitative methods can be applied to explore substantive areas about which little is known or about which much is known to gain novel understandings. Moreover, Strauss & Corbin<sup>12</sup> argue that qualitative methods allow us to collect data about feelings, thoughts, and emotions otherwise the extraction and understanding would be difficult.

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<sup>9</sup> Y. S. Lincoln and E. G. Guba, "Paradigmatic Controversies, Contradictions, and Emerging Confluences," in *Handbook of Qualitative Research*, ed. N. K. Denzin and Y. S. Lincoln (Thousand Oaks, CA: SAGE Publications, 2000).

<sup>10</sup> John W. Creswell, *Qualitative Inquiry & Research Design : Choosing among Five Approaches*, 2nd ed. (Thousand Oaks: Sage Publications, 2007).

<sup>11</sup> Y. S. Lincoln and E. G. Guba, *Naturalistic Inquiry* (Beverly Hills, CA: SAGE Publications, 1985).

<sup>12</sup> A. L. Strauss and J. M. Corbin, *Basics of Qualitative Research : Techniques and Procedures for Developing Grounded Theory* (London: SAGE Publications, 1998), 11.

### 3.5 Case Study Strategy

Another different definition by Creswell<sup>13</sup> suggests that a case study explores “bounded system” or a case (or multiple cases) over time the data of which is collected in detail and in-depth from multiple sources of contextual information. Meanwhile, Yin suggests that condition refers to an event, an entity, an individual or even a unit of analysis. To understand a contemporary phenomenon, this empirical inquiry uses multiple sources of evidence. Case studies then refers to the way and the reason of occurrence to investigate contextual reality and identify the discrepancy between what was expected and what is actually achieved.<sup>14</sup>

Case study strategy in this project is really useful to answer the inquiry questions for various causes. **First**, case study enables the assignment of a particular sense and objective to a particular object or event through the provision of idea about its local context and situational constraints.<sup>15</sup> Therefore, the results of case studies are obtained from the real-world.<sup>16</sup> Since it attends details, nuances and interdependences, a holistic comprehension may be obtained from the investigated phenomenon to result in total and natural comprehensive picture.<sup>17</sup> This research aims at identifying the Indonesian domestic workers’ legal consciousness when they consider getting involved in legal dispute processing. This process is inherently attributed to Malaysian legal system and social constraint. Accordingly, this purpose justified the choice of case study method.

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<sup>13</sup> Creswell, 73-80.

<sup>14</sup> Robert K. Yin, *Applications of Case Study Research*, Applied Social Research Methods Series V. 34 (Newbury Park, Calif.: SAGE Publications, 1993); Robert K. Yin, *Case Study Research: Design and Methods* (California: Sage Publications, 2003).

<sup>15</sup> Robert E Stake, *The Art of Case Study Research* (Thousand Oaks: Sage Publications, 1995), 16.

<sup>16</sup> Jan Dul and Tony Hak, *Case Study Methodology in Business Research* (Oxford: Butterworth-Heinemann, 2008), 5.

<sup>17</sup> M. Q. Patton, *Qualitative Evaluation and Research Method* (Newbury Park, CA: SAGE Publications, 1990), 51.

The **second** advantage of using case study strategy in this research referred to very dynamic and multi-variable phenomena that were focused to be studied. Qualitative methods in general are more advantageous for studying transformation process of legal dispute. It is presumably true due to their better capacity in describing in details the mechanisms of change of very dynamic and complex units of analysis particularly with regards to the development and transformation features.<sup>18</sup> What is more in case studies is that even minimal case number may provide in-depth understanding of these changes and their effects. Accordingly, the case study strategy is appropriate due to its focus on very dynamic and multi-sided phenomena. Especially the study of legal consciousness and the process of transformation in legal dispute processing, which implies that actors are not autonomous units but rather involved into composite interdependent relations.

**Third**, qualitative methods are preferable in general and case studies with unexpected results because no hypothesis is needed and no prediction and control are exercised by the researchers.<sup>19</sup> The naturalistic orientation requires no manipulation to enable the portrayal of real-world phenomena.<sup>20</sup>

### 3.5.1 Multiple Case Studies

Case studies can comprise a single case or multiple case studies. Yin presents four types of case study research design in a  $2 \times 2$  matrix (see Figure 5). Along the horizontal axis (top) are single versus multiple-case designs, and along the vertical axis (left side) are holistic versus embedded units of analysis. In this way, he

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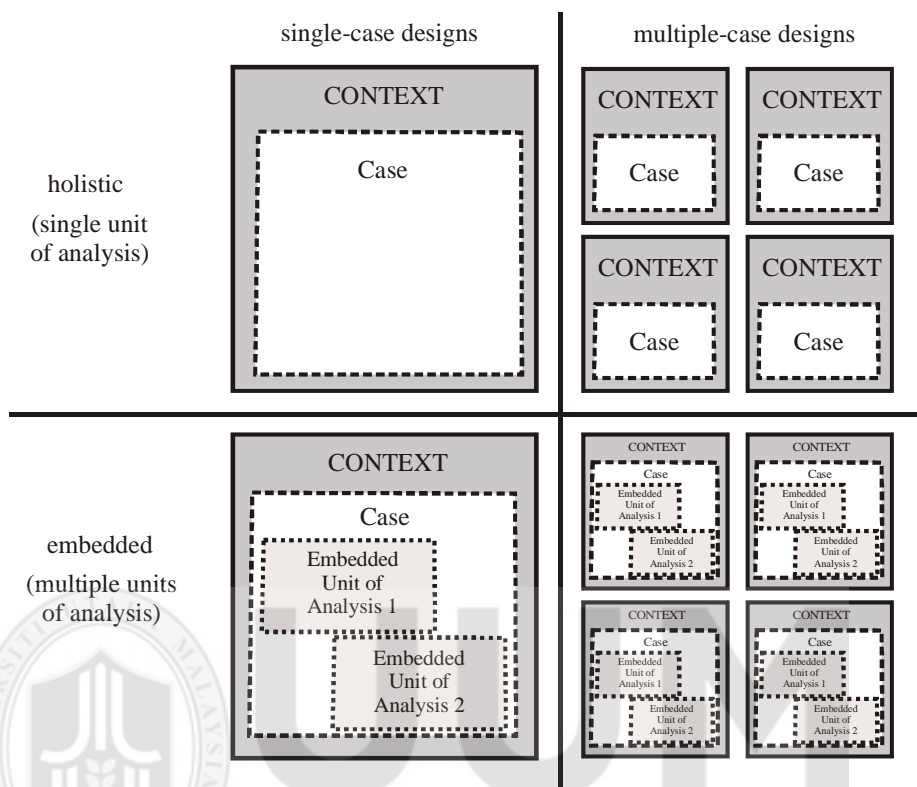
<sup>18</sup> Ibid., 13, 53; Stake, 37.

<sup>19</sup> Patricia Duff, *Case Study Research in Applied Linguistics*, Second Language Acquisition Research. Monographs on Research Methodology (New York: Lawrence Erlbaum Associates, 2008).

<sup>20</sup> Dul and Hak, 5; Patton, 41; Stake, 44.



differentiates contexts, cases, and units of analysis but concedes that “the boundaries between the case and the context are not likely to be sharp.”<sup>21</sup>



**Figure 3.1: Types of Case Study Research**

The research study employs a multiple case study which is in line with what Yin<sup>22</sup> has argued about the appropriateness of multiple-case studies to follow a replication rather than a sampling logic. Accordingly, multiple cases would belong to the same study due to the expected similar results through replication. Similar results from such replications will prove the higher confidence in the overall results. Consistent findings over multiple cases would imply a very robust finding.<sup>23</sup>

<sup>21</sup> Yin, *Case Study Research: Design and Methods*, 39.

<sup>22</sup> Yin, *Applications of Case Study Research*; Yin, *Case Study Research: Design and Methods*.

<sup>23</sup> Yin, *Applications of Case Study Research*, 33-35.

Multiple-case designs, if done well, can provide compelling evidence of a phenomenon and are preferable to single-case studies, according to Yin, although not all case study methodologists agree or feel so strongly about this matter. However, this supposed advantage must be weighed against the time and other resources needed to include additional cases and the resulting trade-offs in depth of analysis between a study of one and a study of two or more.

Furthermore, multiple-case studies also increase the sense of representativeness of, or variation among, cases.<sup>24</sup> In Stake's view, multiple-case studies (which he also calls a collective case study) are instrumental in nature: "Similarity or dissimilarity are possible and redundancy and variety are present. The underlying preference to the employment of multiple-case studies is the perceived better understanding and probable better theorizing about cases at larger collection".<sup>25</sup>

### 3.5.2 Case Selection

Case study seeks to understand the experience.<sup>26</sup> A case study may be used if the research questions are descriptive; if the research questions seek an explanation and asks how or why.<sup>27</sup> Case study helps understand what shape Indonesian domestic workers consciousness, what are barriers in accessing legal justice, how do they transform their legal consciousness in processing dispute, why "naming, blaming and claiming" made, how they are implemented and the results of decision made. The focus is on contemporary events, in this case, the transition and decisions made in

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<sup>24</sup> Duff.

<sup>25</sup> Robert E Stake, "Qualitative Case Studies," in *Sage Handbook of Qualitative Research*, ed. N. K. Denzin and Y. S. Lincoln (Thousand Oaks, CA: SAGE Publications, 2005), 446.

<sup>26</sup> Stake, *The Art of Case Study Research*; Yin, *Applications of Case Study Research*; Yin, *Case Study Research: Design and Methods*.

<sup>27</sup> Yin, *Case Study Research: Design and Methods*.

transforming process of legal dispute. Cases must be bounded.<sup>28</sup> The case studied here is the Indonesian domestic workers who experienced mistreatment during the service, but in that study individual domestic workers' stories were heard as well. The goal is a depth of understanding of the experience.<sup>29</sup> The objective of this research was to understand Indonesian domestic workers' legal consciousness in accessing legal justice and to describe their transformation process in legal dispute process.

Regarding the number of cases in this multiple case studies, there are contrasting views concerning the approach for case study research. There is argument about whether multiple or single case studies are suited for creating good theory. On this matter, Eisenhardt<sup>30</sup> took the stance that "while there is no ideal number of cases, a number between 4 and 10 usually works well". Hence, the research examined 7 (seven) cases with maximum representation and variations.

### **3.6 Data Collection**

#### **3.6.1 Participants of Data Collection**

##### **3.6.1.1 Mistreated Indonesian domestic workers**

In this study, mistreated Indonesian domestic workers were entities that constituted cases. Those 7 (seven) Indonesian domestic workers involved in this study had distinguished themselves from the majority of domestic workers who experience mistreatment during their service in Malaysia. They were representatives of unique phenomena, which are rarely accessible to scientific investigation.

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<sup>28</sup> Creswell.

<sup>29</sup> Stake, *The Art of Case Study Research*; Yin, *Applications of Case Study Research*; Yin, *Case Study Research: Design and Methods*.

<sup>30</sup> K. M. Eisenhardt, "Building Theories from Case Study Research," *Academy of Management Review* 14, no. 4 (1989).

When the fieldwork was started, the main concern was how to access and to make contact with Indonesian domestic workers who were working in the West Malaysia. This problem primarily resulted from the fact that the employers strictly restrict their movements and the domestic workers are almost always within their controlling gaze. If they are fortunate, they will enjoy very precious but limited rest days once a fortnight or once a month.

To deal with such a restrictive problem, the project had in-depth interview with the returning Indonesian domestic workers who happened to have conflict with their employers during their term of employment in Malaysia.

One common design to recruit participants for multiple cases is deploying snowball sampling or non-probability sampling. With this technique, the recruited subjects recruit other subjects with whom they are familiar. In this way, the number of sample seems to get bigger like a rolling snowball (similar to breadth-first search (BFS) in computer science). The gradual sample size increase will lead to adequate collection of data. Researchers will get much benefit from this way of data collection in particular when the targeted population is beyond the researcher's outreach such as those groups of drug users or sex workers. Such is also the case for the mistreated domestic workers.

This sampling technique also allows the researcher to establish the representativeness of the cases presented, and apply the selection of 7 (seven) cases based on the following criteria:

- representing four different mistreatment experience — physical, psychological, sexual, and financial mistreatment

- providing data to address a range of themes
- across different educational background
- across different origins

Since the primary objective had been to identify individuals who would be willing to be interviewed for this project, participants were asked to include their Informed Consent Form if they were willing to be interviewed.

Thus, the case selection aimed at seeking maximum variation across participants to examine the intersection of types of mistreatment, individual indifference, and culture. It also ensures that the case variations capture the entire range of variations in dispute processing choices that take place within the setting of cases.

### 3.6.1.2 Employers

The relationship between employers and female domestic workers has been covered extensively in Huang, Teo, Yeoh, Rahman, Devasahayam and Gonzalez III<sup>31</sup> and also Bell.<sup>32</sup> In fact, it is the employers who dictate the nature of domestic work and employment terms.<sup>33</sup> Since domestic workers have been subjects of employers in receiving countries, employers are among key participants in this research that offers interesting information on issues of the research.

<sup>31</sup> S. Huang, P. Teo, and B. S. Yeoh, "Diasporic Subjects and Identity Negotiations: Women in and from Asia," *Women's Studies International Forum* 23, no. 4 (2000); S. Huang, B. S. Yeoh, and N. A. Rahman, eds., *Asian Women as Transnational Domestic Worker* (Singapore: Marchall Cavendish Academic, 2005); B. S. Yeoh and S. Huang, "Negotiating Public Space: Strategies and Styles of Migrant Female Domestic Workers in Singapore," *Urban Studies* 35, no. 3 (1998); B. S. Yeoh, S. Huang, and T. W. Devasahayam, "Diasporic Subjects in the Nation: Foreign Domestic Workers, the Reach of Law and Civil Society in Singapore," *Asian Studies Review* 28, no. (1999); B. S. Yeoh, S. Huang, and J. Gonzalez III, "Migrant Female Domestic Workers: Debating the Economic, Social and Political Impacts in Singapore," *International Migration Review* 33, no. 1 (1999); Brenda S. A. Yeoh, Shirlena Huang, and Theresa W. Devasahayam, "Diasporic Subjects in the Nation: Foreign Domestic Workers, the Reach of Law and Civil Society in Singapore," *Asian Studies Review* 28, no. (2004).

<sup>32</sup> Daniel A Bell, "Employers and Domestic Workers: A Confucian Approach," *Dissent* Winter, no. (2008).

<sup>33</sup> R. Ariffin, *Domestic Work and Servitude in Malaysia* (South Australia: Hawke Institute, University of South Australia Magill, 2001), 5.

Interviews with three employers who had employed Indonesian domestic workers for several years yielded interesting information on issues of control and of the stereotypical identities of Indonesian domestic workers. To obtain different detailed information, employers with different backgrounds were interviewed. The employers were represented by different professional background: a male lecturer at the university, a female retired person, and a female businesswoman.

### **3.6.1.3 Domestic Workers Agencies**

Domestic workers Agencies are “indispensable actors”<sup>34</sup> in Indonesian domestic workers migration and employment in Malaysia. Besides rendering administrative services and 'tailor-maid' training, domestic workers agencies are also expected to serve as intermediaries in cases of disputes between employers and domestic workers.<sup>35</sup> With their extensive links within and across national boundaries, domestic workers agencies have considerable power which presumably shapes Indonesian domestic workers' legal consciousness.

The interview was conducted with three domestic employment agencies in three different sites: one in Kuala Lumpur Malaysia and two others in Tangerang Indonesia. They were mostly specialists in Indonesian domestic workers. They were formally interviewed during the business hours for approximately one to one and a half hours. The interviews were semi-structured and covered the following topics:

- Industrial practices of maid agents.
- Market niche of Indonesian domestic workers in Malaysia

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<sup>34</sup> Christine B. N. Chin, "Walls of Silence and Late Twentieth Century Representations of the Foreign Female Domestic Worker: The Case of Filipina and Indonesian Female Servants in Malaysia," *International Migration Review* 31, no. 2 (1997): 375.

<sup>35</sup> Ibid; Nicole Constable, *Maid to Order in Hong Kong : Stories of Filipina Workers* (Ithaca, N.Y.: Cornell University Press, 1997).

- Factors underlying the rising popularity of Indonesian domestic workers in Malaysia.
- Problems and issues surrounding the employment of Indonesian domestic workers as perceived by maid agents.

#### **3.6.1.4 Officials of Indonesian Embassy and Consulate General**

Officials of Indonesian Consulate General, Indonesian Embassy were among key participants in the research. Their participations were crucial to assess the services provided by both countries and their perspectives of the main issues confronting Indonesian domestic workers in Malaysia. Their positions as representatives of the sending state offered windows into the institutional power of the state in governing the lives of domestic workers. In fact, national legal elites provided forms of translation that facilitate the expansion of the global human rights regime.<sup>36</sup>

Initially, when the research proposed to have a formal research at the Indonesian Embassy in Kuala Lumpur and the Consulate General in Penang, the researcher got implicit refusal. They declined the proposal by claiming that no relevant information about Indonesian domestic workers could be obtained at the shelters of Indonesian Embassy and Consulate since the majority of the workers held elementary schooling level. Eventually, informal interview was conducted with 2 officials in charge of conflict resolution between Indonesian domestic workers and the employers.

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<sup>36</sup> Sally Engle Merry, "New Legal Realism and the Ethnography of Transnational Law," *Law & Social Inquiry* 31, no. 4 (2006): 992-993.

### 3.6.1.5 Non Governmental Organizations (NGOs)

There has been great number of reports documented by nongovernmental organization concerned with female foreign domestic workers' welfare in Malaysia<sup>37</sup> and in other countries, like in Saudi Arabia<sup>38</sup>, Morocco<sup>39</sup>, Indonesia<sup>40</sup>, Singapore<sup>41</sup>, Thailand<sup>42</sup>, and Guinea. Nongovernmental organization like Migrant Care has played a vital role in advocating especially mistreated domestic workers, though "their efforts have met with little success".<sup>43</sup> Merry stressed the importance of examining the role of such intermediaries as national legal elites, NGOs, middle-level social movement leaders, and local activists who have paid particular attention to such marginalized women in order for us to get a holistic comprehension about the transnational law enactment.<sup>44</sup>

However, due to their being busy for face-to-face interview, interview with the officials of the Migrant Care was conducted through the telephone. The use of telephone interviews in social research has been criticised because it is commonly associated with mass surveying and marketing polls and could be ineffective when

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<sup>37</sup> Human Rights Watch (Organization) and Nisha Varia, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004).

<sup>38</sup> see Human Rights Watch (Organization) and Nisha Varia, *"As If I Am Not Human" : Abuses against Asian Domestic Workers in Saudi Arabia* (New York: Human Rights Watch, 2008), 9781564323514 (pbk.)

156432351X (pbk.).

<sup>39</sup> see Clarisa Bencomo, *Inside the Home, Outside the Law: Abuse of Child Domestic Workers in Morocco* (New York: Human Rights Watch, 2005).

<sup>40</sup> Human Rights Watch (Organization), Sahr Muhammed Ally, and Alan R. Finberg, *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia* (New York: Human Rights Watch, 2005).

<sup>41</sup> Human Rights Watch (Organization) and N Varia, *Maid to Order: Ending Abuses against Migrant Domestic Workers in Singapore* (New York: Human Rights Watch, 2005).

<sup>42</sup> Vachararutai (Jan) Boontinand, *Domestic Workers in Thailand: Their Situation, Challenges and the Way Forward* (Geneva: International Labour Organization, 2010).

<sup>43</sup> Chin: 375.

<sup>44</sup> Merry: 992.



used on certain groups who are not articulate. However, Taylor<sup>45</sup>, based on her own experience researching adolescent boys who participated in a vocational and training programme in Australia, noted that the telephone is a 'surely good tool of research to obtain the abundantly available and valid data when prior personal contact is needed'.<sup>46</sup> She argued that the use of telephone itself is not problematic and stressed that what was more important was the association of its use with a particular style of research. Taylor noted that in her case the use of telephone is justified because unlike market researchers, the conversation between interviewers and interviewee occurred to some degree in a 'shared world'.<sup>47</sup>

### 3.6.2 Methods of Data Collection

Through interview and observation, a qualitative research will effectively obtain the expected and required data.<sup>48</sup> This study employs the two techniques to examine legal consciousness of mistreated Indonesian domestic workers within the framework of Malaysian legal system. As stated before, case study often multiple methods and triangulation of data, this research also used documentary to access secondary data.

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<sup>45</sup> A Taylor, "I'll Call You Back on My Mobile: A Critique of the Telephone Interview with Adolescent Boys," *Westminster Studies in Education* 25, no. 1 (2002).

<sup>46</sup> Ibid., 19.

<sup>47</sup> Ibid., 31.

<sup>48</sup> C. Miller and J. Salkind, *Handbook of Research Design and Social Measurement*, 6 ed. (USA: Sage Publications, 2002), 163; H. Strydom, CB. Fouche, and CLS. Delpont, *Research at Grass Roots for the Social Sciences and Human Service Professions*, 2 ed. (Edited by AS de Vos. Pretoria: J.L. van Schaik Publishers, 2002), 321.

### 3.6.2.1 Interview

Strydom, et al.<sup>49</sup>, define interview in qualitative research as a two-sided conversation. Accordingly, both participants' experiences and the reflection are implicated as well. Likewise, Babbie<sup>50</sup> suggests interactive communication between the interviewer and the interviewee in qualitative interviewing. Meanwhile, Babbie<sup>51</sup> advises rather differently that the interviewer uses structured questions and employed guided interview. The next phase will be following up to the identified specific issues. The maximum time reserved for the interviewer when conducting an interview is 5%.

In-depth semi-structured interviews were made with 8 (eight) Indonesian domestic workers. Additionally, other relevant interviews were also selectively conducted with other respondents. Informed consent was obtained to ensure their agreement with the tape-recorded and transcribed interviews. Review by respondents was allowed, and when appropriate, they were allowed to make correction to the content of the interview upon the transcription.

The twenty open-ended questions were based on what had been found in the first survey and were tested in advance on two IDWs who were selected from the same target population. These two IDWs were later excluded from the full study. The main issues were whether they were persistently mistreated and whether they had difficulties in resolving legal disputes. Additionally, respondents were asked about the details of the cases. To ensure that the interview was clear and relevant to the objective of the study, the respondents had debriefing.

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<sup>49</sup> Strydom, Fouche, and Delport, 292.

<sup>50</sup> E. Babbie, *The Practice of Social Research*, 10 ed. (Belmont, CA: Thomson/Wadsworth, 2004), 300.

<sup>51</sup> *Ibid.*, 299.

The interview of other participants apart from domestic workers was conducted in different types of interviews. Based on Chin<sup>52</sup> and Rahman's<sup>53</sup> experiences, most of employers, domestic workers agencies and officials were reluctant to be interviewed with different types of reasons. Therefore, informal conversational interview (unstructured) on certain occasion and telephonic interviews were applied. This face-to-face interaction was intended to merely collect such factual information as values, attitudes and perceptions otherwise correct interpretation would have not been possible.

### **3.6.2.2 Documentary**

Secondary data used in this research includes reports from newspaper and other media sources and a report published by the KBRI. Newspaper articles from Malaysia, in particular those published in The Straits Times, the English language daily, are important secondary materials especially for examining development of relevant national policies and keeping up to date with public debates surrounding employment of female domestic workers and in particular Indonesian domestic workers in Malaysia.

## **3.7 Data Analysis**

Qualitative analysis requires that data is collected and analyzed simultaneously.<sup>54</sup> In this qualitative study, the text and image derived from interviews, documents and elicitation materials. They were coded and analyzed for themes using the Qualitative Software and Research (QSR) NVivo8.

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<sup>52</sup> Christine B. N. Chin, *In Service and Servitude : Foreign Female Domestic Workers and the Malaysian "Modernity" Project* (New York: Columbia University Press, 1998).

<sup>53</sup> N. A Rahman, "Negotiating Power: A Case Study of Indonesian Foreign Domestic Workers (Fdws) in Singapore" (Curtin University of Technology, 2003).

<sup>54</sup> Sharan B. Merriam, *Case Study Research in Education : A Qualitative Approach*, 1st ed., The Jossey-Bass Education Series (San Francisco: Jossey-Bass, 1988).

In qualitative analysis some steps are taken. First, data is explored by reading the transcripts and writing memos. Second, data is coded by text segmentation and labelling. Third, themes are developed by combining the similar codes. Fourth, themes are connected and interrelated. Fifth, narrative is constructed.<sup>55</sup> To expand further discussion, the visual data display was created to show the developing conceptual framework of the factors and relationships in the data.<sup>56</sup>

To analyze the data, each case of physical, psychological, sexual and financial mistreatment has to be specifically and contextually described since case description and themes are related with the specific activities and situations involved in the case.<sup>57</sup> Contextually, this analysis is rich to present itself.<sup>58</sup> To have a clear perspective about some incidents, chronology, and major events, the researcher has to make up-close description.

Two phases of analysis are performed in multiple case study design: within each case and across the cases.<sup>59</sup> Data can be either holistically analyzed from the whole cases or specifically analyzed from particular aspects of.<sup>60</sup> In this study, the themes of the selected Indonesian domestic workers were analyzed. Subsequently, analysis was made to all cases to identify either common or different themes and to measure the degree of similarity and difference of the effects of internal and external factors on the legal dispute resolution. Finally, the meaning of the cases and was interpreted and

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<sup>55</sup> Creswell.

<sup>56</sup> M. B. Miles and A. M. Huberman, *Qualitative Data Analysis* (Thousand Oaks, CA: SAGE Publications, 1994).

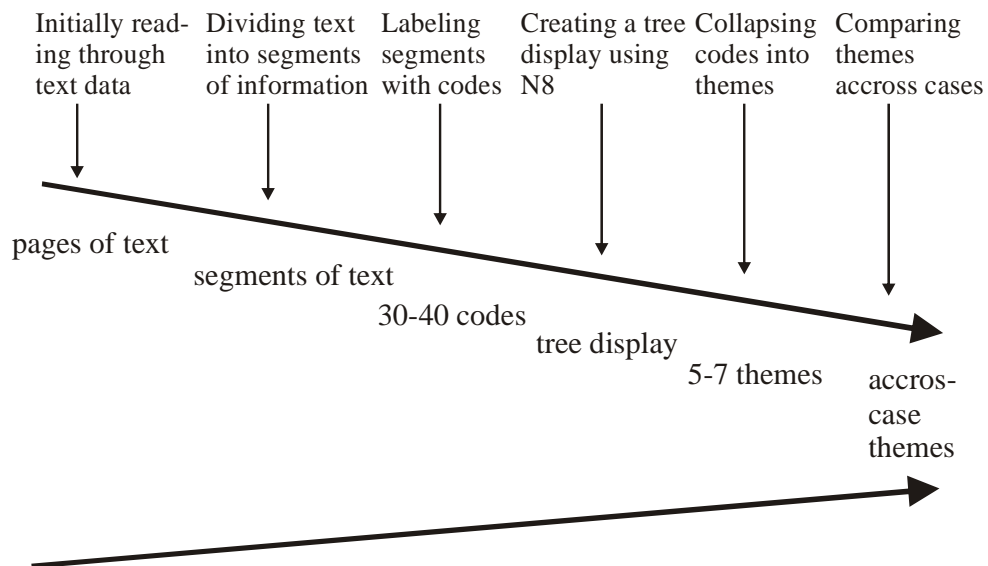
<sup>57</sup> John W. Creswell and R. C. Maietta, "Qualitative Research," in *Handbook of Social Research*, ed. D. C. Miller and N. J. Salkind (Thousand Oaks, CA: SAGE Publication, 2002).

<sup>58</sup> Sharan B. Merriam, *Qualitative Research and Case Study Applications in Education*, 2nd ed. (San Francisco: Jossey-Bass Publishers, 1998).

<sup>59</sup> Stake, *The Art of Case Study Research*.

<sup>60</sup> Yin, *Case Study Research: Design and Methods*.

the “lessons learned” were reported.<sup>61</sup> See Figure 3.2. for the visual model of qualitative analysis for this study.<sup>62</sup>



**Figure 3.2. : Visual Model of Qualitative Data Analysis**

### 3.8 Advantages and Limitation

The methodological approach selected for this project has some distinctive advantages. First of all, it allows the researcher to obtain a deep and contextualized description of the social, cultural and institutional environments that shape legal consciousness of Indonesian domestic workers; secondly, it makes possible the gathering of data through different empirical methods; and lastly, it gives an opportunity to explore a social phenomenon in its real-life form and to analyze it from a sociological perspective, in a way that has been generally overlooked by socio-legal scholars.

However, as for the limitations, perhaps there are two issues - as is true of any case study should be addressed. The first is generalizability, or in other words, can

<sup>61</sup> Lincoln and Guba, *Naturalistic Inquiry*.

<sup>62</sup> Adapted from Creswell and Maietta, "Qualitative Research."

findings be seen as useful beyond the individual case and further generalized? The second one is objectivity, in the sense that the research should offer genuinely objective results, not simply subjective researchers' judgment.

Generalizability is the first disadvantage. In positivist experiments, which are generally quantitative, it plays a very important role to ensure that the findings are relevant, significant and externally valid when applicable for other situations or people. Generalizability contributes to the process of establishing the nature of inferences of the findings and measures the applicability in larger population, in different environmental conditions, and more universal theory.<sup>63</sup> However, generally in qualitative research and particularly in case study, "a single case or non-random sample is selected precisely to understand the particular in depth instead of the general truth of the many".<sup>64</sup> Likewise, Stake suggests that "the search for particularity [in a case, or a biography] is in competition with the search for generalizability."<sup>65</sup>

The second is claim of subjectivity in qualitative research is true to some extent, but could also be levelled against much research of all types. Using personal judgment in making research decisions, framing studies based on earlier research, and drawing interpretations and conclusions are involved in all research, although some research may have more procedures in place to establish reliability, for example, in the consistency of ratings or other judgments, or to establish the replicability or consistency of observations. Stake<sup>66</sup> concedes that "the intent of qualitative

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<sup>63</sup> Duff.

<sup>64</sup> Merriam, *Case Study Research in Education : A Qualitative Approach*, 208.

<sup>65</sup> Robert E Stake, *Multiple Case Study Analysis* (New York & London: The Guilford Press, 2006).

<sup>66</sup> Stake, *The Art of Case Study Research*, 45.

researchers to promote a subjective research paradigm is a given. Subjectivity is not seen as a failing needing to be eliminated but as an essential element of understanding”. However, he also explains that “subjective misunderstandings” must be put to the test by making efforts to try to disconfirm one’s own interpretations.

To make sure that the information found in the study was credible and matches to the reality, it was validated by four primary forms used in the second phase of qualitative study<sup>67</sup>: (1) triangulation, which is the converging of different information sources such as interviews, documents, and artefacts; (2) member checking, which is the participants’ feedback whether the identified categories and themes are accurate; (3) making rich and thick description about the findings; and (4) external audit, which is welcoming external review and report.<sup>68</sup>

### **3.9 Concluding Remark**

Research methodology has to be properly employed to obtain the expected results. Qualitative method is considered appropriate for this study since this study aims at exploring and identifying the dynamics of legal consciousness establishment among Indonesian migrant domestic workers who are believed to have experienced legal discrimination and occupational mistreatments and abuses. This type of methodology is suitable to portray the real daily life of Indonesian migrant domestic workers in Malaysia. This qualitative method enables the perfect interaction between the participants and researchers to generate subjective data, which is characteristically contextual and situational.

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<sup>67</sup> Merriam, *Case Study Research in Education : A Qualitative Approach*.

<sup>68</sup> Creswell, *Qualitative Inquiry & Research Design : Choosing among Five Approaches*.

Using questionnaires, in-depth interviews, and documentary research, this methodology can effectively identify the daily experience of Indonesian migrant domestic workers in normal and contextual settings. Case study employed in this study is suitable since it is contextually arranged to result in dynamic process with multivariates. Done in this way, transformative process, which is one of the characteristics of dynamics of qualitative research, will be clearly portrayed. How Indonesian migrant domestic workers develop legal consciousness is a transformative and dynamic process from accepting the defeat to claiming the rights and redress against the perpetrators.





## **CHAPTER FOUR**

### **RESEARCH BACKGROUND**

#### **4.1 Introduction**

In order to have reliable knowledge about the social, economic, and political condition of Indonesia, it would be advisable to first know the migration process among these Indonesian migrant workers. Of equal importance, it is necessary to identify how labour migration has grown.

In the following section, we would like to see why domestic workers' rights are denied by the policies and rules enforced by the Malaysian government. The legal framework for Indonesian migrant workers in Malaysia will necessarily be elaborated and criticized. The latter part will unveil the Indonesian-Malaysian Memorandum of Understanding. And finally, international law pertaining protection for migrant domestic workers will be discussed briefly at the end of this chapter.

#### **4.2 Malaysia: General Context**

Malaysia covers an area of about 330,803 square kilometers, consisting of states in Peninsular Malaysia, namely Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Perak, Perlis, Penang, Selangor, Terengganu and the Federal Territories of Kuala Lumpur and Putrajaya; Sabah and Sarawak on the island of Borneo and the

Federal Territory of Labuan off Sabah. Malaysia lies entirely in the equatorial zone and the average daily temperature throughout Malaysia varies from 21C to 32C.<sup>1</sup>

Being a multiethnic country, Malaysia is the home for two largely categorized ethnic groups: indigenous citizens and non-indigenous citizens. Indigenous citizens comprise Malayan ethnic and other indigenous people, while non-indigenous status is attributed to such ethnics as Chinese, Indian, White, and other minority groups.

Historically, some rulers had exercised power to the Malays, including the Buddhist Kingdom of Srivijaya and the Hindu Kingdom of Majapahit during the period of the ninth to the thirteenth centuries and in the fourteenth century respectively. Islam took the power in the fifteenth century, when the state of Malacca prospered.<sup>2</sup> The great transformation was dominantly carried on by Indian traders, adventurers, teachers and priests in South East Asia until about A.D. 1500. Since then, Indians were the rulers in the early states in these regions. India had been the source of the teaching of Hinduism and Buddhism for many centuries in these regions. Gradual transformation had occurred and finally these regions were predominantly Buddhist. The strategic position of Malaysia with its maritime advantages in the Pacific trade routes, Malaysia allured such colonial empires as Portuguese, Dutch, British, and Japanese that colonized the state in 1511, 1641, 1795, and 1942 respectively. In spite of the colonial ruling by the British Empire was the longest among the three colonial rulers since it lasted until the twentieth century with a 3-year power interruption by the Japanese during World War II. Malaysia joined Singapore, Sabah and Sarawak in

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<sup>1</sup> Prime Minister's Department Economic Planning Unit, "The Malaysian Economy in Figures 2013 " (2014). <http://www.epu.gov.my/documents/10124/2257e64f-b08d-41b7-bed0-b6e6498c38a3>.

<sup>2</sup> Barbara Watson Andaya and Leonard Y. Andaya, A History of Malaysia, 2nd ed. (Honolulu: University of Hawai'i Press, 2001).

the Federation of Malaysia in 1963 although Singapore finally claimed independence in 1965.<sup>3</sup>

As one of the prosperous economies in the region, Malaysia was successfully passing the brief recession during the Asian financial crisis in 1998,<sup>4</sup> as indicated by the quick recovery and robust growth rate. Malaysia's industrialization grows faster than other countries in Asia. Despite its abundant rich natural resources and primary products, Malaysia has focused more on human resource development through a medium-term economic plan oriented on training policies.

The focus on human resource development policy has been considered to have contributed much to Malaysia's positive economic growth and social development as well. Such these policies oriented to human resource development have put the people of Malaysia in high-grade employment and successful business. While giving up such low-ranked works as plantation workers, manufacture employees, and housemaids. Accordingly, vacant job opportunities have allured the unemployed from the neighboring countries like Indonesia to take the positions. In addition, the long colonial tradition of reliance on foreign workers has been nourished the growing need for migrant workers, in particular for lower-ranked works.

#### **4.2.1 Foreign Workers in Malaysia**

The influx of foreign workers in Malaysia has started since the 1880s. The end of the 19th century and the beginning of the 20th was signified by the large number of mostly male Chinese and Indian workers in Malaysia. Some Chinese workers

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<sup>3</sup> J. Baker and J.M. Baker, *Crossroads: A Popular History of Malaysia and Singapore* (Times Books International, 1999).

<sup>4</sup> Edmund Terence Gomez and K. S. Jomo, *Malaysia's Political Economy : Politics, Patronage and Profits*, 2nd ed. (Cambridge ; New York: Cambridge University Press, 1999).

worked in tin mines, while some others in sugar, coffee, and rubber plantations. Such was also the case for some Indian workers, some of whom were employed in the construction of roads, railways and public utility services.<sup>5</sup>

Historically, the Malaysian economy has been characterized by the strong reliance on foreign workers as it has been practiced since the colonial era. The official data shows that in 1996 the total foreign workers in Malaysia were more than 745,000. The massive legalization scheme enacted a year later has doubled the figure to more than 1,470,000.<sup>6</sup> The formal estimates have excluded the even larger number of undocumented workers, which was in the estimated range of several hundred thousand to more than one million. It is estimated that the foreign labor has accounted to be as much as 15-30% of the country's labor force.<sup>7</sup> Despite the government's repeated claim of temporary measure to fill up the labor gaps resulting from Malaysia's enormous economic success, the practice even grew further. The data show that by 2006 the number of documented foreign workers in the country had risen to 1,820,000 while the number of undocumented foreigners was estimated at about half that number. Foreign workers in Malaysia numbered 3.5 million as of mid-2011, comprising 1.5 million legal foreign workers and 2 million illegals. It seems that the practice of foreign worker recruitment will continue in future time.

With 2.6 percent unemployment rate resulting from the rapid industrialization in the export oriented industries, Malaysia has technically reached the level of full

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<sup>5</sup> Blanca Garcés-Mascreñas, "Continuities and Discontinuities of Labour Migration Regulations in Malaysia. From Colonial Times to the Present," in *Gender and irregular migration in a global and historical perspective* (Leiden: University, The Netherlands, 2006), 1.

<sup>6</sup> Azizah Kassim, "Integration of Foreign Workers and Illegal Employment in Malaysia," in *International Migration in Asia, Trends and Policies*, ed. OECD(OECD, Japan Institute of Labour, 2001), 132.

<sup>7</sup> Rajah Rasiah, "Malaysia's Recovery from the Burst Bubble," in *Beyond the Asian Crisis: Pathways to Sustainable Growth*, ed. Anis Chowdhury and Iyanatul Islam(Cheltenham, UK: Edward Elgar), 169-171.

employment.<sup>8</sup> The resulting industrialization led to a massive population shift to urban areas as the Malaysian economy shifted from commodity production to manufacturing.<sup>9</sup> The economy has undergone dramatic growth with per-capita real domestic product of 1976 twice as much as that of 1950. As commonly experienced by other Asian neighbors, the shift from high to low fertility is prevalent in Malaysia. Likewise, Malaysia has shifted from a labor-surplus and the low - wage economy to a labor-deficit and high-wage economy.<sup>10</sup> The annual growth was 7.5 percent (on average) in the 1980s and 9.0 (on average) 7 between 1990 and 1995 while the annual Labor supply increase was only 2.9 percent. GDP growth increased to 8.5 percent in 2004, compared to 5.8 in 1999. According to Kassim this resulting labor shortcoming was worsened by the increasingly selective attitudes of local labor.<sup>11</sup> As education and living standards improved, Malaysian youths would not accept the low status work. Migrant labor filled up the gap to ease the problem faced up by many manufacturing units in the mid 1980s in Malaysia. Having in such a deep trouble in Malaysia, particularly in the period of 1997 – 98 some companies were thinking to relocate their units to the labor-abundant countries for cheaper wage.

To deal with such an employment problem, workers from Indonesia, Thailand and Bangladesh were imported. This policy has contributed much to the economic development in Malaysian history. Tin mine, infrastructure projects, and service sector are some of the business that employs foreign workers. Since the

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<sup>8</sup> Prema-chandra Athukorala and Chris Manning, *Structural Change and International Migration in East Asia : Adjusting to Labour Scarcity* (South Melbourne ; New York: Oxford University Press, 1999), 149,156.

<sup>9</sup> Patrick Pillai, *People on the Move. An Overview of Recent Immigration and Emigration in Malaysia* (Kuala Lumpur: Institute of Strategic and International Studies, 1992).

<sup>10</sup> Rasiah.

<sup>11</sup> A Kassim, "Economic Slowdown and Its Impact on Cross-National Migration and Policy on Alien Employment in Malaysia," in *Migration and the Labour Market in Asia*, ed. Organisation for Economic Cooperation and Development(Paris: Organisation for Economic Cooperation and Development, 2002).

independence in 1957, Malaysia has enjoyed sustainable high economic growth through the increase of migrant workers.<sup>12</sup>

There had been an increase in the number of foreign workers. While it was only 136,000 persons in the early 1980s, it turned to be 1.1 million in 2000. . Home Minister Datuk Seri Hishammuddin Tun Hussein said as of July 31, 2012, there were 1,581,264 legal foreign workers in Malaysia. "This total represents foreign workers who are paid legally and were issued temporary work passes by the Immigration Department," he said.<sup>13</sup>

While in early 1970s, agricultural sectors absorbed most foreign workers, by 1990 only 48% of total foreign workers worked in these sectors. In later times, foreign workers worked in nearly all sectors of the economy, including manufacturing (30.5%), services (25%), agriculture (24.7%) and construction (19.8%). Belonging to services were restaurants, hotels and as domestic maids. A significant increase was observed for the number of domestic maids, which were only 75,300 persons in 1997 to 261,006 persons by July 2004. Among this number, 67% of the domestic maids had no formal education or elementary teaching background.

For over the past decade, Malaysia has over dependence on the foreign workers the number of foreign workers has increased gradually in Malaysia. According to the Economic Report 2010/2011 by the Finance Ministry, there were 1.8 million registered foreign workers in Malaysia, 38.2% were employed in the manufacturing sector, 16% in the construction and 14.2% in the plantation sectors. Indonesia

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<sup>12</sup> Athukorala and Manning.

<sup>13</sup> Yuen Meikeng, (2012). <http://www.thestar.com.my/News/Nation/2012/10/24/Indonesians-make-up-nearly-half-of-the-158-million-legal-foreign-workers-in-the-country/> (accessed October 24, 2012 ).

accounted for the highest number of registered foreign workers in Malaysia at 50.9%, followed by Bangladesh was second highest, accounting for 17% of the total foreign workers in Malaysia, Nepal at 9.7%, Myanmar, 7.8%, India, 6.3% and Vietnam, 4.2%.<sup>14</sup>

#### **4.2.2 Indonesian Migrants in Malaysia**

Historically, the migration of Indonesians in Malaysia had started since Indonesian independence and went on through the late 1980s. The influx of Indonesians into Malaysia on their own accord had fulfilled the need for foreign labor. The long-standing ties and ethnic and linguistic similarities have made Indonesians historically not seen as 'foreigners'. In answer to the increasing number of foreign workers from additional countries to Malaysia, the country accordingly issued more rules of migration. Despite the consistent influx of undocumented labor migration to Malaysia, migration became more and more institutionalized. The reserved works for migrant workers were largely limited to domestic services, plantation, and construction in the early 1990s. The data reveals that in 1991, it was estimated that 70% of all workers in construction were foreign while by 1994, 60% of all plantation workers were migrant workers. To fill up the need for manufacturers' requests for foreign labor, in 1992 foreign workers were recruited to operate in this sector on condition that they were utilized for export production only and that the figure did not exceed 30% of a company's total labor force. As described by several studies, the

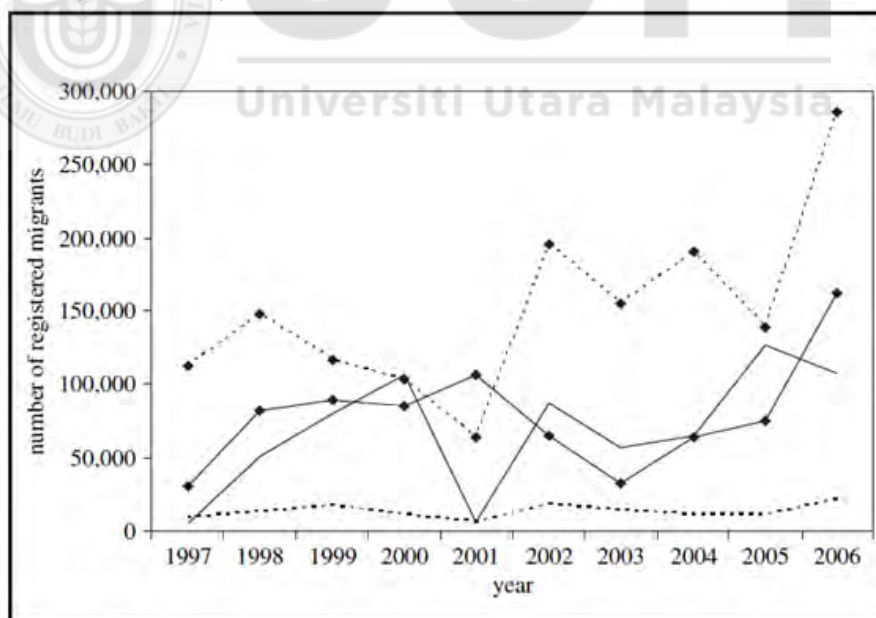
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<sup>14</sup> Charles Ramendran and Peter Yacob, "The Impact of Employment of Foreign Workers: Local Employability and Trade Union Roles in Malaysia " *International Journal of Academic Research in Business and Social Sciences* 2, no. 10 (2012): 530.

percentage of foreign workers engaged by many individual companies is a lot higher than 30%.<sup>15</sup>

Malaysia's Ministry of Home Affairs revealed that in 2006<sup>16</sup>, 1.3 million documented Indonesians and an additional 700,000 illegal migrants, mostly Indonesian worked in Malaysia. Malaysia gets the second greatest number of migrant workers after Saudi Arabia. As depicted in Figure 2 in the previous chapter the steady growth of migration from Indonesia to Malaysia has occurred especially since 2003. Figure 4.1. shows the gender breakdown of the documented migrants to both Malaysia and Saudi Arabia. Soon, the flows to both lands are predominantly female migrants the percentage of which is higher in Saudi Arabia (90 percent) than in Malaysia (60 percent).

Figure 4.1.: Flows of Indonesian Migrant Workers to Malaysia and Saudi Arabia (1997-2006)



Source: Ministry of Home Affairs, Malaysia.

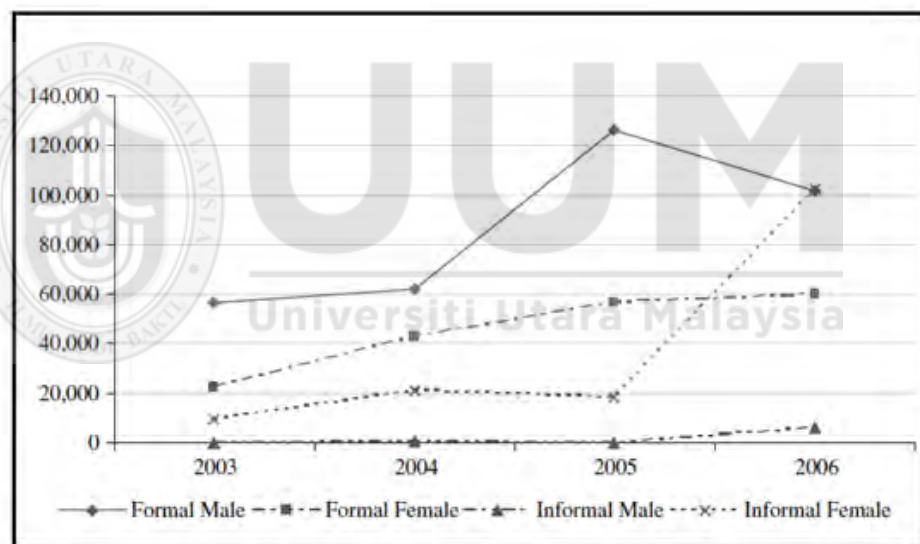
<sup>15</sup> Pillai.

<sup>16</sup> Raúl Hernández-Coss and others, *The Malaysia-Indonesia Remittance Corridor: Making Formal Transfers the Best Option for Women and Undocumented Migrants* ((World Bank Working Paper No. 141). Washington, USA: The International Bank for Reconstruction and Development / The World Bank, 2008), 19.



The data of 2006<sup>17</sup> discloses that about 78 percent of the male migrants migrated to Malaysia and only 16 percent in Saudi Arabia. Meanwhile, the number of female migrant workers in Saudi Arabia was only 52 percent, which is lower than the male counterparts, and 30 percent in Malaysia, which is higher than that of the male gender in the same country. The informal sector has employed forty percent of all Indonesian migrant workers, 90 percent of which are adult females. While the bulk of male migrants is in the formal sector, 60 percent of female migrants work in the loose sector.

Figure 4.2: Gender Trends in Migrant Flow to Malaysia

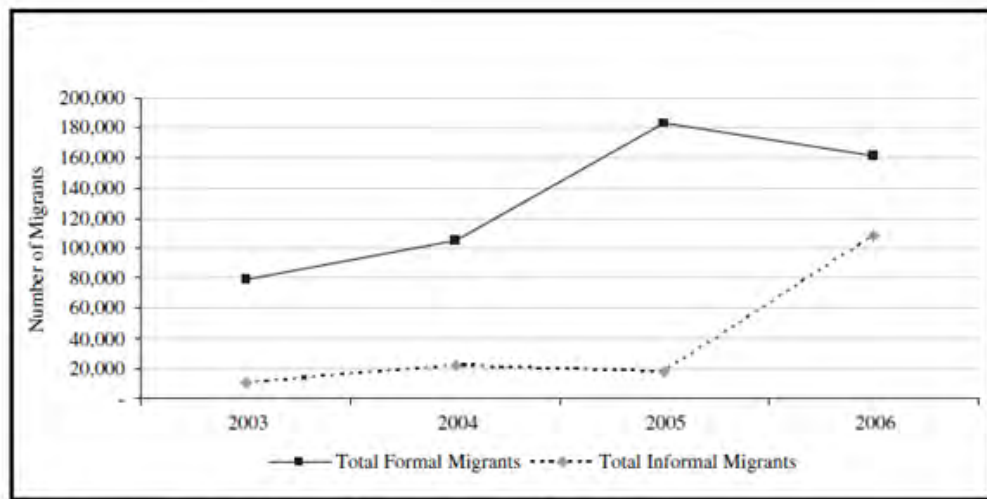


Source: Ministry of Manpower and Transmigration of Indonesia.

Figure 4.2 shows a significantly upward trend of female migrants working in informal sector since 2005. Similarly, as shown in Figure 4.3, since 2005 the total number of migrants (male and female) in the informal sector has increased significantly, which is in contradiction to the declining total number of migrants in the conventional sector.

<sup>17</sup> Ibid.

**Figure 4.3: Trends in Total Formal and Informal Sector Migrant Flows**



Source: Ministry of Manpower and Transmigration of Indonesia.

A number of 1.2 million undocumented workers, 60 percent of which are Indonesian, work in Malaysia.<sup>18</sup> What is intended by an undocumented migrant worker is somebody who moves without a visa, overstays a visa/work permit, or change jobs without following necessary procedures. They are more likely to work on plantations, in construction, agricultural farms, fish ponds, and the service industry. Migrants may travel and stay in other countries illegally for a number of causes. One potential cause is that they go to Malaysia on a tourist visa to join their families. Another reason is counterfeit passports, which implies that they are effectively undocumented migrants, although they took the formal channels. Reasons for remaining undocumented include the high cost structure of the official migration process and a lack of protection for documented workers. Undocumented migrants also include domestic workers who run away and who, according to the Malaysian Association of Foreign Maid Agencies (Persatuan Agensi Pembantu Rumah Asing or PAPA), total 30,000 every year. The bulk of undocumented workers, who end up in

<sup>18</sup> Ibid., 21.

Sabah and Serawak, choose the illegal route due to the proximity to Indonesia. Others get smuggled by middlemen via ferry to the Peninsular Malaysia. They are also likely to work with construction companies and on plantations.

Historically, the migration flows between Indonesia and Malaysia has started since the colonial era. During the period Javanese were recruited as contract *coolies* for the plantation rubber sector in the western Malayan states and Sabah. Spontaneous migration to Malaysia was also prevalent during that point. The informal networks linking Malaysia and Indonesia already in existence before the 1970s and the historical and cultural linkages have played an important role in facilitating migrant flows from Indonesia to Malaysia.

Two mutually endorsing factors of the long tradition of migrant flow from Indonesia to Malaysia and the relatively similar language seem to ensue in the massive migration of Indonesian workers in Malaysia. Workers from East Java, Bawean, Aceh, West Sumatra, Central Java, South Sulawesi and West Nusa Tenggara migrated to the Peninsular Malaysia. Lombok is another source. East Malaysia draws workers, mainly from South Sulawesi and Flores in East Nusa Tenggara. The migration routes for illegal migrants are from East Java and north-east Sumatra to Peninsular Malaysia and Flores-South Sulawesi to Sabah. Although reliable details of age composition are, one study reported that about 84 per cent of the illegal immigrant contract workforce on the Malaysian Federal Land Development Authority Scheme (land settlement) plantations were aged between 20 and 30 years. The workers were generally unskilled and had limited education.<sup>19</sup>

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<sup>19</sup> Graeme Hugo, "Improving Statistics on International Migration in Asia," *International Statistical Review* 74, no. 3 (2006).

The increasing rate of migration to Malaysia was also due to the limited access to domestic employment. The scarce opportunity was thought to result from the increasing rate of agricultural mechanization and modernization in Indonesian development plan since 1969. Another factor was the highly increasing foreign investment with the resultant rural unemployment. Looking up the reality that no domestic work was available, these unskilled laborers perceived foreign employment would be the only prospect. Concurrently, the demand for unskilled labor in Malaysia emerged in the 1980s due to labor shortcomings in the plantation sector, government land settlement schemes and the construction sector. Later, following repeated calls from the Malaysian Agricultural Producers Association (plantation sector), the construction industry (related with the property boom) and close to state governments (notably Johor) for foreign labor recruitment, the Malaysian government approved the introduction of foreign labor into the state despite the firm resistance from the Malaysian Trades Unions Congress (MTUC) for fear of depressed wage levels due to the migrant worker recruitment. In 1993 the manufacturing sector was also allowed to recruit skilled workers from abroad and to hire unskilled workers from the pool of illegal foreign workers already in the country. At the same time, labor demand in the tertiary sector, comprising the entertainment, hotel and restaurant sector and domestic service also increased rapidly, consistent with the rising affluence in the country. The demand for domestic workers corresponded with increased female labor force participation rates in the formal sector, including that of married women.

Primarily, women migrant workers are concentrated in the service sector, while men work primarily for the plantation and construction sectors in Malaysia. Since 1993 women were also recruited as unskilled workers in the manufacturing sector. The

documented labor intakes were augmented by illegal labor flows for reasons outlined earlier. The high costs involved in migration and the existence of networks have facilitated this flow.

#### **4.3 Legal Frameworks Pertaining to Domestic Workers in Malaysia**

Relatively unarranged flows of migrant workers to Malaysia, particularly the undocumented, were commonly practiced in the past time, but recently the government has put more serious attempts on legal regulation pertaining domestic workers in Malaysia. The legal frameworks are intended to regulate, among others, the sectors in which migrant employees will be assigned, the supposed rights and obligations, work safety and protection, and treatment of complaints.

Although constitutionally certain fundamental rights and liberties are guaranteed by Malaysia's Federal Constitution to 'all persons' instead of mere citizens, in practice they are not fully implemented. Article 5 (1) reads that 'no person shall be deprived of his life or personal liberty is saved in accordance with law' and has been interpreted to include the protection of a person's 'livelihood' as well as protection against loss of life or personal freedom.<sup>20</sup> Accordingly, this Constitution grants equal rights and liberties to migrant workers in spite of their being not the citizens of Malaysia. So, they deserve to be treated equally before the law.

Equality before the law is clearly provided in Article 8 of the Federal Constitution of Malaysia that "All Persons are equal before the law and is entitled to equal protection of the law" and by the use of term "person" as opposed to 'citizen', it is most clear that this guarantee of rights extends to all persons, including migrant workers, be

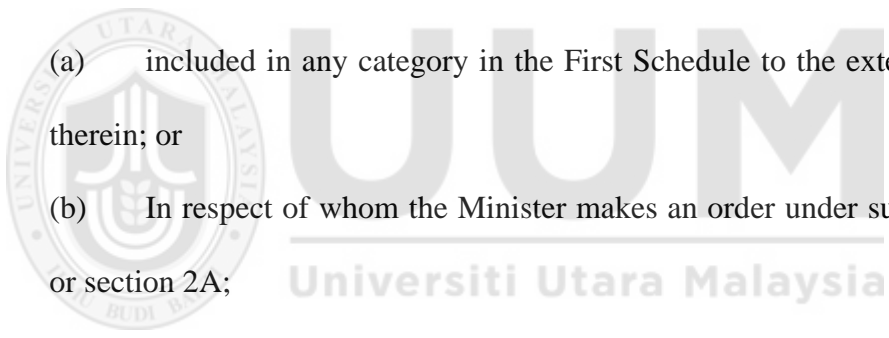
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<sup>20</sup> *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan* [1996] 3 AMR 3181

they documented or undocumented. It must be pointed out that 6 of the 13 Articles under Part II of the Federal Constitution entitled 'Fundamental Liberties' uses the word "persons" as opposed to word "citizens", and as such usage of the word 'persons' in Article 8 clearly is not conscious but also important.<sup>21</sup>

Another guarantee of equality is also ensured in the Employment Act 1955 which applies to all workers, regardless of whether the person is a local worker or a foreign worker (migrant worker). In section 2 of the Employment Act, being the interpretation section, the term employee is defined as:

"Employee" means any person or class of persons-

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- (a) included in any category in the First Schedule to the extent specified therein; or
  - (b) In respect of whom the Minister makes an order under subsection (3) or section 2A;

In the First Schedule, item 1 describes the first category of workers.

"...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 one thousand five hundred ringgit a month...."

And, item 2, describes the other category of workers covered by the Act.

"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..."

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<sup>21</sup> See Dato' M. Ramachelvam, "Migrant Workers in Malaysia & Protection under Domestic Law," (2013). <http://www.slideshare.net/nazuzila/migrant-workers-in-malaysia-protection-under-domestic-law>.

Section 60L of the Employment Act reinforces this concept of equality, and the prohibition of discrimination between workers. The right to complain about discrimination is accorded to all workers, local or migrant, and the duty is imposed on the Director General of Labour to inquire into these complaints.

However, in spite of the seemingly ideal regulations, the laws of Malaysia are not, by all means, fully enforced. In practice, law enforcement is more likely to favour particular persons and disfavour others. While it is stated that the laws of Malaysia do not discriminate against migrant workers, including migrant domestic worker, in practice, the rights of migrant domestic workers are not fully protected.<sup>22</sup> As a matter of fact, although the FDW is covered under the Malaysian Employment Act 1955 (hereinafter referred to as EA 1955) through the definition of “domestic servant”<sup>23</sup>, the recognition of her rights is limited only to the termination of contract under Sec 57 of the EA 1955. Sec 57 Employment Act 1955 stipulates that either party employing the domestic worker or by the domestic servant giving the other party 14 days’ notice of his intention to terminate the contract or by the paying of an indemnity equivalent to the wages, which the domestic servant would have earned in 14 days.

The practice of inequality before the law, indeed, is also, paradoxically put in the law by limiting and restricting their eligibility and rights for migrant workers on the one hand, and imposing higher obligations on the other hand. With respect to domestic

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<sup>22</sup> Evelyn S. Devadason and Chan Wai Meng, "A Critical Appraisal of Policies and Laws Regulating Migrant Workers in Malaysia," in *14th International Business Research Conference*, ed. Tanzil Hoque (Dubai: World Business Institute Australia, 2011).

<sup>23</sup> Sec 2 Employment Act 1955 stipulates that a domestic servant means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washer man or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use.

workers, the discrimination is overtly ruled. They systematically are excluded from the work category and are consequently seen as not deserving to get any allowances or benefits that other workers make. Explicitly, the specification declares that the “domestic servant” is not eligible for such benefits as:

- a) Rest days, work hours, holidays and other service conditions.<sup>24</sup>
- b) Termination, lay-off and retirement benefits.<sup>25</sup>
- c) A four-week notice of termination.<sup>26</sup>
- d) Contract termination for special reasons- pending inquiry, with only half wage payment.<sup>27</sup>
- e) Employee advancement restriction.<sup>28</sup>

The status of domestic workers has been a consistently discussed issue and gained a serious position in these provisions of the Employment Act. Unfortunately, those public discussions and governmental commitment have not been accordingly materialized. Although it was set by the Malaysia’s Minister of Human Resources, Dr. S. Subramaniam, in 1999, the provision that introduce a mandatory rest day per week for all domestic workers would have to be integrated to the Employment Act, the issue seems to be a never ending issue without any concrete implementation.<sup>29</sup>

In addition to the exclusion of foreign domestic workers from many national employment and labor protections, denial of specific protections within the home

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<sup>24</sup> Part XII EA 1955- Rest days, work on rest days, hours of work, task work, shift work, holidays, annual leave, sick leave

<sup>25</sup> Part XIIA EA 1955

<sup>26</sup> Sec 12 of the EA 1955

<sup>27</sup> Sec 14 of the EA 1955

<sup>28</sup> Sec 22 of the EA 1955

<sup>29</sup> Irene Fernandez, Complicity in Violence, Abuse and Trafficking, MALAYSIA TODAY (June 1, 2011), <http://malaysia-today.net/mtcolums/letterssurat/40802-malaysia-indonesia-mou-complicity-in-violence-abuse-and-trafficking->.



was also commonly practiced. It is true that the Malaysia's 1994 Domestic Violence Act has outlined such offenses by the employers as incitement of fear, forced conduct, confinement, or physical abuse to the domestic workers.<sup>30</sup> The fact is, however, that only the violence against a spouse (or former spouse), a child, an incapacitated adult, or another member of the family (including those related by blood or other legal familial ties) is considered guilty.<sup>31</sup> The explicit lists of the persons to whom these protections apply, other members of households, which imply the domestic workers, are excluded.

The protection thus did not include those domestic workers since they belong to the category of neither business employees nor private family members. It is even worse that with the pervasive worldwide problem of impunity for domestic abusers,<sup>32</sup> violence and sexual assault against domestic workers remain unprosecuted and unpunished.<sup>33</sup>

Although it has been acknowledged by the government of Malaysia that there is a risk of abuse by the practice of unmarried employers hiring domestic help,<sup>34</sup> the protection is not effective at all. It fails to protect the vast majority of abused women. Another problem is that it also discriminates against unmarried people and

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<sup>30</sup> Domestic Violence Act (Act No. 521/1994) § 2 (Malay.), available at <http://www.agc.gov.my/Akta/Vol.%2011/Act%20521.pdf>.

<sup>31</sup> Domestic Violence Act (Act No. 521/1994) § 2 (Malay.), available at <http://www.agc.gov.my/Akta/Vol.%2011/Act%20521.pdf>.

<sup>32</sup> Violence against women is a serious problem in Malaysia, with estimates of over three thousand cases of domestic violence in 2003, and as many as thirty-nine percent of Malaysian women have been victims of partner

abuse.

<sup>33</sup> Fitzpatrick & Kelly,

<sup>34</sup> Human Rights Watch (Organization) and Nisha Varia, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004).

can especially pose an increased burden on single parents while not actually addressing the underlying problem of systemic abuse of foreign domestic workers.<sup>35</sup>

Becoming a destination country for immigrants and migrants from many different areas and for many different reasons, Malaysian immigration law attempts to highly regulate the individuals entering and exiting the country by the Immigration Act of 1959/63. The act strictly prohibits individuals to remain in Malaysia unless they hold a valid pass or permit. A person's pass is invalid immediately upon the expiration of the period of work that it is covering or if any of its terms or conditions are deemed to be contravened. Thus, women who give up the work early, regardless the fact that they cannot stand the abuse or forced labour conditions, will have to be arrested as illegal immigrants without the appropriate documentation. One abused and escaped domestic worker was found to be scared for being prosecuted or deported as stipulated by Malaysian labour law.

#### **4.4 Legal Framework Covering Indonesian Migrant Workers Abroad**

##### **4.4.1 The Constitution**

Indonesia's constitution is the supreme law of the land in Indonesia. In the period known commonly as reformasi (reformation), the constitution was amended four times to create stronger checks and balances on government power, and to strengthen rights protection. The second amendment of August 2000 created a bill of rights in Article 28 that includes rights to earn a livelihood, to healthcare, to information, and to social security. These rights may implicitly create significant protections for

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<sup>35</sup> Equal Rights Trust. and Tenaganita (Organization), *Washing the Tigers : Addressing Discrimination and Inequality in Malaysia*, Ert Country Report Series.

migrant workers, though they have not, to date, been tested in this context. Article 27 (2) also guarantees that each person has a right to decent and humane work.

Here are, rights and state obligations under the Constitution of the Republic of Indonesia potentially relevant to migrant worker protection and access to redress

- Everybody shall reserve the right of decent and humane work (Article 27(2)).
- Everybody shall reserve the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law (Article 28D (1)).
- Everybody shall reserve the right of work and fair and proper remuneration and treatment in employment (Article 28D(2)).

#### **4.4.2 Law of 39/2004**

Indonesia has regulated labor migration for almost 40 years. Early regulations governing labor recruitment and placement were adopted by Ministerial decree in the 1970s, during the Suharto Era. These decrees were aimed primarily at maximizing the number of workers sent abroad, and included very few protections for workers. In 1999, soon after the fall of President Suharto, the minister of manpower passed the first reformation-era decree on overseas migrant workers. The decree established the broad framework for migrant labor that exists today, i.e., an essentially private enterprise overseen by the state. The legal framework has expanded considerably since the 1999 decree (itself no longer in force).

In 2004, the Indonesian Parliament (DPR) enacted the first national labor migration law. Law 39/2004 on the Placement and Protection of Indonesian Migrant Workers

Abroad is now the central governing instrument of the labor migration system. It focuses on governance and administration; institutional powers and responsibilities; licensing requirements for recruitment agencies; administrative requirements to travel abroad; and pre-departure processes. It also establishes a small set of migrant worker rights.

Formal attention has certainly been paid by the Indonesian Government to the labour migration process. The government has indeed has monitored how Indonesian migrant workers are recruited, deployed and treated in the destination countries. Accordingly, the government has enacted a number of public policies in order that migration of Indonesian migrant workers can be more properly managed. Civil societies representing the broad public interest in cases of mass deportation of Indonesian migrant workers from Malaysia has urged the Government of Indonesia more seriously enact laws that provide more comprehensive protection to Indonesian migrant workers. The followings are the main provisions and regulations:

- Law of 39/2004 on the Placement and Protection of Indonesian Overseas Workers;
- Governmental Regulation of 92/2000 on Types of Non-tax State Income in the Labour and Transmigration Ministry;
- Presidential Instruction of 6/2006 on the Reform in Indonesian Migrant Worker Placement and Protection System;
- Presidential Regulation of 81/2006 on the National Authority in charge of the Placement and Protection of Indonesian Migrant Workers;

- Labour and Transmigration Minister's Decree of KEP-14/MEN/I/2005 on Non-Procedural Departure Prohibition and Repatriation Services for Indonesian Migrant Labour;
- Labour and Transmigration Minister's Regulations, including that of PER-04/MEN/III/2005 on the Pre-Departure Briefing for Indonesian Migrant Workers;
- Labour and Transmigration Minister's Decree of PER-05/MEN/III/2000 on the Administrative Sanctions and Means for the Placement and Protection of Indonesian Migrant Workers;
- Labour and Transmigration Minister's Decree of PER-07/MEN/IV/2005 on the Standards of Accommodation for Prospective Migrant Workers;
- Labour and Transmigration Minister's Decree of PER-19/MEN/V/2006 on the Management of the Placement and Protection of Indonesian Migrant Workers;
- Labour and Transmigration Minister's Decree of PER-23/MEN/V/2006 on the Insurance for Indonesian Migrant Workers.

#### **4.4.2.1 Policies Before the Enactment of Law of 39/2004**

The previous policies passed since the early post-reform period of 1998 deserve our attention and discussion since they may become the underlying rationale for the Law No. 39/2004 that regulate the placement of migrant workers abroad. The background of the issuance of Law No. 39/2004 includes the following policies with which we can have a good insight on the labour migration situation.

#### **4.4.2.2 Ministerial Decree of 204/1999**

Issued shortly after the major national political changes, Ministerial Decree No. 204/1999 was intended by the government to response the great urge of reform by various stakeholders. Protection of Indonesian migrant labour are clearly stipulated in Articles 69 to 74 of this ministerial decree. Likewise are the monitoring and evaluation in placing and recruiting migrant labour. With the decree, the important high-ranking officials at the regional and national levels are obliged to prepare periodic progress reports (weekly, monthly, and annually) on Indonesian labour migrant placement and recruitment. The decree provides the guidelines for the protection of Indonesian migrant workers. Additionally, it also deals with information management, regulation improvement; vertical and horizontal coordination among government agencies, and law enforcement/enactment.

The decree has simplified and improved the quality of management system in the placement and protection of the Indonesian migrant labour. It also requires quality improvement in protection for migrant workers and their families, higher performance of recruitment agencies; and better Indonesian migrant workers supported by additional remittances. Ministerial Decree of 204/1999 makes the position of private recruitment agencies even stronger in the migration process.

#### **4.4.2.3 Manpower and Transmigration Ministerial Decree of 104A/2002**

Manpower and Transmigration Ministerial Decree No. 104A/2002 was an official attempt to develop public management of Indonesian labour migrant placements. The decree implied the government's formal recognition of the need for labour migration protection. Collaborative works between the Indonesian labour migrant export business circles and social networks and national manpower officials have

commenced before the regime collapsed in 1998. The collaboration has outlined the need for international level implementation of policy on trade in manpower instead of the merely national level. Ministerial Decree No. 104A/2002 predominantly supported labour migration of Indonesian nationals on the one hand and protected workers in especially vulnerable sectors on the other hand through seriously regulating the least regulated sectors as domestic workers and caregivers. The government implemented this policy to provide more comprehensive and holistic protection to the Indonesian migrant workers at risk of various exploitative practices and physical, psychological, and sexual abuse and violence. The introduction of the 'vulnerable worker' category in the decree was an attempt to decrease the number of Indonesian migrant workers in domestic services. Unfortunately, the decree failed to address the underlying driving forces in the destination countries, namely the global shortage of domestic labour and consequently, large numbers of Indonesian women continued to migrate as domestic workers through both regular and irregular channels.

It was on this decree that the government authorized private recruitment companies to place Indonesian migrant workers in the domestic sector. This policy was a good attempt to prevent unauthorized parties from undertaking the role. By doing so, the government has given up the role in labour migration management since the government has assigned the primary responsibility to the private sector. The ministerial decree declined the government's role in providing the protection to migrant workers but levied sanctions for Indonesian migrant workers who violated

the terms of their employment at home or abroad.<sup>36</sup> The underlying situations where unfair or exploitative situations were left unaddressed and Indonesian migrant workers were at risk for their unlawful actions. The Indonesian migrant workers were in even worse position as they are in a weak bargaining position. Such this practice will not ensure successful or sustainable management of labour migration.

#### **4.4.2.4 Introduction of Law No. 39/2004**

With little consultation with civil society, in 2004 the Indonesian Parliament finally passed the Law of 39/2004 on the Placement and Protection of Indonesian Migrant Workers.<sup>37</sup> By adopting some regulations, the law aims at reforming and regulating the placement and protection system of Indonesian migrant labour. In addition, a number of presidential instructions have been issued. They are Presidential Instruction of 6/2006<sup>38</sup> concerning the main initial reform by all relevant government institutions coordinated by the Coordinating Ministry of Economic Affairs, Presidential Regulation of 81/2006 concerning the establishment of the National Authority for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) directly under the Manpower and Transmigration Ministry.

#### **4.4.2.5 Limited Scope of Protection**

Again, the Law does not seem to sincerely provide total legal protection to Indonesian migrant workers. Paradoxically, it only acknowledges the legally recruited and placed workers while denying the other part of the so-called irregular workers. This partial acknowledgement has caused incomplete and discriminative

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<sup>36</sup> See sub-articles 2, 3, and 4, that regulate sanctions for Indonesian migrant workers who 'resigned', 'violated the terms of the work agreement', and 'took actions that were threatened with criminal sanctions'.

<sup>37</sup> Law No. 39/2004 Concerning the Placement and Protection of Indonesian Overseas Workers, 18 October 2004.

<sup>38</sup> Presidential Instruction No 6/2006 about Reform Policies Regarding the Protection and Placement of Indonesian Migrant workers, 2 August 2006.



protection. Article 1 of Law No. 39/2004 only provide legal protection towards legal migrant workers, namely the Indonesian citizens who meet the requirements for working abroad. Meanwhile, illegal migrant workers, who use of informal channels for migrants, will suffer not receive protection under this law. Comparatively, the Law No. 39/2004 provides little protection.

Another shortcoming of the law is that it ignores the fact that migrant workers need further protection upon their return from working abroad. Migrant workers need sustainable support to have a successful socio-economic re-integration process in the society. It is weird that while it is an important part of the protection of migrant workers, the government turns blind eye. The government seems to lose the initial orientation of migration being the effort to improve the welfare of migrant workers and their families. All they expect from the painstaking period of overseas work is a better social and economic life in their home town. Thus support should have been provided along the whole chain of migration. How the former migrant workers can, as expected, have a better life should have become a serious concern by the government.

Ironically, as Law No. 39/2004 indicates, the protection of migrant workers will end soon after they arrived home. While many migrant workers experience social and economic re-integration problems and find it difficult to manage the benefits of their overseas experience and the wages they earned, no such governmental support as basic financial education is available. Consequently, their poor financial management will result in careless spending and the sum that they earned when working abroad will go unnecessarily in vain.

The problem goes even worse that many returned migrant workers lack ability and access to complain the problems they have experienced. Only later when they got home did many become aware of unpaid salaries from their employers.

#### **4.4.2.6 Shortcomings of Law No. 39/2004**

It seems that in responding labour migration issues, the government takes incoherent and less comprehensive strategy. Although strong initiatives come up at the national level, overall government reforms have been ad-hoc in nature. They poorly prepared strategy seems to derive from poor perspective in identifying the large number of issues relating to management of labour migration in Indonesia, particularly the protection of migrant workers' rights while working abroad and particularly the irregular migration. It is not an exaggeration to say that the law and the national labor migration policies in Indonesia are just aiming to reduce local unemployment. Or in other words, the Government of Indonesia just concentrate to facilitate the out-flow of migrant workers, but ignore their legal protection for working abroad. With this goal in mind, the government tends to be more focused on the temporary protection mechanism for migrants.

#### **4.4.3 Regulation of the Ministry of Foreign Affairs No. 4/2008**

Following the Presidential Instruction No. 6/2006, the Ministry of Foreign Affairs issued a Regulation No. 4/2008 to assist and protect Indonesian citizens abroad. The regulation establishes the concept of a 'citizen service'. In fact, it is the result of lack of protection of labour laws that Indonesian migrant domestic workers are most likely to experience problems.

The regulation also contains instructions for Indonesian representatives to verify and guarantee that recruitment agencies are accredited and that contracts signed by Indonesian migrant workers are truly protecting their rights. In addition, the regulation covers the supervision of these agreements and managing the employment-related problems for migrant workers. Further, Indonesian embassies and consulates abroad also have representatives who can provide legal assistance and advocacy for Indonesian who experience legal problems.

There are several services offered for Indonesian migrant workers who have a legal problem such as being lost, neglected, losing contact with family, accidents, hospitalizations, being the victim of crime or human trafficking, death, being arrested, or being deported. In addition, there is a special service provision for migrant workers who passes away while abroad.

However, these instructions seem to be operationally insufficient, since most of the problems appear during the pre-departure training in Indonesia. Indonesian diplomatic missions overseas in destination countries have to handle numerous troubled migrant workers on their arrival. Unfortunately, the number of migrant workers who are mistreated, abused and come with problems often is more than the capacity and staffing levels of Indonesian representative offices abroad. Again, the importance of coordination between government agencies in Indonesia and key stakeholders on migration has gone out of mind and has not accordingly been practiced. Poor coordination then results in inadequate protection needed by Indonesian migrants to avoid abuses abroad.

#### 4.4.4 The 2011 Indonesian-Malaysian Memorandum of Understanding

As a favourite work destination for migrant domestic workers, Malaysia has attracted 300,000 Indonesian women, the rank of which is the highest among other countries. To deal with the mutually facilitating supports between Malaysia and the countries from which the migrant workers come from, and in response to the growing need of labour in Malaysia on the one hand and the increasing influx of migrant workers, the Malaysian government has set up individual agreements with the governments of these countries to determine employment terms for domestic workers. However, instead of creating mutually binding bilateral agreements, however, Malaysia has signed Memoranda of Understanding (MOUs) that are not actually binding on either state party.<sup>39</sup> Terms for Indonesian domestic workers in Malaysia are laid out in a MOU established between the two countries in 2006 and revised in 2011.<sup>40</sup> Following a rash of abuses in Malaysia and a disappointingly weak official response, the Indonesian government in June of 2009 put a ban on new migration of domestic workers to the country.<sup>41</sup> Such action, however, does not necessarily help those women who are driven to seek work abroad due to dire poverty at home. As the ban continued while discussions of a new MOU flagged, it was feared that the number of women illegally seeking domestic work in Malaysia would drastically increase. For these women there is even less protection and greater danger of ending up in

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<sup>39</sup> Naj Ghosheh, "Protecting the Housekeeper: Legal Agreements Applicable to International Migrant Domestic Workers," *The international journal of comparative labour law and industrial relations* 25, no. 3 (2009).

<sup>40</sup> Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers, Indon.-Malay., May 13, 2006 [hereinafter Indonesian-Malaysian MOU], available at <http://www.caramasia.org/docs/MoU%20My-Indonesia%202006.pdf>. Revisions came when the MOU was renewed to address the problematic provisions within the Agreement. However, both revisions have been considered disappointments by many human rights activists, as they have failed to address some of the most problematic aspects of the MOU.

<sup>41</sup> (Organization) Human Rights Watch, "Indonesia: Guarantee Domestic Workers' Rights in 2010," (2010). <http://www.hrw.org/news/2010/02/12/indonesia-guarantee-domestic-workers-rights-2010>.

trafficking situations. Reciprocally, the Malaysian government responded to the ban by stating that it would have to seek hired help in greater numbers from Thailand and the Philippines, noting that it has always received good, Muslim domestic workers from those countries. In actuality, the ban did result in an increase of domestic workers from Cambodia but also a discernible decrease in the overall number of domestic workers employed in Malaysia.<sup>141</sup> In May 2011 the two governments finally signed a new MOU, which addresses some, though certainly not all, of the provisions triggering human rights concerns but does little to indicate how it will be any more effectively carried out than its predecessor.

In this agreement, while protections and terms to which workers are entitled are stated in detail, it contains some restrictive and/or problematic sections. Such key issues as minimum wage are not taken into account while other regressive and potentially dangerous practices are explicitly allowed. An instance for this case is that though the newest iteration of the MOU does guarantee one rest day a week (an improvement over the 2006 MOU, which had no such provision), it states that “a one-day off can be compensated with overtime pay.”<sup>42</sup> Thus, employers will have the option of paying domestic workers to forgo their day of rest, presumably adding some amount of extra pay to the pre-agreed monthly rate.<sup>43</sup> However, it was not clearly stipulated of the amount of overtime pay that is appropriate to compensate for skipping a rest day, and the MOU does not provide the mechanics for how that overtime pay is monitored or delivered. As such, this provision seems prone to abuse and demonstrates the governments’ refusal to recognize the extreme disparity in

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<sup>42</sup> Irene Fernandez, "Malaysia-Indonesia Mou: Complicity in Violence, Abuse and Trafficking," (2011). <http://www.malaysia-today.net/malaysia-indonesia-mou-complicity-in-violence-abuse-and-trafficking/>.

<sup>43</sup>"Indonesian Maid Problem Nearing Settlemen," (2010). <http://www.themalaysianinsider.com/malaysia/article/najib-indonesian-maids-get-a-day-off>.

negotiating power between Malaysian employers and poor, foreign, and often young women from Indonesia.<sup>44</sup>

Vague language is another contributing problem of the MOU and no finite standard has been established, which result in less compliance among the employers. While the MOU says that employers shall provide “reasonable accommodation” and “adequate rest,” it does not set any minimum requirements. Some parts of the MOU are clearer about their requirements, such as those relating to the costs the employers are supposed to cover. The new MOU stipulates that recruitment fees are capped at U.S. \$1,500, which employers are required to pay up front. It also prohibits employers from passing on recruitment fees of more than U.S. \$600 to domestic workers and only allows deductions of up to fifty percent of their monthly wages. Migrant workers are required to be able to speak either Malay or English to be allowed to enter the country.

After a long insistence from the international NGO communities, the most recent MOU include the provision that allows Indonesian domestic workers to keep their passports. The 2006 MOU explicitly directed employers to hold workers’ passports, meaning that a domestic employee’s legal status in the country was completely dependent on her employer. According to Human Right Watch, that the new version allows domestic workers to keep their passports instead of having to surrender them to employers is a positive change.

Although it has taken almost two years of negotiations until the signing of a new MOU, the agreement still ineffective on important issues such as the setting of hard

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<sup>44</sup> Human Rights Watch (Organization), "Indonesia/Malaysia: Proposed Labor Pact Lacks Key Reforms," (2010). <http://www.hrw.org/news/2010/03/04/indonesiamalaysia-proposed-labor-pact-lacks-key-reforms>.

and fast minimum wage. Instead, the MOU states that a monthly wage for Indonesian women of U.S. \$133-200 is sufficient, no matter that it is well below Malaysia's poverty line (monthly earnings less than U.S. \$250). Malaysia does not have a national minimum wage, though deputy Minister of Human Resources Maznah Bt Mazlan recently stated that the government is planning to introduce a minimum wage for private sector workers. The Malaysian government justified the current wage rate for domestic workers by contending that the rates for Indonesian workers in Malaysia are acceptable so long as they are above Indonesia's set minimum wage. This is a perverse justification, however, as the vast majority of these women are travelling for work in order to earn money and opportunities beyond what is available at home.

#### **4.5 International Law Pertaining Protection for Migrant Domestic Workers**

This sub-chapter summarizes the contents of international human rights and labour instruments relevant to women migrant domestic workers, specifically focusing on the terms and conditions of employment. The instruments are arranged chronologically, in accordance with the date of entry into force, and are followed by the relevant monitoring mechanism.

Universal Declaration of Human Rights is the most fundamental international instrument in realizing the principle of non-discrimination. Article 2 of the Universal Declaration of Human Rights states that discrimination in any form at all is not allowed, such as race, color, sex, language, religion, political or other opinion, national origin or social origin, property, birth or other status.

Thus, in accordance with Article 23, migrant domestic workers are entitled to the following rights: the right to just and favorable conditions of work; the right to social security; the right to equal pay for equal work; the right to just and favorable remuneration and the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Until now, more than 50 years of the adoption of this declaration, it has been regarded as customary international law and consequently all governments are bound to implement the principles. However, there are still gaps between the rights recognized in the declaration and enforcement, especially among female migrant domestic workers.

Although there is no international instrument specifically for women migrant domestic workers, there are conventions that address discrimination and violence based on gender, nationality, ethnicity, and labor rights. Several international conventions and several international labor standards, guaranteeing workers' rights in general, including migrant workers, also applies to women migrant domestic workers.

#### **4.5.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

CEDAW is the first human rights treaty which obliges States Parties to ensure equality between men and women even in private life. The agreement acknowledges the rights of women that are relevant to domestic workers, such as the right to social security; right to paid-leave; and the right to protection of health and safety in working conditions. This provision is particularly relevant for women migrant



domestic workers for two reasons: first, the housework is done primarily by women, and second, the work done in the private sphere, the home.

CEDAW is the second treaty in terms of the highest number of ratifications by the State after the Convention on the Rights of the Child. Moreover, CEDAW is the only international binding instruments specifically intended for the protection and promotion of women's rights. CEDAW does not have any articles on migration, but CEDAW can be effectively utilized to promote and protect the rights of migrant domestic workers. CEDAW which came into force on September 3, 1981, basically applies throughout the migration process, including the actual period of employment until the end of employment. Fortunately, both Malaysia and Indonesia have ratified CEDAW.

One of the tasks of the States Parties referred to in Article 2 (e) is to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. In this context, the state can be held accountable as the holder of the duty they are required to prevent human rights abuses by recruiting agents, unscrupulous employers or even families against women migrant workers and to provide solutions to them are violated. "

Further, states parties have the obligation to take all appropriate measures to eliminate discrimination against women, including adopting laws and policies in the field of labor and employment. General Recommendation No. 19 (1992) of the Committee noted that discrimination under CEDAW is not limited to actions by or on behalf of the government. States Parties have an obligation to conduct all appropriate measures to eliminate discrimination against women by any person,

organization or company. According to the Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19, paragraph 9 (1992), the Government may be liable for "personal action" if they "failed to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." Even based on the same recommendation paragraph 24 (p) The Committee recommends States Parties to monitor the working conditions of domestic workers as one of the measures to protect women from violence.

#### **4.5.2 International Covenant on Economic, Social and Cultural Rights (ICESCR)**

ICESCR took effect on 3 January 1976. It further developed the "right to work" norm under the Universal Declaration on Human Rights. ICESCR also embodies the principle of non-discrimination, that is why its provisions are relevant to women migrant domestic workers. Indonesia has ratified this Covenant. Unfortunately Malaysia has not yet.

Article 2(2) prohibits discrimination on grounds of sex, amongst others. Article 3 mandates that States undertake to ensure the equal right of men and women to the enjoyment of all rights protected under ICESCR.

Article 7 guarantees the rights most often ignored by governments, by their exclusion of domestic workers in the coverage of labour laws and the provisions on minimum wage; rest days; holiday pay; working hours, among others, and the lack of or ineffective prosecution of private actors, such as employers and recruitment agencies, who perpetuate abuses against domestic workers.

#### **4.5.3 International Covenant on Civil and Political Rights (ICCPR)**

ICCPR entered into force on 23 March 1976. Article 2(1) of also ICCPR embodies the principle of non-discrimination, and requires States Parties to “respect and to ensure ... the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Different from Indonesia, Malaysia has not yet ratified ICCPR.

Article 14, paragraph 1, guarantees the equal treatment of women migrant domestic workers in case they have recourse to the justice system for violation of rights or abuses committed against them. They must not be treated differently on the basis of their status as noncitizens.

In practice, however, there are conditions which restrict the domestic worker's access to the judicial system. In some countries of employment, the legal residency of domestic workers is dependent on their continuous employment with the employer. As such, disputes with the employers usually result in the cancellation of the residency permit of domestic workers and their deportation. Migrant domestic workers are generally not allowed to work while the case they filed is pending, resulting in loss of income for months or years. This rule also makes it difficult for the worker to support herself while the case is pending. Given these conditions, some domestic workers prefer not to report abuses or file cases against the perpetrators.

#### **4.5.4 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

CERD, entered into force on 4 January 1969. It was adopted as a measure “for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices.” Abuses of women migrant domestic workers by their employers or recruiters may sometimes constitute examples of racial discrimination perpetuated by private actors. Unfortunately, Malaysia has not yet ratified CERD.

Article 1(1) of the convention defined Racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The obligation on Article 5 of CERD includes the guarantee to “just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration ... [t]he right to public health, medical care, social security and social services.”

Further, based on Article 2(c) of CERD, states Parties have the obligation to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Non-recognition of domestic work or its exclusion from labour laws in countries of employment wherein an overwhelming majority of domestic work is performed by migrants may be deemed as a failure to fulfill the above-mentioned State obligation as it effectively excluded migrant domestic workers from the protection of the law.

#### **4.5.5 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC)**

MWC entered into force on 1 July 2003. It is the most comprehensive international instrument which focuses on the treatment, welfare and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the part of countries of origin and employment of the migrants.

It is one of the least ratified human rights treaties, especially among countries of employment. Indonesia signed MWC in 2004 but not yet Malaysia.

#### **4.5.6 Watered-down law and compromises**

In spite of the already passed and enacted international law, convention, and recommendations concerning the protection of migrant domestic workers, they are not the ideal law outcome. Some compromises were made to meet the conflicting interests of the states parties. The international labour standards that had been set up by the International Labour Organization (ILO) prior to the establishment of the Migrant Workers Convention concerned with the provision of legal rights for migrant workers.<sup>45</sup>

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<sup>45</sup> These include: ILO Convention No. 97 concerning Migration for Employment, 1949; Convention No. 143 concerning Migrant Workers, 1975; Recommendation No. 86 concerning Migration for Employment, 1949; Recommendation No. 100 concerning Protection of Migrant

The preoccupied negotiation among the involved parties had derived from the pursue of narrow state interests. It is not surprising that the resulted provisions were weak. Consequently, the crucial rights of migrant workers and their families were left unattended. Therefore, as it has been predicted, such negotiations among the conflicting interests had resulted in compromises and the text of the MWC contained ambivalent provisions of the protection of migrants' rights on the one hand, and the strict adherence to the principle of state sovereignty".<sup>46</sup>

Such obstacles as the unwillingness of the states to apply the internationally acknowledged conventions on migrant domestic workers' human rights and the unilateral claim of individual state sovereignty, allowing them to rule their own domestic governance with the legal instrument they think most suited to the local conditions are commonly practiced. Most countries have egoistically insists on applying their inherent national sovereignty to protect their domestically endorsed economic, political, and social purposes. Their strictly practiced discrimination between legal migrant workers and illegal migrant workers seem to derive from the fear of national social, political, and economic burden. This inappropriate practice of national sovereignty has been in contradiction to the universally acknowledged and adopted principles of human rights endowing any human with equal rights in any aspect of life, including the right for equal employment opportunity and treatment.

In attempt to improve the poor practice of employment for migrant domestic workers, the United Nations established the Sub-commission on the Prevention of

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Workers in Underdeveloped Countries, 1955; and Recommendation No. 151 concerning Migrant Workers, 1975

<sup>46</sup> A very detailed and thorough discussion of the drafting process as well as the specific human rights in the MWC can be found in R. Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Oxford: Clarendon Press, 1997), pp. 137–204.

Discrimination and Protection of Minorities of the UN Commission on Human Rights. Subsequently, the United Nations Economic and Social Council recommended to draw an instrument that can be applied in wider settings. This has led to the drafting of the *United Nations Convention on Migrant Workers*.<sup>47</sup>

This would have complemented the already existing instruments for the protection of migrant workers' rights based on the non-discriminative principles and universally applied human rights. However, as many as there have been, migrant workers have been far less fortunate than the refugees, both being aliens and stranded in foreign countries. In spite of the fact that migrant domestic workers outnumbered the refugees, migrant domestic workers have been poorly attended or protected.<sup>48</sup> While refugees were properly treated under Refugee Conventions at both the international and regional levels since 1951<sup>49</sup> the opposite condition was the case for migrant workers. Prospectively, it was expected that the enactment of the MWC would bring the expected benefits. But the expectation had never come true. The adopted MWC was watered down due to the persistent egoistical insistence of narrow conceptions of state interests and the short-sighted claim of national sovereignty. The lengthy debates and negotiation had taken almost thirteen years for the 20 ratifications to come into force.<sup>50</sup> Another contributing factor is the fact that none of the states

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<sup>47</sup> See (UN Doc. A/RES/32/120) (1977); (A/RES/33/163) (1978); G.A. Res. 34/172, (34 U.N. G.A. OR Supp. (No. 46)) pp. 188–189, (U.N. Doc. A/34/46) (1979).

<sup>48</sup> Cholewinski, v. However, aside from the fact that this assertion raises complicated issues, it would be difficult to verify this claim since uncertainties in applying the existing definitions of 'migrant workers' and 'refugees' make it almost impossible to distinguish one from the other especially in the current socio-economic and political scenario. The statement is thus being used for its metaphorical value.

<sup>49</sup> 1951 Convention Relating to the Status of Refugees and its 1967 Protocol; the 1969 Organization for African Unity Convention Governing Specific Aspects of Refugee Problems in Africa; and the 1984 Cartagena Declaration on Refugees.

<sup>50</sup> The MWC was adopted without a vote and opened for ratification on 18 December 1990. While ratification had been slow, pressure emanating from non-governmental organizations has aided in somehow accelerating the ratification process since 1997. For instance, as of November 1996, only seven states had ratified this international instrument. The rate of accession somehow speeded up in

parties to the MWC is rich and industrialized state. The prospect of ratification darkens due to the apparent unwillingness of modern countries of employment. During the drafting process, a German diplomat revealed that it is “highly unlikely that...Germany would ratify the Convention”.<sup>51</sup> The convention was also criticized, in spite of the clearer definition of migrant domestic workers to include those in an ‘irregular’ situation, mostly connected to the conflict between the notion of state sovereignty and provision of specific rights to the ‘outsiders’. The fact that migrant workers include those with full legal documents and those who are there without any required documents. The acknowledgement of higher status to the legally recruited workers, while relatively neglect the illegally recruited employees. Of equal difficulty, the jurisdictional conflict between the United Nations and the International Labour Organization has made the implementation of the treaty difficult. Of equal importance are the facts that states are granted to exercise discretion on family reunification and that such groups as students, non-resident seafarers are excluded from the general definition of migrant workers. It is also

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the last few years leading to its entry into force in 2003. So far, the states that have ratified the MWC are: Azerbaijan, Belize, Bolivia, Bosnia & Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay. The 19th state, Ecuador, ratified on 5 February 2002. Guatemala, the 20th state, ratified on March 14, 2003. El Salvador, the 21st state, ratified on March 21, 2003.

<sup>51</sup> Cholewinski, 2003., quoting the UN Working Group Report (October 1987) wherein a German representative stated that: “[The German] delegation maintained its substantive reservations with respect to the need for the adoption of a new convention on the protection of the rights of migrant workers, since, in its view, such protection was already amply afforded by the Universal Declaration of Human Rights and the International Covenants on Human Rights, which should not be diminished through the elevation of supplementary rights to the rank of human rights. As regards rights relating to employment, social security and the stay of migrant workers, the International Labour Organization was the competent organization. Apart from such substantive reservations ... the delegation had reservations to a great many provisions adopted on second reading. The most important of these objections related to the fact that migrant workers in an irregular situation should become subjects of an international convention and that such a convention should accord them too many rights and that Article 2, paragraph 2, included within the scope of the [draft] Convention categories of persons which ... were not truly migrant workers. *In light of all these objections, it seemed highly unlikely that ... Germany would ratify the Convention.*” (Emphasis in the original.)



criticized for having excluded specific cases in certain provisions while ignores women.<sup>52</sup>.

In spite of the relevance and applicability, the protection of migrant workers mandated by the international human rights regime are not effective due to the poor sensitivity to discrimination on gender, race, class and immigration status. Other contributing factors are the inconsistency in the application of general human rights standards and severe limitedness in the dealing with the local socio-political, economic, and cultural problems. Such these weaknesses have hindered the serious efforts of the international human rights regime to ensure the full respects to migrant workers' rights.

It was reported during the meeting of United Nations Special Rapporteurs and Chairpersons of human rights treaty bodies that migrant domestic workers deserve protection through the recognition of domestic work. Therefore, it is necessary for such women to have access to reporting and protection mechanisms<sup>53</sup>. Since among the domestic workers the violations of human rights is prevalently practice in private, they find it difficult to have their problem reported or spoken to the public. The case is more complicated when the employers take a coercive strategy by keeping the domestic workers' documents that the workers will have nowhere else to get legal status of employment and residence, which force them to be always with the incumbent employers. They are in poorer condition when they are in fear and undocumented, while they are financially indebted to the parties who have supplied

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<sup>52</sup> See *ibid.*, 137-180.; S. Hune, "Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," *International Migration Review* 25, no. (1991): 800.

<sup>53</sup> Special Rapporteur Gabriela Rodriguez Pizarro of Costa Rica, was appointed by the United Nations Commission on Human Rights on 6 August 1999, pursuant to Resolution 1999/44 passed at its fifty-fifth session.

financial supports to pay the costs for their journey. Even worse, their being lack of information, fearful of deportation, and low self-esteem has made migrant workers depressed and deny access to basic worker's rights.

Other United Nations bodies such as the Commission on Human Rights, the Commission on the Status of Women, the Office of the High Commissioner on Human Rights, and the International Labor Organization are some of the bodies that have expressed concerns on MDW and accordingly and have made various recommendations.<sup>54</sup> While the common forms of violence of migrant domestic workers' rights are trafficking of women and children, bonded domestic labour, and confiscation of passports by employers, such cases are absent in countries like Filipina migrant domestic workers in Canada and Hong Kong, but they experience different forms of similar unjust treatment.<sup>55</sup>

Conclusively at the formal level, migrant domestic workers have not suffered from complete exclusion of migrant domestic workers from the international human rights framework. Some human rights bodies have paid greater concern on it although it has not resulted in substantially better lives of the Migrant domestic workers nor their rights' promotion and protection. There has been ineffective follow up mechanisms and poor clarity and unrealistic standards in human rights protection. They are obviously inadequate to address the complicated problems of migrant

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<sup>54</sup> Please see *Violence Against Women Migrant Workers: Report of the Secretary-General* (UN Doc. A/54/342), (10 September 1999); *1999 World Survey on the Role of Women in Development: Globalization, Gender and Work* (UN Doc.A/54/227), (18 August 1999); subcommission on Human Rights Resolution *Report of the Working Group on Contemporary Forms of Slavery* (Nos. 2000/19, 2001/14, 2002/27), (18 August 2000; 15 August 2001; 14 August 2002); *Protection of Migrants: Report of the Secretary General* (A/57/134), (2 July 2002); *Comments submitted by the International Labor Organization to the Commission on Human Rights* (E/CN.4/2002/WP.4), (19 March 2002).

<sup>55</sup> Letter of 9 April 2001 signed by C. Siminowski, Acting Director of the Human Rights, Humanitarian Affairs and International Women's Equality Division of the Department of Foreign Affairs and International Trade (DFAIT) in reply to P. Taran and M. de Feyter, Coordinators of the Global Campaign for the Ratification of the Convention on the Rights of Migrants.

domestic work. What is needed further is to have more concrete and unambiguous standards to legally bind states and individuals (be they employers, recruitment agents or migration and other government officials) in order to greatly assist the realization of human rights adherence among the Migrant domestic workers.

#### **4.6 Concluding Remark**

While requiring a great number of migrant workers to fill up the given-up 3-D (dirty, difficult, and dangerous) works, Malaysia has failed to apply equal justice for migrant domestic workers. The lack of legal protection as well as social and economic benefits for Indonesian migrant domestic workers has been systematically regulated in the Malaysian Employment Act and other prevailing laws. This legal negligence has complicated the seemingly never-ending labyrinth of bad fortune among Indonesian migrant domestic workers. While they are prone to various kinds of legal perpetration due to their being female, less educated, migrant, and alienated on the one hand, the law has discriminatively and inconsistently excluded them from the legal protection and rights they should have reserved. Consequently, it is expected that legal and right perpetration may have increased significantly but is left unnoticed due to the failure of Indonesian domestic workers to find the appropriate channels to voice the problem.

The problem seems also to derive from the facts that the Indonesian government has failed to since the very beginning process provide well-planned protection to those foreign-exchange contributor. As the regulatory body, the government of Indonesia has arbitrarily regulated the recruitment services by labour agencies. While it is conceptually good, it is poor in implementation. Inadequate and inappropriate training is thought to contribute to the lack of skills that further lead to poor work

performance. Should the government consistently apply the regulation on employment agencies, only well-trained migrant labours are sent abroad and thus minimize potential conflicts resulting from employers' dissatisfaction with domestic workers' poor performance.



## CHAPTER 5

### BECOMING DOMESTIC MIGRANT WORKERS: MISTREATMENT EXPERIENCE AND DISPUTE SETTLEMENT

#### 5.1 Introduction

The aim of this qualitative research to measure the legal consciousness of mistreated Indonesian domestic migrant workers in Malaysia. This study examines critically the interaction of the situation of migrant workers are shaped and influenced by social-cultural contexts and the Malaysian employment law, within the framework of legal dispute processing. On a general level, this research is to examine *why* only a few Indonesian domestic workers who are mistreated, file the suits for claiming. Further, the study is to also to undertake a socio-legal analysis on *how* they develop patterns of legal disputes they processed.

The 7 (seven) participants include female domestic workers over the age of 21 (twenty-one) who had worked in Malaysia for at least one or more years and experienced mistreatment. These 7 (seven) participants represent four different mistreatment experience — physical, psychological, sexual, and financial mistreatment, who came across from different origins, namely West Java, Central Java, South Kalimantan, and Lampung. The main language spoken by the participants was Bahasa Indonesia. Literature on historical and legal framework of Indonesian migration into Malaysia was used as a framework for this study. I

The following research questions guided data collection:

1. Why only small number of Indonesian domestic workers who had been experiencing employment mistreatment file lawsuit through litigation to the court?
2. How do Indonesian domestic workers develop, maintain and establish the patterns of dispute processing, as alternatives to the courts?
3. How do problems of access to justice effect the patterns of disputes processing they developed;

As I analyzed the experiences of the participants, my first task was to establish trust and respect as the participants shared their thoughts, feelings, and beliefs. I gathered pertinent data from the participants through observations and interactions. Each section in this chapter will highlight the stories and experiences of each participant told during the interviews. In addition, the descriptions of the 5 (five) participants are provided.

## **5.2 In Depth Interviews**

This project examined Indonesian domestic workers as complete beings, taking into account their lived experience and social context, and rejects traditional notions of neutrality and objectivity as illusory. The decision to use in depth interviews for this project was intended to allow respondents to articulate their own understanding of legal concepts and language as well as their own particular social context and life experience. “In-depth interviewing’s strength is that through it we can come to understand the details of people’s experience from their point of view. We can see

how their individual experience interacts with powerful social and organizational forces that penetrate the context in which they live and work...”<sup>1</sup>

These in-depth interviews allow the respondents to describe their own experiences and tell stories about their legal encounters in their own way. Narrative is one of the primary ways humans make sense out of their experience. Storytelling is a natural mode of communication, it provides a form through which individuals can express their understanding of events and experiences. Ewick and Silbey<sup>2</sup> explain the importance of narrative accounts in their study. “We adopted the concept of narrative because people tend to explain their actions to themselves and to others through stories. In other words, stories people tell about themselves and their lives both constitute and interpret those lives; the stories describe the world as it is lived and is understood by the storyteller.”<sup>3</sup>

The interview script had developed, with particular questions related to the research problem. However, since the goal had been to dig into respondent’s consciousness, it was critical to allow the respondents to tell the stories in their own way and to avoid communicating expectations or assumptions through my questions. The interviews were semi-structured, and evolved organically according to the comments of the respondents. The researcher began each interview by asking respondents to describe the mistreatment experience that eventually led to the complaint and allow them to tell their stories uninterrupted. The researcher then asked them to expand on, describe or explain certain aspects of their experience.

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<sup>1</sup> Irving Seidman, *Interviewing as Qualitative Research* (New York: Teachers College Press, 2006).

<sup>2</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*.

<sup>3</sup> Ibid., 28-29.

**Table 5.1. Outline Profile of Participants of Case Studies**

<b>Summary profile of the case study based on Employer's ethnic and Type of Mistreatment</b>			
<b>Case Study Number</b>	<b>Fictitious Names</b>	<b>Employer's ethnic</b>	<b>Type of Mistreatment</b>
Case Study 1	Latifah	Malay	Financial
Case Study 2	Jumanah	Chinese	Psychological
Case Study 3	Bibi Isah	Chinese	Psychological/Physical
Case Study 4	Nia Kurniawati	Malay	Financial
Case Study 5	Yuyun	Chinese	Physical
Case Study 6	Yani	Indian	Sexual
Case Study 7	Hesti	Chinese	Psychological

**Table 5.2. Summary Profile of the Case Study Based on Participant's Origin and Educational Background**

<b>Summary profile of the case study based on participant's origin and educational background</b>			
<b>Case Study Number</b>	<b>Fictitious Names</b>	<b>Origin</b>	<b>Educational Background</b>
Case Study 1	Latifah	Tulung Agung	Junior High School
Case Study 2	Jumanah	Banjarbaru	Junior High School
Case Study 3	Bibi Isah	Sumedang	Elementary School
Case Study 4	Nia Kurniawati	Bogor	Senior High School
Case Study 5	Yuyun	Bogor	Junior High School
Case Study 6	Yani	Bogor	Elementary School
Case Study 7	Hesti	Yogyakarta	Elementary School

### 5.3 Seven Case Studies of Mistreated Indonesian Domestic Workers

In this section the individual experiences of each of the seven Indonesian domestic workers who were experienced mistreatment while their service in Malaysia is



documented. Details of each employment experience and their conflict respond towards the dispute are presented.

### **5.3.1 Case Study 1: Experience Seeker**

#### ***Background***

Latifah is the oldest and the only daughter of 5 (five) children. Therefore, she had been just like Tom boy. She usually hang around with boys in the village and rarely got along with girls. She got used to traveling around by herself, wherever she wanted to go.

Latifah graduated from Junior High School (Sekolah Menengah Pertama). She did not continue her study to Senior High School due to financial problem. Instead, she went to a religious school (pesantren) where she simply paid school fee a bit cheaper than that of formal school.

She was offered to work as a domestic worker in Malaysia by her family who had been a permanent resident there. Her family worked as a religious teacher (ustadz) in the Damansara, and one of his students asked his help to find a maid from his village. Latifah did not think too long to take an offer, since she had nothing to do, except being a santri. She was also very keen to take the job, since she wanted to experience working abroad. She then applied for a passport, financed by her employer to be and flew to Kuala Lumpur by herself.

#### ***Employment in Malaysia***

She had 6 (six) years of work experience in Malaysia with only 1 (one) employer, with the same ethnic (Malay) and religious (Muslim) background. According to

Latifah, her life and work in Malaysia with her employer was not bad at all, particularly compared to other maids she met and talked with while going out for shopping or running errands outside the house. She relatively enjoyed freedom to go out anywhere she wanted, as long as she had finished the job. Every time she intended to go out, she would finish the job earlier. Fortunately, she held her own passport. She was also allowed to use her own cell phone and she was free to communicate with other maids.

While in Malaysia, she worked for Datin who lived with only 1 (one) daughter and a married son of three children. However, after schooltime, almost all of her other grandchildren stayed with her until their parents picked them up. By that time, the home was just like a kindergarten, full of scream and laugh of children.

She served the Datin's family with 3 (three) other maids who came from other parts of Indonesia. The housemaids did not have fixed arrangement in doing household chores. They simply worked together, washed clothes, prepared food for the children, and prepared them for school, one by one. When everyone had gone, they would vacuum, mop, clean the kitchen, cleaned the toilets and water the flowers. They also cook all the meals.

Eventhough they did not have any rest or any days off, they could go out for a while as long as they had finished the job. They were also given a room to share with 2 (two) other maids close to the kitchen. She was also free to perform her religious obligation, like praying and fasting. In short Latifah was happy to serve her employer. She felt that she was treated just like a member of a big family.

### ***Conflict experience***

Latifah's main motivation to take up overseas employment was to gain a working experience. As a rural girl with limited education, it would be difficult to get a good job. The only chance was becoming a housemaid. Considering a better income overseas, she preferred overseas work opportunity.

*"Honestly, my intent to work in Malaysia was to seek a new experience, since I had never been out of my village before. It was my first overseas experience"*

*Latifah (translated from Bahasa Indonesia)*

While most overseas migrant domestic workers had negative experience of various kinds of abuse, Latifah was quite lucky that she was employed by a good Datin. In spite of the much work to do, she relatively had some free time to indulge herself.

*"The employer let me go out for personal or social purposes as long as I had completed the work. I really appreciated my employer's kindness and understanding for giving me such a valuable freedom to me. I was much luckier than other maids".*

*Latifah (translated from Bahasa Indonesia)*

Good relationship had been built between Latifah and her employer. While initially it was a kind of professional tie, it later turned into a personal tie. Mutual understanding and tolerance between the employer and employee made the relation lasted long. Both Latifah and the employer had successfully maintained mutual trust between them. Therefore, Latifah could work for a consecutive term of 6 (six) years. She declined further employment for personal reason rather than professional reason. She would like to get married.

*"I felt comfortable and happy to work with her for 6 (six) years. Such was also true for my employer. She offered me another contract upon the*

*completion of one contract. It turned out that I had worked for her for 6 (six) years. I terminated the term since I had to return to my hometown to marry my boyfriend whom I met during my service in Malaysia.”*

*Latifah (translated from Bahasa Indonesia)*

Latifah was so lucky financially that no salary deduction was imposed to her. While salary deduction to reimburse administrative fares and boarding fees was commonly practiced by labor recruitment agencies to migrant domestic workers, the employer held herself responsible for the fee charged by the agencies. Even better, the employer paid most of such expenses as medical check up and airfares to Kuala Lumpur.

However, in spite of those good stories, dissatisfaction did exist. She had to work continuously without any scheduled break, leave, or holiday. Although this seemingly hard work was compensated by occasional and conditional personal and social freedom, she was not free to arrange activities for herself.

*“Well, frankly I wanted to have specified day-off and holidays too so that I could indulge myself all day long. But having no reserved leave, I just could go out for a while and soon I had to return.”*

*Latifah (translated from Bahasa Indonesia)*

Another ‘bad experience’ was that during her 6-year term of employment she did not receive any pay raise. She started out with a salary of RM400 which was later stucked at that point after six years. However, although she failed to get the expected pay raise, she felt reluctant to sue a protest for fear that the boss would lose face.”

*“Since my employer had been too kind and nice to me, I felt uncomfortable to ask for a higher salary. I feel reluctant to ask for more money for reasons ranging from fear of asking through to issues of lack of self-esteem. Further, I even had to pay myself for my personal expenses, like buying soap, toothpaste and shampoo. But then, I tried to cheat on her by including those expenses in the shopping budget, and she never complained.”*

*Latifah (translated from Bahasa Indonesia)*

Latifah considered her employer as ‘stubborn’ and determined not to change her argument, even though she was wrong. Once, Latifah was asked to cook a certain food (she cannot recall what it is). She argued the people in the house never wanted that food. The Datin seemed to be not happy and showed her anger. She insisted forcefully to cook the food. Since then, Latifah realised that her employer never accept the word ‘no’, any refusal or contradiction. She always pretended to cope with any situation, to make her employer happy.

She always got along very well with her employer, but not with her daughter in law who lived in the same house. The daughter in law was a bit silent and speak very little or not at all. When she got angry she just went silent and became very noncommunicative. One day, I made a mistake and she did not talk at all. On the contrary, she wrote a letter and dropped it to my room. Unfortunately, this was very painful for me as I am very much into self-expression.

*“Can you imagine how painful it was, if we had lived at the same house and never talked? I simply glanced at that letter and then burned it. It hurted me and made me feel worse than if she had just done the deed with true courage.”*

*Latifah (translated from Bahasa Indonesia)*

At that time, I was stressed and think to step out, finding a place away from everybody. I felt it would be helpful to have a friend, relative or significant others with me. I eventually went to my uncle’s home in Kuala Lumpur, about 2 (two) hours driving by taxi. I thought this might help me to keep my self calm during the tough times. I told him about what happened and the person that upset me. Fortunately, he understood and readdressed the situation to my employer. It took me

only 3 (three) days to straighten the situation and I went back to Damansara and started to work again.

### **5.3.2 Case Study 2: Tough Girl**

#### *Background*

At the time when she secured overseas job, Jumanah was a 23-year-old widow from Banjarbaru, South Kalimantan. Her main motivation in taking up overseas employment was to help her family escape from poverty and also escape from her broken marriage. She was inspired to look for work overseas after seeing the benefits gained by other neighbors in her origin (Tulung Agung, East Java) who had worked in Taiwan and Hongkong. Even her sister and aunt had been working in Taiwan for 10 (ten) years. She became motivated when she saw the material changes in their families living in the village.

Jumanah graduated from Junior High School and after that she spent most of her time working as domestic worker. She used to work for a vet in Banjarbaru for about two years. Then she worked for a foreman in the sugar mill around Martapura municipality. The later employer was kind enough allowing and financing her to join sewing course in Martapura.

#### *First employment in Malaysia*

Jumanah secured the job in Malaysia as a caregiver of 80-year energetic Chinese grandmother. All she had to do was accompanying her going shopping and carrying shopping bags. At home, she only performed such light housekeeping tasks as

dusting, vacuuming, making beds, cleaning bathrooms, kitchens, etc. She also did washing and ironing.

The woman and her unmarried son were relatively kind persons. They treated her proportionally. Extra payment and tips were occasionally awarded. Overall, her employment condition with this family was quite good.

### *Second employment*

Jumanah's second employer was also Chinese family. She preferred working for Chinese since they had been quite straightforward and open. Besides, she also had prior experience in working for Chinese family for three years.

In addition to working for her employer, she was also helping his employee's parents in law, who owned a Chinese traditional herbs store. She helped them prepare and pack the herbs. The whole herbs were dried, sterilized, tested, and packaged in vacuum-sealed bags and delivered to the store. Although she worked for the parents in law throughout the day, they did not offer her any lunch. She sometimes bought an instant noodle from a small mini market and cooked it for myself.

*I could not stand being overburden with work and might be overloaded that I did not have a spare time for myself. I woke up at 5:00 early morning, worked all throughout the day. At night I started doing other household task like washing clothes and ironing until late night. I usually took supper after midnight and went to bed right after then.*

*Jumanah (translated from Bahasa Indonesia)*

### *Conflict experience*

Her first term of work was quite enjoyable. The employer was kind and rather generous, and her work was quite simple and easy. Accompanying her going

shopping was one of her primary work in addition to doing such light housework as cleaning, vacuuming, and cooking.

*“The old woman was fond of going shopping, and I had to accompany her to ensure her safety and to carry the purchased goods for her. Since she had a hypertension and had a recurrent weird behavior, my work included observing that such those incidence would not happen.”*

*Jumanah (translated from Bahasa Indonesia)*

Generosity was one thing that she liked from the old woman. Having accompanied the lady for shopping, she would earn some extra money. Such was also the case when the woman’s unmarried son assigned Jumanah an extra work of washing. He would reward her proportionately.

*“In spite of her temperamental character and irritable personality, the old woman was generous enough. I earned some extra money for having accompanied her going shopping. Additional income was rewarded by her unmarried son to me for having doing the washing of his clothes. “*

*Jumanah (translated from Bahasa Indonesia)*

But working for an 80-year-old hypertensive and irritable woman was not as easy as she had imagined. With her abrupt change of behavior was common, the old woman could be a serious physical threat for Jumanah. The old woman got angry easily. When she got angry, she went unconscious. Occasionally, she got herself undressed. She would throw away any property close to her. Sometimes she behaved dangerously to herself and to others.

*“It happened several times that she threw a knife to me. Fortunately, I was able to avoid it and none of the unintentional attack ever hit me. Thank God.”*

*Jumanah (translated from Bahasa Indonesia)*

Jumanah learned that becoming a caregiver of an elderly required a great deal of patience. She knew that the woman was not evil. Therefore, no harmful action was



intentional. Jumanah knew very well about the characteristic of an old hypertensive woman. All she had to have was appropriate response and immediate adjustment. She learned to adapt accordingly.

*“I have to learn that she was only temperamental and irritable. Therefore, all those damaging acts had to be tolerable and understandable. They did not bother me at all. She was just an old lady. She would ask for an apology right after that, expressing her regret.”*

*Jumanah (translated from Bahasa Indonesia)*

Jumanah was also able to get along with the employer. Misunderstanding could resolve in a wise and proportionate way. The already well-established good relation between the employer and employee had made any dispute wisely resolved, such as in the case of the salary payment at the end of the contract.

*“My employer gave me a piece of bank draft instead of cash for my total salary, but I politely refused. Although what I worried much was about the probable fake bank draft, as I had heard during the training period in Surabaya, I managed to assured her that it would be difficult for me to cash out the bank draft, since I live in a rural area. I begged her to pay me in cash instead, and she agreed. “*

*Jumanah (translated from Bahasa Indonesia)*

In contrast to the first term of work, Jumanah’s second term of work was full of discomforts and inconveniences. She had problem for most of the time with the second employer. As commonly suffered by other domestic workers, she had overloaded work. In spite of her all-day-long work, she did not get any lunch. The worst of all was stealing accusation.

*“None of my time with my second employer was comfortable. I had to work extremely hard without any lunch allowance. They demanded me to accomplished overloaded work, but they let me in hunger. I did almost everything.”*

*Jumanah (translated from Bahasa Indonesia)*

Another common practice of blaming was theft or stealing. Assumed to be poor, migrant domestic workers were easily victimized to have stolen their employer's belonging or property. Although the accusation was not preceded by adequate and appropriate investigation, the claim was believed to be true by the employer. Being the only person supposed to take care of the employer's property or belonging, Jumanah was held responsible for any missing property.

*"I was suspected of stealing at home. One day, sister-in-law of my employer asked me to iron some of her clothes. It was my bad day that one skirt was missing. I was accused of stealing that one. I denied that accusation."*

*Jumanah (translated from Bahasa Indonesia)*

The common way to prove innocence among the migrant domestic worker, as Jumanah did, was swearing which was hardly believed by the accuser. To assure her not being guilty for stealing, Jumanah naively offered the employer to charge the loss to her, and offered her to deduct her salary to compensate the accused loss, although she was strongly affirmed that she did not do the accused act. In her case, the missing skirt was finally found.

*"I am swearing, in the name of Allah I did not do it. Please cut my salary even a year, but I did not steal it." Nevertheless, the sister-in-law did not believe on me and kept suspecting me on stealing. During a month she got angry, cut me off, and spoke above me and threatened to cut my salary. Finally she found the skirt somewhere in her room."*

*Jumanah (translated from Bahasa Indonesia)*

Forgiving and forgetting the person who had wronged her were the ways she could build a mental resilience. By doing so, she could recover her psychological shock and resolve the dispute. Even without apology, she would already have felt happy to be proven innocent.

*“When the sister asked for an apology for the wrong accusation I accordingly forgave and forgot it. I did not mind being held responsible for the crime that I had not committed. Most importantly, I did not steal it.”*

*Jumanah (translated from Bahasa Indonesia)*

Frankly, Jumanah hardly stand her second employer’s treatment towards her but she tried to go on her work and complete the contract. She was not brave enough to complain. Furthermore, she had nobody to help and she knew nothing about complaint mechanism. Once, she was inspired to escape and run to the agent. But she declined the plan.

*“I could not bear the work any longer and I indeed wanted to quit the work. But I was afraid to escape since I had no one to share shelter and food. I had no money either. When I suddenly had an idea of returning to the agent, I immediately declined the plan. I had given up having any contact with labor recruitment agent. My previous bad experience with agency kept me from contacting them.”*

*Jumanah (translated from Bahasa Indonesia)*

Having nowhere to go and nobody to share the bitter story, Jumanah employed a resilience strategy. She affirmed herself that the poor treatment was one of the work risks. She gave in to the poor destiny that she had to stay with the employer rather than with the agent. In spite of the poor treatment from the employer, she still enjoyed a little comfort that otherwise was not available at the agency.

*“The treatment of the agent had been the worst. It is better to suffer with the employer rather than the agent. The Malaysian agent was uncivilized. Once I saw a friend of her who was rejected and sent back to the agent. The agent got angry with her and hit her. The agent locked her in a dark room. People in the agent hit her everyday with a wooden stick or rattan cane and poured water on them.”*

*Jumanah (translated from Bahasa Indonesia)*

Jumanah had also learned how to cool down the heated relation between the employer and employees. Giving in was one way to end a dispute. She knew that

talking back to the employer would cause even more complicated dispute. Taking the humiliation personally would result in further psychological disadvantages.

*“When I was at the training center in Indonesia, the teachers always reminded us not to argue to the employer, although we are right. Otherwise, the employers would be more upset. We were taught not to say even a word when the employer got angry.”*

*Jumanah (translated from Bahasa Indonesia)*

### **5.3.3 Case Study 3**

#### ***Background***

Bibi Isah, a middle-aged housewife, was a tough woman. Her attempt to have a better life had urged her to earn money by herself. Since she dropped out of grade 4 of elementary school, she was not capable enough to get a good job. While, a suitable job was scarcely found in her neighborhood, she decided to work overseas. She did not want to be dependent, and thus financial security was one way to ensure a better life. She was such a misfortunate mother that she was not in a good relation with her own children and their spouses.

#### ***First Employment***

The fascinating success story told by the relatives and neighbors had attracted Bibi Isah to work as a migrant domestic worker. In 2008, she went to Malaysia and worked for a Chinese family until 2010. Frankly, she expected to work for the Malayan family, but the labor recruitment agency put her at the Chinese family. She was accommodated in a camp for 2 months before she was transferred to another agency organized by a Chinese person.

The work was relatively fine and the employers was kind enough, although she did not want to extend the term of employment for the same person. She worked as other domestic workers did. Since the employer frequently brought her around the town, she got familiar with the surrounding areas. Only once did she have physical abuse that was a slap on the face, to which action the employer apologized. At the end of the contract, she collected ID 16 million, which she distributed to her children and families at hometown. Salary payment was not made on monthly basis. Instead it was made at the end of the contract, after being deducted at the sum of approximately 6-month salary.

### ***Second Employment***

Having a relatively good employment experience with the first employer, she decided to have another work opportunity in 2011. The work condition was totally different from that in the first employer. Restlessness was the biggest problem among others. She had to start working at 6 in the morning and was allowed to sleep at 10 p.m. Her routine works include washing and cleaning. She had to clean up the floor, furniture, railing, fan, and even the roof! She had to use a ladder to climb up the ceiling or reach objects at high location and it was energy-consuming. In addition to the regular works, the overburdened woman still had to accomplish incidental works. A CCTV was put in the house from which the employer could locate where she was and monitor what she was doing. In that way, the employer would easily identify when she was at rest or at idle.

### ***Conflict Experience***

Working with Chinese employers was a terrible experience for Bibi Isah. They were intolerant and cruel, and she expected that none of her children and relatives would ever worked for Chinese employer.

*“ I cannot stand to work for them. Never would my children and relative work for them. The Chinese employers in Malaysia were intolerant.”*

*Bibi Isah (translated from Bahasa Indonesia)*

Cultural conflict was another important contributing factor that result in a dispute. While she expected to work for the Malayan employer, whom according to her should have had almost similar culture, she was assigned to a Chinese employer to whom she had had a cultural a priori. She, of course, could not deny the assignment, as she was not eligible to protest.

*“I expected to work for a Malayan employer, but they wanted me to work for a Chinese employer. Even worse, that when I wanted to work as a domestic worker, they put me at the elderly home. Nothing was right.”*

*Bibi Isah (translated from Bahasa Indonesia)*

Her second term of employment only lasted 6 month since she could not stand the full work and strict supervision. She even could not pass prayer or have personal pleasure. The employer always monitored her about what she was doing, and prepared another work to follow. Sometimes she had to repeat the work when the employer thought what she had done was not as expected.

*“He called me to do one thing, while I was doing something else. He always knew when I had completed one job and immediately instructed me to do another job. Continuous work! In other occasion, he called me to do works beyond the regular activities, and it occurred when the regular works had not completed yet.”*

*Bibi Isah (translated from Bahasa Indonesia)*

Food scarcity made her suffer. She only ate the reserved portion, nothing else. When no food was available at home, due to the power failure or gas shortage, she would eat nothing the whole day, while the employer would eat out or asked for food delivery service. No part was shared with her, even though knew that the domestic worker ate nothing at all the whole day.

*“One day the power went out and the gas run out. We could not cook any meal until the next day. And during that moment I was starved. Poor me that my request for a bit portion of the meals she bought was totally refused, on reason that he had paid me.”*

*Bibi Isah (translated from Bahasa Indonesia)*

To be able to work well, she was required to be always healthy. Ironically, no health provision was provided. When she slipped off the floor and got her leg injured, the employer did not provide any health support or allowance, which might have been as much as 5 ringgit! Not only did the employer refuse to provide medical service, he asked her to work as hard as usual, while ignoring the fact that she was in poor health.

*“The employer was a bad guy. Once I had my legs injured after they slipped off the floor. Did he brought me for medication? No! He urged me to work as usual, as if nothing bad occurred.”*

*Bibi Isah (translated from Bahasa Indonesia)*

Although she did not experience physical abuse, she indeed had psychological abuse. Such rude verbal expressions as lazy, rubbish, or useless were commonly addressed to Indonesian domestic workers. Some were understood, and thus, responded accordingly, but some were not since they were uttered in Chinese. On balance, Bi Isah expressed her emotional discomfort with Sundanese language. Poor Bi Isah that the employer usually called the agent to complain and accordingly the agent

representative would come and stood on behalf of the employer. She was labeled as rebellious.

*“No, he had never hit me. But it was her rude words. When he spoke in Malayan language, I would respond accordingly, but when he murmured in Chinese language, I replied in Sundanese language. He had to know that I was mad. When this occurred, the boss would call the agent, and the agent would blame me.”*

*Bibi Isah (translated from Bahasa Indonesia)*

#### **5.3.4 Case Study 4**

##### ***Background***

Nia Kurniawati, a 27-year-old divorced mother of 6-year-old-boy was a typical young woman who strived to survive with limited skills and network. Coming from a rural area most population of who were poor, she dreamt about having a better life. All she knew, as she had seen in her neighborhood, was becoming a domestic worker. While it was the only choice that she had, it generated good income adequate for her being financially self-reliant. And that would only be possible when she worked abroad.

Another reason for her desire to work overseas was that she would like to escape her broken marriage. Leaving the home country would mean both income generation and emotional relaxation. She knew how hard working as a migrant domestic worker would be, but she was determined that it was the only way to survive and sustain her life and her son's.

Arranged by a labor recruitment agency in Central Java, she went to Malaysia in 2002 and secured a job as a migrant domestic worker. Prior 3-month trainings in



such competencies as calling etiquette, writing, baby bathing, and interpersonal skill were provided.

### ***First Employment***

In Malaysia, she worked for a retired teacher and a financial manager and earned 300 ringgit per month, which had to be deducted to pay the recruitment fee. She had to wash 4 cars everyday and cut the grass once a week. She also had to paint the house once a year. In addition, she still had to do the washing and ironing. That's not all. She still had to clean up the two-floored 5-roomed house and this had already taken up the whole half day.

Working as a migrant domestic work required much perseverance and toughness. She nearly had enough personal time as she had to do different things consecutively and repeatedly. The 1.5-year-term was such a difficult time for her. The employers always made her do anything whenever she had completed her works, one after another.

### ***Conflict Experience***

Her way to work overseas was not as smooth as she expected. Working overseas was a kind of escaping from her marital failure. After getting divorced and having to bring up a 6-year-old boy, she decided to work as a migrant domestic worker. For professional preparation, she had to undertake some short-courses in communication and home care. With low wage of 300 ringgit, she still had to 'reimburse' the expenses and charged to the labor recruitment agency. Initially expecting to work in

Singapore, she had to take the job in Malaysia. Lack of competencies was the reason of why she was assigned to Malaysia instead of Singapore.

*“Frankly, I would rather have been working in Singapore than in Malaysia because of its higher salary rate. Unfortunately, due to my poor competencies and skills I would not met the required high standard for Singapore. Consequently, I was assigned to Malaysia.”*

*Nia Kurniawati (translated from Bahasa Indonesia)*

Her term of employment in Malaysia was not a really good experience. Her extremely long work hour had taken up her personal time. It was true that she had adequate meals, but it was because she had to work hard. Other than the time for passing the prayer, she had no other non-job free time. The tendency that the employer always wanted to see her working had made her extremely exhausted and frustrated.

*“The employer would not allow me to do nothing although I have accomplished the work. Soon after I had done a work, they would ask me to do another. And another! They thought they deserved to have more services.”*

*Nia Kurniawati (translated from Bahasa Indonesia)*

The employer was financially tight. Other than the wage of 300 ringgit, she got no extra payment such as bonuses or allowances. She had enough food, but that was all. No clothing allowance at all. She realized that she looked very different with the dress she was wearing. With that amount of money, she still had to pay off the recruitment fee to the agent.

*“My salary was deducted for six month to reimburse the recruitment fee. It was such a large sum of money, you see, but what can I do?”*

*Nia Kurniawati (translated from Bahasa Indonesia)*

Conflicts went further when she was accused of stealing, which she strongly denied. Although they could not prove the accusation, they insisted that she had wronged them. Getting rid of further dispute and conflict, she offered her 4-month salary to compensate the loss. This represented, unfortunately, a kind of admission of guilty.

*“I was accused of stealing some money. Of course I didn’t, but they insisted I did, although they failed to prove. I don’t want to get involved in dispute or conflict. I offered them to deduct my salary to compensate that loss; as much as 4-month salary.”*

*Nia Kurniawati (translated from Bahasa Indonesia)*

### **5.3.5 Case Study 5**

#### ***Background***

Ari Wahyuni, who is usually called Yuyun, is the third child of nine children. She graduated from a junior high school. Arranged by a labor recruitment agent, She went to Malaysia to get a job in 2008. Her minimal education level and her narrow perspective of job opportunities had led her to expect a job like what other girls in her neighborhood had. Her first experience as a domestic worker was not as nice as she had expected. She had such severe and continuous physical abuses as kicking, hair pulling, pushing, and locking up. Such these mistreatments had resulted in mental depression. The misfortune went on as this poor mental condition justified the employer to send her home.

The family found her in terrible physical and mental conditions. Although she was commensurately paid in cash and in check, physically she was thin and signs of physical tortures were found everywhere of her body. Mentally, she was so depressed that she had a kind of hallucination and disorientation. Only later then did

she gradually recovered. She got married the following year. To move away the bitter memory, she burned out such memorabilia as photos and accessories.

Later in 2010, together with her aunt, she again went to Malaysia. This time, however, instead of expecting to secure a job, she wanted to see her sister who had been there and had never returned. The trauma kept her from getting a second chance of work overseas.

### ***One and Only Experience***

Working was the only choice for a rural girl with very minimal education. Her junior high school schooling put her on very limited chances other than becoming a domestic worker. Considering the possible higher income from working overseas, she decided to work as a migrant domestic worker. Simple as it seems, the work was really beyond her capacity. Failure to satisfy the required standard and procedure had resulted in physical and mental abuse. Her body being kicked and her hair being pulled out were daily physical tortures that she had. Her thin body probably implied either a malnutrition or mental discomfort.

Working for a Chinese family was a terrible domestic hell for her. After those several days of warm welcome, she went into a labyrinth of seemingly never-ending abuses. The employer seemed to be always dissatisfied with whatever and however she did. The employer got easily mad with whatever she did. An unexpected encounter and conversation with a stranger could result in verbal and physical abuse. Food was scarcely secured for her and the all-in work had taken up all of her time. Nothing could he have done, as she was locked up and kept away from any possible social interaction.

Returning home was such a relief for her long-lasting poor work experience. In spite of the commensurate sum of wage, she did not expect to secure another chance of work overseas. It took long time to heal the bad memory, although hard attempts had been taken to throw away the bitterness. Only a year later did she feel better and was mentally prepared to get married.

### ***Giving Up Second Chance***

Having a second chance to go to Malaysia, she had a bit different expectation. Rather than for employment purpose, her leaving for Malaysia was to see her sister whom she had not seen for years. All she wanted to know was that her sister was fine and enjoyed her contractual term of employment. Her sister's not returning home for years had worried her that her sister might have had as poor treatment as she had experienced. In case her sister's employment term was fine, she would have taken another chance of employment.

Unfortunately, her second visit had resulted in the worsening of her already depressed mental condition. Her sister's working condition had evoked her bitter memory of the past employment. Her initial expectation of seeing her sister in good condition faded away soon she saw what her sister had experienced. The negative impression had resulted in her giving up her expectation to have the second chance of employment. Another bitter moment came to her. She had to be returned to Indonesia with the seriously depressed mental status.

### 5.3.6 Case Study 6

A thirty-one-year-old mother of a seventeen-year old daughter and a thirteen-year old son, Yanah has been in Malaysia for only 13 (thirteen) months. During her service, she served as a maid in the household of an Indian businessman; who had a wife and three children. The lady had been pregnant at the the time she arrived home.

Yanah got married very young. When she was 13, her family arranged her marriage. However, after 3 years of marriage, her husband married another woman without her consent. Yanah went abroad simply to escape from her broken marriage. This gave her courage seek a job overseas. Unfortunately, she escaped from crocodile's bite, but accidentally entered tiger's mouth.

Yanah told that her employer forbade her from making or receiving phone calls, writing letters, and communicating with their family or other migrants in Malaysia. Her employer locked the rooms where phones were kept to prevent domestic workers from reaching out, and he also forbade her from having cell phones. This level of control caused Yanah anguish, as she was not able to convey messages about her well-being to her family or to hear important news from home. "That is why I always cry, I worked without communicating with my family."

"At the house I was given a separate room to stay, but there was no scope to lock it up. He often groped me since she arrived in the country to work for him six months ago. "He would come to my room, hug me and touch my breast," she said. "I told him that I would scream so he used to leave me .....

However, when the lady delivered the baby and hospitalized, it happened. “I was preparing breakfast to take to his hospitalised wife so I asked him to bring his clothes to the kitchen and I will have them ironed,” said Yanah. She said he insisted that she do the job in his room. When she walked into the room, he locked the door and took away the key. Anticipating danger, the woman tried to take refuge in the bathroom but the man managed to grab her and throw her to the ground. He twisted both her arms then sat on her abdomen and raped her, she said.

“I begged him repeatedly, I reminded him he was married, asked him how would he feel if someone did the same offence to his wife, I told him I was married, I begged him, but in vain,” said Yanah. “He raped me for at least twice. If I cried out for help, he forced my mouth shut so that I could not make any sound. I was also beaten up...Out of fear I did not disclose it to anybody,” she added.

Such a terrible experience has disgraced Yanah’s self-esteem to the lowest grade. Having been sexually assaulted in that way, she got so desperate and frustrated. The fact that the employer had raped her brutally and ignored her begging for mercy as well as that his being a Moslem had not kept him from committing sexually indecent force was a terribly intolerable experience. had made her so depressed. All she could do was acknowledging the bad fate of falling into another misfortune.

However, Yanah was a typical representation of the rural women who inevitably and desperately have to take the seemingly inherent misfortune. The overburdened life had resulted in naturally improved mental immunity that kept her from being tearfully and overly emotional. She was such a strong woman who soon regained strength after an emotional depletion. It was even much bitter to know that she got

pregnant and her employer sent her back to Indonesia. What made her even more frustrated was that the wife seemed to have known her 3-month pregnancy but did not take any necessary action. Later, she gave birth to a son.

### **5.3.7 Case Study 7**

#### ***Background***

Hesti is a tough and brave girl. She had had a lot of work experience long before she worked abroad. Her getting along with many people of different background and many employers of different characters had taught her much about how to behave accordingly and appropriately. She could be kind and tender at one time, but harsh and hostile at another. Her brevity was strongly reflected in her strong courage to fight anything that she disliked or disagreed. Even, she was well-prepared to have physical clash with criminals.

She had a good friendship and strong solidarity. Basically, she was kind and helpful to the people she thought they deserved to be helped. She was voluntarily willing to help complete the works beyond her own responsibility. But she would suddenly harsh and irritable when she was either psychologically or physically attacked. And accordingly, she would fight against them.

Above all, her courageous personality had resulted in respect and honor from friends and foes. And the employers too! Her warm and friendly Javanese character had established everlasting friendship and continuous communication. She was also a progressive woman, who was determined in what she expected and wished. She



knew very well what job she deserved to secure, and what level of education she should have reached. And she always struggled to make them come true.

### ***First Experience***

Hesti had a very extensive work experiences in domestic and foreign countries. Domestically, she had worked with different employers at different sectors including merchandise production and selling in different towns. Jogjakarta and Jakarta are those among the cities in which she had worked. When a job offered higher income, she would seek. She had been accustomed to seek higher income. Such a various work experiences made her familiar with different work conditions and employers and had taught her much about how to work professionally in appropriate way.

Working abroad in Malaysia was her first overseas job. Relevant to her past work experience in business sector rather than domestic works. She worked for a cloth shop owned by an Indian family. She insisted to work as a shop assistant since it earned much more money than domestic workers. She had refused, although temporarily, to be assigned in housemaid work. She claimed that she would work better as a shop assistant rather than a domestic worker, although she would not mind helping accomplish the housework upon the completion of the shop works.

Some initial adjustment and adaptation were needed. Personal conflicts occurred but soon easily resolved. Her female employer set up restrictive work arrangements difficult to meet, while the husband was very kind and attentive to the employees. Likewise were the children and other family members. Sometimes, the fierce communication with the female employer peaked to verbal quarrel. If such an incident occurred, the husband would set them apart and calmed down his wife,

arguing that the quarreling interrupted her work and caused emotional discomfort among them.

The employer employed different person for different work. In addition to Hesti, there were other two shop assistants who worked as shop assistants. For domestic work, the family employed a Pilipino. Although her job was specifically described, which meant excluding housework obligation, she helped complete the housework when she was at home. Hesti worked at the shop from 8 a.m. to 5 p.m. without any break except for lunch and during pray time. For that work she earned .....She worked for 2 years 5 months. She gave up the work for personal reason. Her brother did not allow her to extend the work term.

### ***Conflict Experience***

Just as commonly practiced, some types of abuse were suffered Hesti. However, the intensity and frequency of conflict were relatively minimal since she was assigned in shop work with relatively regular work hour and specifically described work responsibilities. Compared to those domestic workers, she got much better work condition. However, infrequent as they were, abuses did occur and she successfully countered them.

*“Initially, the female employer kept protesting our work outcome although we had done the best we could and no defect was identified. Probably it was because she thought she deserved doing that for what she had paid to us.”*

She was lucky that it was only the female employer who was harsh to her. The husband, the children, and other family members were all fine. The male employer trusted the employees of their obligation and commitment. When a conflict occurred

between the employee and his wife, he resolved wisely. It was he who reminded them to have lunch. Sometimes he bought them some food.

*“The male boss was such a nice and attentive man. In contrast to his wife who always complained and protested, he was calm and tolerant. At shop, he asked if we had had lunch. Occasionally, he bought us some special meals. At home, when I was in conflict with the wife, he wisely advised her not to scold me, and had better let me go back to work. And luckily, the wife gave in and stopped scolding me.”*

The children of the family were all kind to her. They called her ‘older sister’, implying that they were emotionally attached to her. They talked to each other as if they were true sisters. Even upon the termination of her work term with that family, they kept contacting her.

*“The children, particularly the youngest, were close to me. We had a very intimate relation. When I finally gave up the job and returned to my hometown, we still kept in touch. They called me and asked if I would be with them again. They said that they missed me so much.”*

Conflict did occur at initial phase of work term but diminished over time. Never had a conflict escalated to a serious and overt dispute or physical abuse. This might be because of relatively good communication in the family.

*“Initially, the female employer scolded me very much. Anything that I did was wrong and she was eligible to ask me to obey whatever she said and to satisfy whatever she expected. A minor mistake might mean a rage. But over time, we had better mutual understanding. I learned to work better and she handed out more trust to me.”*

What Hesti had done to empower herself and minimize conflict was tactical. She had good contact with the local policemen who always friendly greeted her whenever they met. She also had a good relation with the other some Chinese people from whom she learned not to speak harshly or behave rudely. Her good relation with the local policemen had become a kind of protector or resolver to her.

*“The policemen once came to my employer and advised them not to be harsh and rude to the employees. Since then, the employer showed much better appreciation and respect to the employees. No more blaming!”*

In times when she had to face up the fact that the female employer was angry with her and scolded her Hesti kept herself not to be reactive. She listened what the employer said but responded no single word. This kind of defensive mechanism was proven to be successful. The anger diminished and vanished gradually.

*“Being not reactive was effective to stop the conflict. Allowing the employer to burst into anger was good to release the temper to obtain emotional stability. Meanwhile, listening to what she said was a wise way for me to know what she expected, while introspecting if I had probably done wrong.”*

However, there were times when she could not stand the condition any longer. In spite of her serious attempt to keep control of her emotion, she sometimes outburst and reacted accordingly. Quarrels resulted when both parties failed to wisely channeled the anger.

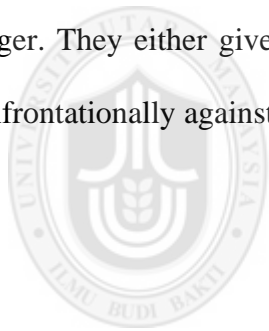
*“Sometimes what she said was intolerable and I cannot stand anymore. She kept scolding me and did not allow me to defend. Loosing self-control, I shouted back and thus we were in serious conflict.”*

#### **5.4 Concluding Remark**

In spite of the different personal reasons of becoming migrant domestic workers, they have something in common: earning extra money overseas. While they find it difficult to secure jobs in the home country, they look for jobs in overseas country. Malaysia is the most favourite destination country due to its long history of employment tradition for Indonesian migrants and the relatively similar languages they speak. However, these two advantages paradoxically have poor employment history as well. Mistreatment by the superior to the inferior has been manifested in what we may call modern slavery and servitude. While it is true that most migrant

domestic workers show poor performance due to their being less skilled, what is also true is that there seems to be arrogance and intolerance from the employers. Parallelizing domestic workers to the traditional domestic role of women with overburdened work and overtime schedule is what seems to cause the servitude.

When they are lucky enough, they will get 'kind' employers who allow them, although limited, some personal care and social encounters, which they should have inherently embedded in any work contract. Long work-hour and low-pay work on the one hand, and high work-target and the consequent punishment on the other hand are two characters of servitude. . This is what is considered to have escalated the conflicts. It is not surprising that some migrant domestic workers cannot stand any longer. They either give up the job at the expense of their retained salary or stand confrontationally against the employers.



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## **CHAPTER SIX**

### **DISCUSSION**

#### **6.1 Introduction**

Becoming domestic workers have come up as alluring work opportunities for a great number of people who fail to secure formal jobs due to either the lack of work opportunities or professional skills. The work has also attracted more women, many of whom are socially and culturally are reserved for housework and home care. While some have attempted to secure formal jobs, many more are involved in such informal works as becoming mobile sellers, operating mini-shops, providing tailoring service, working in field or plantation, getting involved in masonry projects, or house helpers. The primary motivation is economic, and therefore they take any possible and available opportunities as long as they will earn higher income.

Unfortunately, some of them find it difficult to secure works domestically. Consequently, they are willing to work abroad at any risk. With limited education and professional skills, the job seekers, mostly women, can only get such hard and lousy jobs as migrant domestic workers. Unfortunately, their dreams do not always come true. Instead of earning the expected income, they are at high risk of having mistreatment and abuse. As sadly reported by the participants of the study, they are powerless in defending and protecting themselves against infringement, violation, and abuse, primarily because they have no formal access to complain or they fail to identify the ongoing abuse or mistreatment on them. Even when they realize that they are abused or mistreated, they take them for granted and consider them as the embedded risk of work. If they happen to complain, they just want the employers

know about how they feel rather than what they expect. The complaint is mostly intended to channel out their emotional burst, instead of an attempt to get wage increase or better facilities. In addition to the lack of knowledge and courage about complaint procedures and channels, such a mental attitude has been attributed to the low rate of complaints or litigations.

## **6.2 Indonesian migrant domestic workers within the intersection of gender, class and race**

This part elaborates the images of Indonesian migrant domestic workers portrayed by employers, agencies and the society from the idea of intersectionality. The image has stimulated infringement of human rights as well as oppression and discrimination in Malaysia. Accordingly, intersectionality theory will be used to examine the society's perception and construction of the images of domestic workers based on their race, ethnicity, gender and status in the society which influence how the society treats domestic workers.

Race, ethnicity, gender and class are socially constructed to produce and maintain social stratification among people within the society.<sup>1</sup> Social stratification has classified people in different classes based on particular aspects. Being mostly *female*, migrant, and unskilled, domestic workers are classified into the least respected class. The low stratum is attributed to such numerous reasons as race, ethnicity, gender and status socially constructed by the employers and agencies and

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<sup>1</sup> J. Misra and I. Browne, "The Intersection of Gender and Race in the Labor Market," *Annual Review of Sociology* 29, no. (2003): 490.

the society in general. The socially constructed images of domestic workers resulting from through the intersection of race, ethnicity, gender and status have resulted in stimulate oppression, rights violation, and discrimination in the society. Gender-bias has traditionally and customarily worsened the status of underpaid workers. The justification may derive from the traditional perspective of free maternally-attributed housework. Being a paid domestic worker, a woman is thought to be better off than doing purely unpaid housework. The low-ranked status is also attributed to the migrant status, implying the unavailable alternatives but receiving the domestic works at any payment level. Equally important, low education seems to contribute to the negative labeling for domestic workers.

Most domestic workers are those with limited access to formal employment due to their failure to compete in rarely available job opportunities prevalently experienced by the people in such developing countries as Indonesia. Failing to meet the formal requirements and limited work opportunities in both formal and informal sectors has led the marginalized people, mostly unskilled women, go abroad to secure a job.

All participants in the case study were rural and isolated women with average schooling of either elementary or lower secondary level, except Nia Kurniawati who held Senior High School degree. The presentation of this case study is in line with Hannah Andrevski and Samantha Lyneham's findings<sup>2</sup> that domestic workers exploited in Malaysia had only a basic level of formal education. Forty percent of

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<sup>2</sup> Hannah Andrevski and Samantha Lyneham, "Experiences of Exploitation and Human Trafficking among a Sample of Indonesian Migrant Domestic Workers," *Australia's national research and knowledge centre on crime and justice* 471, no. (2014).



respondents received elementary-level (primary school) education or no formal education at all (n=736) and less than one-third completed high school (29%; n=525). Only five of the women had received a university degree or diploma. Accepting the job as a domestic worker is inevitably their only chance of employment and the seemingly fascinating migrant domestic work has lured the needy and desperate women wishing to give up the long-standing poverty and escape from their own marital despair at once. Such is the case for Nia Kurniawati who had just had a marital divorce and Yanah whose husband had given her up for another marriage without her legal consent.<sup>3</sup> The majority of these women seek employment in the domestic service sector, as domestic work attracts high wages (compared with other occupations in Indonesia) for positions that require minimal skills.

The influx of domestic workers is characterized by ethnic minorities, alien workers, or unskilled workers from under-developed and economically poor countries. Accordingly, lower employment sector has been heavily assigned to race and ethnicity. Being ethnically-minor, alien, unskilled, and migrant has put them in different treatment from other racial-ethnic backgrounds or nationalities. Categorized in this group of unfortunate workers, female unskilled migrant domestic workers from such countries as Indonesia belong to 'others'.<sup>4</sup> Belonging to this stigmatized group, domestic workers influence have been trapped in the ethnically-and-racially-based social hierarchy and unequal treatment as reflected in the exclusion of migrant

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<sup>3</sup> The current research by Hannah Andreovski and Samantha Lyneham reveals that just over one-third of Indonesian domestic workers in Malaysia were married (38%, n=692); a similar number reported being single (n=679, 37%), 14 percent (n=259) were divorced and eight percent (n=141) were widowers. Over half of respondents reported having at least one child (56%, n=1,006), one-third (n=396) of whom were not married (ie were single, divorced, widowed or separated). See *ibid*.

<sup>4</sup> Misra and Browne: 502.

domestic workers from the local labour law. Such a discriminating law is not applied to the local domestic workers who enjoy privileged local legal protection and other national legislations and laws. Holding the status as the citizen of Malaysia, they are favourably treated. Another discrepancy clearly practiced through lower wage for longer working hours among particular migrant domestic workers. Higher payment is generated by domestic workers from Philippines while domestic workers from Indonesia, Bangladesh and Myanmar are relatively underpaid.<sup>5</sup> Preference of employers and agencies to recruiting domestic workers from Indonesia, Bangladesh and Myanmar instead of domestic workers from Philippines is apparently due to the facts that they are less educated, cheaper and more docile than domestic workers from Philippines.<sup>6</sup> In addition, being racially and ethnically different has put the domestic workers in systematic oppression and infringement of rights of domestic workers. The condition is justified with the stigmatized status of being 'others' or 'outsiders' by the society. Stigmatized class of 'others' or 'outsiders' has resulted in negative assumption about domestic workers. Since they are perceived to be lazy and unintelligent and accordingly they are not eligible for rights and benefits.<sup>7</sup>

The negative images deriving from racial and ethnical status of domestic workers indeed have resulted in oppression and violation of domestic worker rights. Their status of being others or outsiders has limited their access to nation-wide.<sup>8</sup> The status of being an outsider of the society is indeed referred to race and ethnicity. The

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<sup>5</sup> Nicola Piper, "Rights of Foreign Workers and the Politics of Migration in South-East and East Asia," *International Migration* 42, no. 5 (2004): 77.

<sup>6</sup> Ibid.

<sup>7</sup> J Elias, "Struggles over the Rights of Foreign Domestic Workers in Malaysia: The Possibilities and Limitations of 'Rights Talk'," *Economy and Society* 37 no. 2 (2008): 293.

<sup>8</sup> Ibid., 294.

negative images of domestic workers in Malaysia are only applied to the migrant domestic workers instead of the local people who are working in the domestic sector. Accordingly, they are discriminatively and unequally treated.

Such discrimination has rooted back to the Western colonial practice which preferred Indians to Chinese workers for domestic labor and in descending order, Chinese workers were more favorable than Malay. However, emphasis surely must be given to colonial construction of Western cultural and moral superiority that delimited the choice of paid domestic workers according to specific intersections of race, class, and gender. First, colonial policies protected Malay peoples by not hiring the future peaceful but allegedly lazy heirs of the country to work in the low status job of the domestic servant. Second, preference for Chinese over Indian men reflected and reinforced racial stereotypes that constituted the image and belief that while Indians were docile workers, they were also less intelligent and hygienic in their ways.<sup>9</sup>

Gender has been a sensitive issue in any social aspect. Such is also the case in domestic works mostly performed by women. Using gender as another basis of stigmatization for domestic workers, the society has practiced discrimination and infringement of the rights of female domestic workers. Underpaid female domestic works are traditionally classified as informal sector in a private house. In spite of their living-in the house, they are degraded to merely household helpers instead of family members.<sup>10</sup> Not only do employers treat female domestic workers as household helper but they are also the left hand of the wife. The female employer has

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<sup>9</sup> Chin, 166.

<sup>10</sup> Elias: 292.

direct supervision of domestic workers compared to male employer since domestic workers are portrayed as the assistant of the wife. The position of female employer in maintaining power to supervise domestic workers creates superiority of female employer over domestic worker. Female employer assumes superior position than domestic workers. Being inferior, they are not eligible for fair and dignified treatment.<sup>11</sup> In Malaysia, not only are domestic workers perceived as the helper and the left-hand of the wife but they are suspected to sexually-appealing and promiscuous to the husbands.<sup>12</sup> Therefore, gender hierarchy is established by negative stigmas in the society and further it leads to discrimination, oppression and exploitative regime of employment control within household. Accordingly, those stigmas have resulted in strict migration policies by Malaysian government in attempt to limit the number of domestic workers in particular. Therefore, gender hierarchy plays a significant role for the construction of negative stigmas with the consequent negative treatments.

Even in the history of domestic workers, Malay and Chinese women, in particular, were also debt-bondswomen who performed domestic labour in households other than their own. According to Chin<sup>13</sup>, paternalistic colonial attitudes and policies toward Malay peoples were designed to "protect" the rural Malay cultural lifestyle. Unfortunately, protection also meant having intact the Malay social institution of debt bondage/debt-slavery wherein men and women, who could not repay monies,

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<sup>11</sup> Misra and Browne: 504.

<sup>12</sup> Elias: 292.

<sup>13</sup> C. B. N. Chin, "In Service & Servitude: Foreign Female Domestic Workers and the Malaysian Modernity Project" (American University, 1995), 158.

borrowed from rulers or chiefs were taken to live with and work for their creditors. Young debt-bondswomen also could be taken to satisfy the sexual and household needs of Malay rulers and their male followers. A debt-bondswomen was quoted as having said, "Our chief works are cooking, working, carrying water, splitting tirewood, pounding rice and at nights, we are to prostitute ourselves, giving half of this earning to the raja and half to supply ourselves with clothing and provision for the sultan, the house and other slaves."<sup>14</sup> Such a mistreatment is currently experienced by a small number of Indonesian domestic workers. In the recent study conducted by Hannah Andreovski and Samantha Lyneham<sup>15</sup> a smaller number reported being sexually abused/raped (16%, n=297) during the course of their employment in Malaysia. What Yanah had bitterly experienced was a concrete example of this type of mistreatment. In spite of her begging for mercy: "I begged him repeatedly, I reminded him he was married, asked him how would he feel if someone did the same offence to his wife, I told him I was married, I begged him, but it was a vain," said Yanah. Her desperate effort failed and the rape went on.

Attribution to lower class of employment is related to the commonly perceived hierarchy of social class. Becoming the members of this group, domestic workers have to suffer continuous practice of oppression, discrimination and infringement of rights by employers. They are classified in lower class of employment since they perform 3Ds (difficult, dirty and demeaning) works. In Malaysia, class hierarchy is practiced between local people and migrant workers and within migrant workers.

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<sup>14</sup> J. M. Gullick, *Indigenous Political Systems of Western Malaya* (London: Althone Press, 1958), 103., as quoted in Chin, 159.

<sup>15</sup>

This stratification is based on the status of employment in the society. Migrant workers are socially classified into skilled workers in high class employment and unskilled migrant workers in lower class job. Domestic work is classified into the lowest class of employment. Domestic work is characterized by unskilled labour and is commonly viewed as unreal work due to the informality or household. It is perceived that only ethnic minorities, those with low economic condition, or those migrant workers from neighbouring countries are suitable for the work. Furthermore, skilled migrant workers in Malaysia are viewed as one of the actors behind the economic growth and consequently they are eligible to have privilege in enjoying numerous rights same as the local people. Thus, with the privileged rights skilled migrant workers are socially respected in the society.<sup>16</sup> On the contrary, for the society and middle class employers, employing the domestic workers will mean that they are socially respected.<sup>17</sup>

Violation, infringement, and abuse admittedly derive either from race, ethnicity, and gender or intersection of them. It seems that the intersection of the three aspects has contributed much on the prevailing violations of rights by the society (employers and employment agencies) in Malaysia. Consequently, they are stigmatized and portrayed and consequently they are prone to oppression, discrimination and infringement of domestic workers rights. In addition, this intersection also establishes social hierarchy within the society in which domestic workers are in the

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<sup>16</sup> Jr Robert Hughes and Maureen Perry-Jenkins, "Social Class Issues in Family Life Education," *Family Relations* 45, no. 2 (1996): 292.

<sup>17</sup> Martin Ruhs and Ha-Joon Chang, "The Ethics of Labor Immigration Policy," *International Organization* 58, no. (2004): 72. This article clarified that hiring domestic worker is similar to possessing or owning material items that symbolize an achievement to maintain higher social status in the society as middle class family.

lowest level. Modern servitude or slavery is practiced through mistreatment of migrant domestic workers as the commodity that employers may purchase from the labour market through employment agencies.

Indonesian maids, despite "their lowly' position or status as servants," strongly felt that they still had the right to demand respect from their employers. But from the middle-class employers' perspective the fact that they provided their live-in Indonesian maid full board and lodging and monthly wages meant that they had the "moral right" to dictate the latter's every move without any demarcation over public (work, duties) and private (the maid's personal life, privacy) domains. The absence of concrete legislation from the Malaysian government meant that employers had full and absolute rein over their charge.

#### **6.2.1 Domestic Workers as a Unique Workforce Vulnerable to Abuse**

Being female, unskilled, and alien, domestic workers are vulnerable to be physically, sexually, verbally, or psychologically abused. Although abuses are commonly complained by migrant domestic workers, no legal protection is provided by the authority. Their being domestic workers without any adequate legal protection have led them to be exploited or abused. Such exploitation and abuse are normally practiced due to their uniquely structured and characterized domestic work relationship.<sup>18</sup> The facts that domestic workers are isolated and solitary are among some factors that result in exploitation and mistreatment. Such poor practice is also

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<sup>18</sup> Peggie Smith, "Organizing the Unorganizable: Paid Household Workers and Approaches to Employee Representation," *North Carolina Law Review* 45, no. 52 (2000): 54-55.

caused by one-on-one employee-employer relationship. Other factors include the perception that domestic works are informal and precarious and that domestic workers work in private location. Of equal importance, exploitation and mistreatment may result due to the attribution of domestic workers to unpaid women's household labour.

Employers invoke state policies to justify extreme control and surveillance of Indonesian migrant domestic workers. Nevertheless, the bases of control and surveillance are based on biased stereotypes of domestic workers constructed along the axes of class, race/ethnicity, gender and nationality. In this country, the popular perception of migrant domestic workers who hail mostly from less developed countries in Asia such as the Philippines, Indonesia, Burma and Sri Lanka, as young, poor, vulnerable, promiscuous and untrustworthy are deeply ingrained in society and are used to justify the paternalistic authority of employers.<sup>19</sup>

It is required by the traditional structure of domestic work that workers both work and live in their employer's home implying their isolation from each other. Their being isolated has kept them from developing a sense of solidarity or develops a collective consciousness to respond their employment condition.<sup>20</sup>Of equal

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<sup>19</sup> Christine B. N. Chin, *In Service and Servitude : Foreign Female Domestic Workers and the Malaysian "Modernity" Project* (New York: Columbia University Press, 1998).

<sup>20</sup> Smith: 54.



importance, isolation keeps domestic workers from seeking supports and leverage from co-workers against the employers.<sup>21</sup>

Misfortune seems to be embedded to domestic workers. Their temporary work terms with one employer have made them insecure. While doing their current work, they keep thinking to secure another job when the current employment term is over. Working in informal and precarious domestic work has reduced worry among workers about the continuation of work. They have to secure multiple sources of employment and they keep searching for new jobs. It is worth noted that another contributor for the-problem is verbally arranged employment contract.<sup>22</sup>

The suffering goes even further with the fact that domestic labour is physically and economically invisible. Working as domestic workers in invisible work place, at the employee's home, far beyond public access and social supports has led them go unnoticed. Although they hold equal employment, domestic workers are not as lucky as those equally-low-waged workers of <sup>23</sup>service industries, like food service and janitorial work, who have wide access to more public spaces. Otherwise, domestic workers are physically invisible because they work behind closed doors unsupervised. They are economically invisible because of the prevailing norm that domestic work is normally unpaid.<sup>24</sup> The expectation that women work up such household duties as cooking, cleaning, and child rearing as part of their maternal

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<sup>21</sup> Robin D. G. Kelley, "Home Is Where the Work Is: Inside New York's Domestic Work Industry," (2006). <https://www.datacenter.org/reports/homeiswheretheworkis.pdf>.

<sup>22</sup> Smith: 55-56.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

roles and devotion has put domestic work unquantifiable and cannot be exchanged in the market. Consequently, because domestic work is naturally reserved for women and is privately located in homes, domestic workers physically and economically marginalized and devalued by both the market and the legal system.

### **6.2.2 Legal Consciousness of Indonesian migrant domestic workers**

It has clearly elaborated earlier at Chapter two that the perspective of law and society research has changed from the instrumental view of law to the view of law as an integral part of society, which is called as constitutive perspective. While the instrumental view treats the law as autonomous from social life, normative systems, and social institutions, the latter considers that law is connected to and embedded in the cultural constraints and social norms that interact with the law. Therefore, the instrumentalism sharply distinguished legal standards from non-legal human activities, while, the constitutive perspective assumes that social life is run through with law and shapes society from the inside out to establish for natural, normal, cohesive, and coherent social life.”<sup>25</sup>

In accordance with the constitutive perspective, the research is in opposition to the instrumentalist view that law and social practice are mutually independent. It was highlighted by Sarat and Kearns that instrumentalism results in a false impression about how law operates in everyday life. Considering the law as a distinct tool to

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<sup>25</sup> A. Sarat and T. R. Kearns, *Law in Everyday Life* (Michigan: University of Michigan, 1995).

change behaviour, instrumentalists redirect attention from the deep, often invisible, but pervasive effects of legal concepts on social practices.<sup>26</sup>

In opposition to the instrumentalism, Bumiller examines individual attitudes and behaviour and suggests that the traditional model of legal protection, which is the central issue in the instrumentalism, that claims law to be a powerful tool to create social change, is an illusion. Therefore, it fails to identify how law influences individual actions and attitudes. Otherwise, victims' stories about what they have experienced plays more important role to explore the complicated anti-discrimination law.

To have a clearer picture of how law and social changes are related, she introduces a paradigm for **legal consciousness** research. This paradigm requires the opposition of individual the perspectives and experiences against the traditionally acknowledged instrumentalist view of legal protection. The theoretical shift from the instrumental view of law to the constitutive view of law has urged the scholars to acknowledge the importance of analyzing how law comes out of and how specific historical, cultural, social situations and attitudes constitute the law. Therefore, to differently understand the meaning of law we have to differently study the relationship between law and society. The focus has to be shifted from institutions to individuals. Therefore, as Bumiller maintains, interviewing individual subjects about what they think and experience law is very crucial. Current research, according to Bumiller,

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<sup>26</sup> Austin Sarat, "The Law Is All Over: Power, Resistance and the Legal Consciousness of the Welfare Poor," *Yale Journal of Law and the Humanities* 2, no. (1990): 50.

has to fully understand the potentialities and the troubles resulting from social conflict with clear understanding about the individual life changes.<sup>27</sup>

Considering the importance of legal consciousness in reciprocal formation of daily activities, new perspectives are required to identify the way everyday activities shape and are shaped by an individual's legal consciousness. In response to such a need, recently there have been some legal consciousness researches utilizing relatively distinct groups of subjects. For instance, Larson examined about the legal consciousness of actors in the securities industry in Ghana and Fiji. Another researched issue was how subjects' legal consciousness reciprocally influences professional lives.<sup>28</sup> The study demonstrated the usefulness of theoretical integration involving legal consciousness, intertwining neo-institutionalism with the emphasis on the social settings in which the law is constructed. It was found that legal consciousness of the actors in Ghana and Fiji were largely related to whether the regulatory bodies' presence and diligence. Therefore, their legal consciousness derives from external force, rather than internally-driven consciousness.

The way how law shapes everyday lives of average people is apparently acknowledged.<sup>29</sup> This research tradition conceptually adopts the idea that average

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<sup>27</sup> Kristin Bumiller, *The Civil Rights Society : The Social Construction of Victims* (Baltimore: Johns Hopkins University Press, 1988), 35.

<sup>28</sup> Erik W. Larson, "Institutionalizing Legal Consciousness: Regulation and the Embedding of Market Participants in the Securities Industry in Ghana and Fiji " *Law & Society Review* 38, no. 4 (2004).

<sup>29</sup> Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness. , Vol. 26/731," *New England Law Review* 26, no. (1992); Patricia Ewick and Susan S. Silbey, *The Common Place of Law : Stories from Everyday Life*, Language and Legal Discourse (Chicago: University of Chicago Press, 1998); Laura Beth Nielsen, "License to Harass: Offensive Public Speech, Legal Consciousness, and Hierarchies of Race, Gender and Class,"

people can serve as legal actors. Therefore, they may alternatively propose the decentralization of formal legal institutions and procedures. The studies suggests how law and legality play significant roles in helping people solve the everyday problems in their surroundings, homes, schools, workplaces, and neighbourhoods.<sup>30</sup> Constitutive perspective acknowledges that legal concepts indeed influence the way the average individuals deal with their goals, options, choices, and problems. According to this view, law is not a mere conflict resolution tool. Accordingly, legal consciousness is not merely a reflected attitudes and opinions about law and the legal system. Instead, legal consciousness can be explored through such stories of people's everyday lives and social practices as going to court, talking about problems, engaging in disputes, and avoiding conflict.<sup>31</sup>

A critical factor in this transformation process is the idea of "legal consciousness" the degree to which individuals invoke legal concepts, to define everyday experiences. Here, the notion of legal consciousness broadly defined to describe the importation of legal principles into everyday life and the transformation that occurs

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(University of California, Berkeley (UMI Number: 9931344) Retrieved August 21, 2009, from Dissertations and Theses database, 1999); Laura Beth Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," *Law & Society Review* 34, no. 4 (2000); Laura Beth Nielsen, "Subtle, Pervasive, Harmful: Racist and Sexist Remarks in Public as Hate Speech," *Journal of Social Issues* 58, no. 2 (2002); Laura Beth Nielsen, *License to Harass: Law, Hierarchy, and Offensive Public Speech* (Princeton: Princeton University Press, 2004); Laura Beth Nielsen and Robert L. Nelson, *Handbook of Employment Discrimination Research : Rights and Realities* (Dordrecht, The Netherlands: Springer, 2005); Sarat and Kearns, *Law in Everyday Life*.

<sup>30</sup> Anna Maria Marshall and S. Barclay, "In Their Own Words: How Ordinary People Construct the Legal World," *Law & Social Inquiry* 28, no. 3 (2003a): 617.

<sup>31</sup> Ewick and Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness. , Vol. 26/731."; Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*; Marshall and Barclay: 621; Sally Engle Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, Language and Legal Discourse (Chicago: University of Chicago Press, 1990).

as individuals move toward an understanding of events or experiences as injurious and deserving of redress.

Claims-making requires legal consciousness of existing or possible rights. Informed by their legal consciousness—commonsense understandings of the law—people develop stratified levels of rights awareness, pursue various conflict-resolution strategies, and generally interpret their lives in different ways.

In their important study on the ways people understand and apply the law in everyday life, Ewick and Silbey<sup>32</sup> identify predominant types of legal consciousness, each associated with a set of actions. Among these, Ewick and Silbey find that individuals who are “with the law” find it to be accessible, utilize it as a resource, and perceive it as a game.<sup>33</sup> These individuals are aware of their rights and are likely to make claims for redress or inclusion. On the other hand, those who are “against the law” are trapped by its pervasive authority and are not likely to make claims.<sup>34</sup> Based on this framework, they predict that members of disenfranchised groups will generally be against the law—distrusting and suspicious of the law and its capricious implementation.

Although these categories are loosely correlated with social status, orientations toward law are shifting and contingent.<sup>35</sup> Because legal consciousness is socially constructed and leaves room for shifting interpretations and applications of law,

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<sup>32</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*.

<sup>33</sup> Ibid., 48.

<sup>34</sup> Ibid., 48-49.

<sup>35</sup> Ibid., 235.

Ewick and Silbey's prediction accurately explains the experiences of some marginalized groups.

Indonesian migrant domestic workers are marginalized people in Malaysia. As such, they constitute a vulnerable group, and their legal consciousness should presumably place them unvaryingly "against the law" within national boundaries. Among the underlying factors that had made people have negative sense of "against the law" were fear, mistrust of the justice system, and cultural factor. When fear, mistrust of the law and cultural factor centrally inform the legal consciousness of migrant domestic workers, all sentiments can stand as barriers to claims-making.

Despite their unhappiness with such oppression, migrant domestic workers generally prefer to keep silent. The fear of losing all they have invested so far, both monetarily and in terms of effort to earn a future for themselves and their families acts in very real ways to keep the women stoically submissive. In the case of Jumanah, however hard her life had been, she kept herself from either giving up the job or combating the oppression. All she had in mind was that she had to complete the work contract in a dignified way. Her excessive fear for talking against the employer and from making mistakes derived from the fear of being returned to the recruitment agent. She felt hopeless and powerless.

*"I could not bear the work any longer and I indeed wanted to quit the work. But I was afraid to escape since I had no one to share shelter and food. I had no money either. When I suddenly had an idea of returning to the agent, I immediately declined the plan. I had given up having any contact with labor recruitment agent. My previous bad experience with agency kept me from contacting them."*

*Jumanah (translated from Bahasa Indonesia)*

In addition, mistrust of the law is prevalent among the Indonesian migrant domestic workers. The negative words of mouth among them during their pre-departure or when they were at the accommodation site negatively impressed them very much. They knew that fighting the employer would result in nothing. Far less would she take any legal claim. Such a seemingly dramatic story was indeed true. A closer analysis reveals that for the marginalized, the decision to avoid contact with the legal system is less a symptom of parochial traditionalism than it is a rational response to the opportunities and risks which the legal system presents. It is not surprising when the marginalized regard the law as their enemy.<sup>36</sup> In the cases presented in the research, Jumanah and Nia Kurniawati plead for not guilty. But they did not have anything to prove, nor witness. The only way they could take was involuntarily offering the salary deduction to compensate the accused crime they had never committed.

The final factor is characteristically cultural. It is publicly known that in the oriental culture, getting rid of unexpected legal problem and the consequent legal punishment, particularly among the marginalized, is commonly practiced. This is sometimes attributed to the strong social stigma attached to any encounter with the law, no matter how innocent. Thus litigation may be seen as making trouble while a brush with the police can be interpreted by the society as guilty until proven innocent. In the case of Latifah, although she perceived unfair employment of her stagnant salary rate for 6-year consecutive work contract, she kept herself from

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<sup>36</sup> Michael R. Anderson, "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in Ldcs," in *WDR Meeting* (1999).



raising a protest against the employer. In addition to reserving the dignity of her employer who had been so kind to her, she opted to decline a protest as this was against the firmly-adopted Javanese culture that uphold harmony and kinship.

### **6.2.3 Legal consciousness of injustice and strategy of resistance**

Legal consciousness of injustice is an important aspect in social interaction where possible social gaps may exist. Mutually beneficial interaction will be difficult to achieve due to the embedded status discrepancy between one person and another. The people involved in the interaction are equally potential to infringe others' rights, and accordingly, good legal consciousness of injustice has to be grown up in order to frame a fair and just relation.

While legal consciousness plays an important role in dispute resolution, only few studies provide comprehensive frameworks. Ewick and Silbey's effort provides important insights into legal consciousness, but leaves some crucial unanswered questions. For example, they hypothesize that orientations toward law will correlate with social status: members of disenfranchised or subordinated groups will be more likely to be "against the law" and to employ methods of resistance to law.<sup>37</sup> Yet, as some commentators note, they do not systematically analyze the consciousness of informants by social status. How does experience with law translate into attitudes and opinions about other areas of law that are not so commonly encountered? Do the three orientations or prototypes of legal consciousness hold true for individuals across problems and contexts? How do established cultural schemas about the law,

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<sup>37</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*, 235.

such as those surrounding the First Amendment, affect legal consciousness, if at all?<sup>38</sup>

Being a slow-moving mechanism, law is largely inaccessible to everyday citizens. Consequently, the law has been subjective and consistently it is difficult to result in equitable outcomes for everyday people and the less powerful. With the Against the Law consciousness, individuals may either accept the problem or "lump it." However, this consciousness frequently may take the forms and levels of defiant action. The following is the excerpt from Ewick and Silbey about Against the Law consciousness and the way it leads to resistance:

Law is a product of power. Rather than objective, legality is understood to be arbitrary and capricious. Unwilling to stand before the law and unable to play with the law, people act against the law...people talk about the rules, tricks, and subterfuges they use to appropriate part of the law's power.<sup>39</sup>

Resistance has been a kind of strategic attitude or behaviour to deal with the unexpected moments or events. Considering the significance, it has to be appropriately studied. To analyze the role of law in everyday resistance to inequality within this against-the-law orientation, Marshall introduced a theoretical framework which she calls the legal consciousness of injustice. This framework is intended to understand the bottom-up relationship between law and social change since it is believed that changing social, political, and cultural values might lead to everyday life conflicts. Equally important to law are political debates and organizational

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<sup>38</sup> Nielsen, "Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment," 1060-1061.

<sup>39</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*, 28.

practices since they might result in disputes. The framework is employed in an empirical study of sexual harassment in a particular workplace. In a specific way, attempts are taken to identify how women confront their experiences with unwanted sexual attention at work. In particular, she examines the interpretation and response to experiences. Arguably, the assigned meaning of these experiences reflects more than just legal rules but also broader political and social debates about equality and the role of women in the workplace. These meanings have become the basis for women to come to decision of whether to complain or to ignore the behaviour or even to participate in sexual joking and banter with co-workers. The women's decisions and management responses shape the meaning of sexual harassment laws in particular workplaces.<sup>40</sup>

Inequality is not an exclusive stand-alone issue. It results from unequal position and power between the involved parties and results in unfair process and unjust outcome. As Marshall reveals, inequality is believed to construct everyday life. Such crucial aspects of daily life as schools, jobs, neighbourhood, and healthcare are influenced by system of stratification based on class, race, sex orientation, and ethnicity. We take for granted whatever we routinely do in our daily lives. We live the broad social forces the way they are due to the inevitability and naturalness of these routines. In spite of the unfortunate nature, inequality has to be widely accepted aspect of social life.<sup>41</sup>

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<sup>40</sup> Anna Maria Marshall, *Confronting Sexual Harrasment: The Law and Politics of Everyday Life* (Hants, UK: Ashgate Publishing Company, 2005b), 2-3.

<sup>41</sup> Ibid., 1.

While some people take oppression for granted as the inherent part or risk of life, some others refuse any kind of unequal treatment. Historically, challenges had emerged at particular moments. These challenges normally occur in public policy arenas, such as courts or legislatures while resistance may occur in both public policy and everyday life. The emerging "new" social movements have politicized the personal and explicitly encourage everyday resistance. Therefore, resistance can be found in private or public aspects and accordingly will result in different responses from the people involved in disputes.

When people obtain and develop new oppositional interpretations of their experiences, new expectations, desires, needs, and grievances will result. People will adopt new meaning of their daily lives. Since they have new concept about what they deserve to have in life, they become demanding for better treatment. While the demands are based on new idea of life, adaptation and adjustment are required. Unless they are adapted and adjusted, opposition from spouses, children, neighbours, co-workers, or teachers may result. Therefore, unless inequality is challenged wisely and properly, it may result in unexpected everyday life conflict from which social changes will seemingly result.<sup>42</sup>

McCann and March reveals that resistance "...entails efforts by subaltern groups either to renegotiate the terms of dominant power relations or to construct a new separate, alternative forms of practical activity..."<sup>43</sup> In *Weapons of the Weak*:

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<sup>42</sup> Ibid., 2.

<sup>43</sup> Michael McCann and Tracey March, "Law and Everyday Forms of Resistance: A Socio-Political Assessment," *Studies in Law Politics and Society* 15, no. (1995): 230.

Everyday Forms of Peasant Resistance, Scott examines the mechanisms by which the less powerful resist entrenched authority. He ethnographically investigated the peasant workers in Southeast Asia where elites had material and cultural domination. Based on his previous work on peasant rebellions, he concluded that there was not any enduring distinction between resistance and conformity. It was stated that the less powerful may take some kinds of largely individual resistant acts frequently committed under the guise of compliance. Scott suggests that everyday forms of resistance can include such wide spectrum of actions as foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and others."<sup>44</sup> This implies that resistance may take either such hard form as frontal opposition or such soft forms as the aforementioned acts.

Only few people are capable of developing some form of resistance to the supposed injustice as a coping strategy. It is most likely that resistance is predominantly expressed by individuals with an *Against the Law* consciousness. Considering the significant role of against-the-law consciousness in the resulting resistance, it is important to recall the dynamic and interactive nature of these categories of consciousness. Empirically, the applications of Ewick and Silber's schema have demonstrated that there are multiple types of legal consciousness among individuals. Although "consciousness forms are not always in correspondence to actors," this typology enables us to understand the mechanism and interpret the sometimes "multi

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<sup>44</sup> J. Scott, *Weapons of the Weak* (New Haven: Yale Univ. Press, 1985), xvi.

faceted, contradictory, and variable legal consciousness" of individual environmental activist.<sup>45</sup>

### **6.3 Transformation of disputes among Indonesian migrant domestic workers**

Disputes are naturally embedded in humans and are socially prevalent in any aspect of life. Some disputes are easily resolved while others take longer time and more serious attempts to resolve. Being ingenious social animals, humans develop institutionalized responses to interpersonal conflict. Such institutionalized responses as song duels and witchcraft to moots and mediation to self-conscious therapy and hierarchical, professionalized courts are commonly developed. Such is the case for Indonesian migrant domestic workers. With their uniquely vulnerable to sexual, physical, and mental mistreatment or abuse, they develop their own responses to interpersonal conflict. Values, psychological imperatives, history, and economic, political, and social organization indeed play significant roles in the prevailing dispute resolution practices in any particular group.<sup>46</sup>

With the large scope of examination, some aspects have been seriously studied, while some others received less interest. Broader perspective about dispute resolution will open up a currently covert underlying process. Admittedly, within the study of dispute processing, interests have grown among some scholars on dispute them-selves as a phenomenon to identify their causes and cures. Recently, more

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<sup>45</sup> Ewick and Silbey, 50; Susan S. Silbey, "Making a Place for Cultural Analyses of Law," *Law & Social Inquiry* 17, no. 1 (1992): 46.

<sup>46</sup> W. L. F. Felstiner, "Influences of Social Organization on Dispute Processing," *Law & Society Review* 9, no. 1 (1974): 63.

scholars are interested in studying how dispute undergoes the life-cycle since the initial phase in the social field to the eventual phase of the lawsuits. When researches are dispute-centred they explore why some situations produce disputes, and what happens to these disputes. The researches will have to identify if there are the switching devices that either bring some disputes to court track, disappear others, or divert still some others to alternative modes of resolutions? To understand the cycle, the study of the “transformation” of “injurious experiences” into legal claims may precede the study of litigation.

### **6.3.1 Development of disputes**

Clear definition and description of dispute will make a better understanding about what it is and how we can solve it. Even further, we may explore the possibly different process that underlying the process of resolution. Being an unstable and subjective process, dispute is influenced by some factors. Such factors as perceptions, attitudes, and beliefs of the involved parties play significant roles.<sup>47</sup> There may be changes in the parties involved and the requirements when new data and experiences are gained. It is widely acknowledged that injury is especially subjective and depends on how people mean it. Some factors are involved in

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<sup>47</sup> Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*; W. L. F. Felstiner, R. L. Abel, and A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," *Law & Society Review* 15, no. 3/4 (1980-1981a); Merry.

disputing process since social, cultural, and ideological context are involved in the disputes. Therefore, heated contention in the meaning of cases may be prevalent.<sup>48</sup>

While there are seemingly potential aspects to be explored, only few aspects have been thoroughly studied. Previous researches on disputing seem to have taken the existence of disputes for granted with little consideration in the origins and content of disputes. They have not inquired the occurrence of disputes or the social context in which disputing is taking place.”<sup>49</sup> Recently, more researches have acknowledged the numerous potentials for disputes and the possible sources of disputes. In addition, they also acknowledge that only few disputes are clearly disclose, while others might evolve. Consequently, the development of disputes in some contexts is problematic while in others, it is not. This leads to an important question of how disputes begin and why some potential disputes fail to develop<sup>50</sup>

Since some disputes go unnoticed, it will not always easy to identify how disputes are constructed. It is even more challenging to know why some potential disputes fail to develop. To obtain the answer, legal dispute processing theory of offers some explanation. The theory offers the framework to have a clear view of that matter through careful and through examination of how disputes emerge and transform through stages: naming, blaming, and claiming. Naming is the perceived injurious. Blaming is the perception that some person or entity is held responsible for the injury

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<sup>48</sup> Anna Maria Marshall, "Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment," *Law & Social Inquiry* 28, no. 3 (2003b): 661.

<sup>49</sup> R. E. Miller and A. Sarat, "Grievances, Claims, and Disputes: Assessing the Adversary Culture," *Law & Society Review* 15, no. 3/4 (1980-1981): 526.

<sup>50</sup> Jeffrey Fitzgerald and Richard Dickins, "Disputing in Legal and Nonlegal Contexts: Some Questions for Sociologists of Law," *Law & Society Review* 15, no. 3/4 (1980 - 1981): 684.



and accordingly obliged to remedy it. Claiming implies assertion of a demand for redress.

Naming has been hard to study empirically. However, naming is a very critical point of transformation. While initially the level and kind of disputing in a society are perceived injurious, they may be considered differently any later decision. Like in the case of asbestosis later became an acknowledged "disease" and the basis of a claim for compensation when shipyard workers did not take the breathing troubles for granted any longer after ten years of installing insulation and started to consider it a problem.<sup>51</sup> Such difficulty in naming is also reported by the respondents of this study. While domestic works should have arranged in clearly stated schedule, most domestic workers work longer hours. Even they have to work on holidays. Taking this assignment for granted, they do not even realize that their human freedom has been infringed. Latifah, a domestic worker who luckily enjoyed better treatment from the employers, complained of her fully assigned house works. She had to work continuously without any scheduled break, leave, or holiday. Although this seemingly hard work was compensated by occasional and conditional personal and social freedom, she was not free to arrange activities for herself. Likewise, Jumanah, another domestic worker had to work overtime at different places for different works. While initially she did clearly specified works, as time went by, the employers made her work even harder and for longer time.

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<sup>51</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," 635.

When a person attributes an injury to the fault of another individual or social entity, the perceived injurious experience is transformed into a grievance. The inclusion of fault within the definition of grievance has limited the injury concept in norm violations and remedy.

Having failed to name the problem that they have, domestic workers fail to make grievance. Another underlying factor is that domestic workers are not prepared for grievance. Some of them keep the poor treatment for them and are reluctant to have opposition to the employer. The grievant perspectives prevail that the injured person must have perceived wrongfulness and expected response to the injury although they may be politically or sociologically improbable. A grievance is different from a complaint against no one in particular (about the weather, or perhaps inflation) and from a mere wish without by a sense of injury for which another is held responsible. The transformation from perceived injurious experience to grievance is called blaming. A good example is the blaming by sick shipyard worker to their employer or the manufacturer of asbestos insulation and held them responsible for their asbestosis.<sup>52</sup> Such is also the case for the domestic workers who were the respondents in this study. When they are in frustrating condition following some forms of mistreatment, all they can do is expecting to give up the work. Nia Kurniawati is a good example in this case. She had not expected to work different works continuously without any personal time for rest and relax. Such is also the case of Bibi Isah, who had to work in a strict schedule but with limited resource. They put direct grievance to the employers, but they did not get the expected

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<sup>52</sup> Ibid., 635.

response. While Nia Kurniawati and Bibi Isah dare to complain, Yuyun personally kept her bad experience for herself. She did not have any courage to make grievance to the employers. Her chronic psychological and physical mistreatment finally resulted in mental depression.

The third transformation, claiming, is characterized by the action taken by someone with a grievance and holds the person or entity responsible and assumes some remedy. Claims are not always approved. Some are rejected verbally and some others are rejected by a delay. Delay is actually a refusal or rejection. Likewise is a compromise offer (partial rejection) or an outright refusal.<sup>53</sup> None of the domestic workers in this study claimed for any remedy for the maltreatment they have received. Even such courageous workers as Bibi Isah and Nia Kurniawati were already satisfied when their employers knew that they were disappointed with the employment condition. They did not claim for extra allowance or higher salary.

### **6.3.2 The pyramid of disputes**

To describe the disputes, Miller and Sarat<sup>54</sup> develop the concept of the dispute pyramid. The pyramid illustratively describes how perceived injuries may lead to formal claim unless they are well managed.

The bottom part depicts perceived injurious experiences. This part represents the broad mass of recognized injuries. Some these experiences become grievances.

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<sup>53</sup> Ibid., 635-636.

<sup>54</sup> Hector Fix-Fierro, *Courts, Justice and Efficiency: A Socio-Legal Study of Economic Rationality in Adjudication* (Oxford and Portland, Oregon: Hart Publishing, 2003); Miller and Sarat.

Grievance is developed when injuries involve a violation of right or entitlement. Grievances can be thought of as 100% of potential claims, for without a violation of right or entitlement individuals will not seek redress. Only some grievances turn into claims. That is when an individual contacts the party responsible for the grievance. Fewer still are disputes. That is when the party allegedly responsible for an individual's claim initially denies their responsibility. Some number of disputes results in filings. Filing is a formal complaint (in a litigation model, a court filing). The smallest category of all is made up of trials through case adjudication.

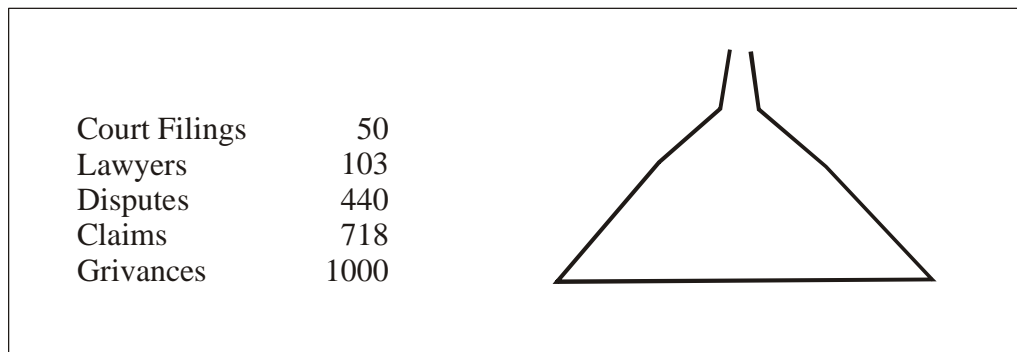
The initial source of data for this classic study<sup>55</sup> was a household survey designed to measure the incidence of civil disputes. In the survey, conducted by the Civil Litigation Research Project (CLRP) in 1980, a sample of 560 discrimination claims was obtained from approximately 5,000 households. Respondents were asked if they had experienced "illegal or unfair treatment" because of their "race, age, sex, handicaps, union membership, or other things."

Metaphorically, the process of dispute generation can be visualized in a pyramid (see Figure 6.1). Grievances constitute the base of the pyramid. The relative width of the pyramid represents different proportions and successive transitions to claims, disputes, lawyer use, and litigation.

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<sup>55</sup> Miller and Sarat.

**6.1. Figure : A Dispute Pyramid: The General Pattern No. per 1000 Grievances<sup>56</sup>**

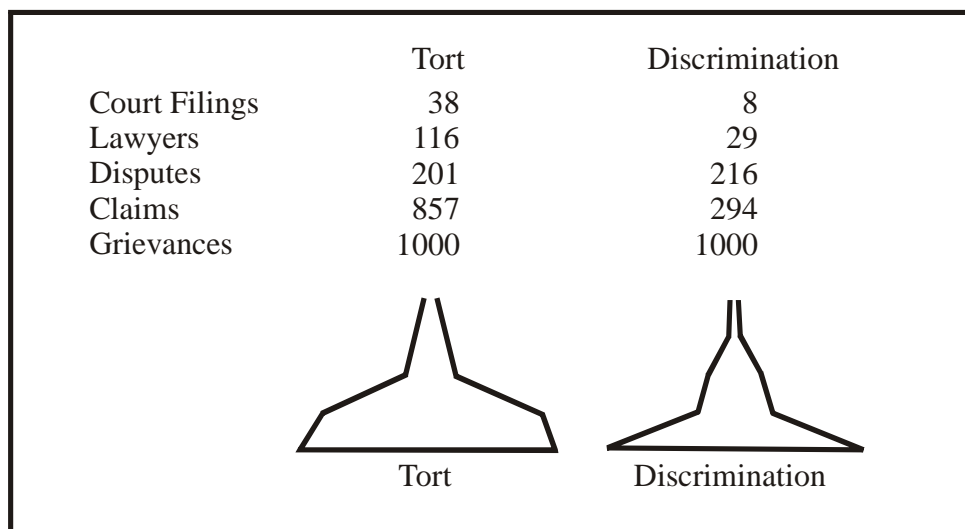


Dispute pyramid illustrates high rates of claims (72 percent of grievances), high rates of disputes (45 percent of claims), fairly low proportions using a lawyer (simply 10 percent of disputants), and low litigation rates (only 5 percent of disputants). Certainly, it can be estimated that only very few claims result in successful resolution.

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<sup>56</sup> Ibid., 544.

**6.2. Figure : A Dispute Pyramids: Two Deviant Patterns No. per 1000 Grievances.**



The pattern for torts is clear. Most of those with grievances make claims (85.7 percent), and most claims are not formally resisted (76.5 percent result in immediate agreement). Consequently, disputes are relatively rare (23.5 percent of claims). Where they occur, however, lawyers are available, accessible, and are, in fact, often employed (57.9 percent). Nevertheless, the figure illustrates that only few go to litigation.

Meanwhile, the pattern for discrimination grievances shows that approximately 71% make no claim for redress. Those who claim (29%) are more likely to have their claim resisted. Further, only slightly more than 10% disputants are is aided by a lawyer, and only 0.8% (out of 1000) disputes lead to litigation.<sup>57</sup> Discrimination grievances had a significantly lower rate of escalation into court cases than tort. The

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<sup>57</sup> Ibid., 545.

size of the gap is indicative of the more problematic relationship between victims and the law in discrimination cases compared to other civil cases.

It is widely acknowledged that particular gaps have kept some aggrieved people from bring grievance. Hesitation is one of the most common gaps that people avoid formal grievance however strong the legitimacy of the claims is.

Earlier grievance resolution studies document that aggrieved persons sometimes hesitate to bring grievances, despite a belief in their claims' legitimacy.<sup>58</sup> As illustrated in workplace settings, for example, Bumiller explains that nobody pursues claims over workplace discrimination because of the perceived "legitimized their own defeat".<sup>59</sup> Many employees thought that opposition against perpetrators would be fruitless: "me against the corporation".<sup>60</sup> Defensively, they avoid confrontation with the perpetrators to avoid "double punishment".<sup>61</sup> Tyrannical power of the opponents, often managers and supervisors was exaggerated and thus they became even more fear.<sup>62</sup> A great number of respondents feared that instead of gaining the

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<sup>58</sup> e.g., Bumiller; Ewick and Silbey, *The Common Place of Law : Stories from Everyday Life*; Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."; Elizabeth Ann Hoffmann, "Compromise, Confrontation, and Coercion: Formal and Informal, Dispute Resolution in Cooperative and Hierarchical Worksites" (Wisconsin, 2001a); Elizabeth Ann Hoffmann, "Confrontations and Compromise: Dispute Resolution at a Worker Cooperative Coal Mine," *Law & Social Inquiry* 26, no. 3 (2001b); Elizabeth Ann Hoffmann, "Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies," *Law & Social Inquiry* 28, no. 3 (2003); Elizabeth Ann Hoffmann, "Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice," *Law & Society Review* 39, no. 1 (2005); Nielsen and Nelson, *Handbook of Employment Discrimination Research : Rights and Realities*.

<sup>59</sup> Bumiller, 29.

<sup>60</sup> Ibid., 52.

<sup>61</sup> Ibid., 25.

<sup>62</sup> Hoffmann, "Confrontations and Compromise: Dispute Resolution at a Worker Cooperative Coal Mine," 558.

power over the situation, they are afraid of potential loss of control over the situation resulting from the confrontation.<sup>63</sup>

### **6.3.3 Indonesian migrant domestic workers trapped at the bottom of pyramid**

In a study, Galanter<sup>64</sup> the basal part of the dispute pyramid in which one has perceived injury and thus have a legal claim is the most difficult to analyze and the least understood aspect of disputing systems. The difficulty seems to derive from the problem in the definition of personal experiences with discrimination. Even the target of discrimination may not even realize the discrimination for a variety of reasons. This is clearly noted by Smith his critical review of the literature prepared for the National Academy of Sciences panel on measuring racial discrimination<sup>65</sup>.

Indonesian female domestic workers are indeed prone to three discrimination problems. The vulnerability seem to derive from the fact of their being female, migrant, and underclass. With respect to the vulnerabilities and problems of access to justice of Indonesian female domestic workers, indeed they are suffered from triple discrimination i.e.: as female, migrant and underclass. The discrimination and negative stereotyping of domestic workers seem to derive from culturally gender-

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<sup>63</sup> Hoffmann, "Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice Dispute Resolution in a Worker Cooperative: Formal Procedures and Procedural Justice," 53.

<sup>64</sup> Marc Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society," *UCLA Law Review* 31, no. 4 (1983).

<sup>65</sup> R. A. Smith, "Class, Gender, and Race in Authority Outcomes at Work," *Annual Review of Sociology* 28, no. (2002).



biased racial discrimination as migrants and household work structures, which seen as underclass.

Gender subordination also shapes the relationship between domestic workers and their employer who are generally women. As Rollins<sup>66</sup> argues, "The female employer, despite her motherliness, protectiveness, generosity, and feminineness is expressing lack of respect for the domestic as an autonomous, adult employee." Exploitation goes further since employers use this maternalism and the emotional nature of caretaking work.<sup>67</sup>

Another source of discrimination is race. Becoming racially different migrants will result in racial discrimination. The employment relation between domestic workers and their employers will depend much on this issue. Therefore, may employers justify that low waged migrant domestic workers for have enjoyed better condition in Malaysia than in their home countries. Many employers develop hierarchies of racial and ethnic preference. Most employers prefer to employ Indonesian domestic workers. The relatively low education of Indonesian domestic workers put them in more "docile" statu. Consequently, manipulation and lower payment will find no opposition. Migrant domestic workers from the Philippines are not preferred by Malaysian employers because of their relatively higher education and seemingly

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<sup>66</sup> J Rollins, *Between Women: Domesticity and Their Employers* (Philadelphia: Temple Univ. Press, 1985), 186.

<sup>67</sup> B Anderson, *Doing the Dirty Work: The Global Politics of Domestic Labour* (London: Zed Books, 2000).

arrogant attitudes who tend to be well educated and fluent in English, and therefore viewed as "arrogant".<sup>68</sup>

In addition to the gender bias for women, discrimination is associated with the view that childcare and housework are "naturally performed" by women. This view has contributed to the devaluation of domestic work and workers.<sup>69</sup> The condition goes worse, as Romero<sup>70</sup> says since reproduction of "class, race, ethnic, and gender hierarchies are practiced in the home. Consequently oppressive working conditions result." The prevailing view that domestic work is not "real work" specially reserved for unskilled and "natural" women's labor have become the justification of low-wage.<sup>71</sup>

Belonging to the group of marginalized people who are trapped at the bottom of the pyramid, this group represents similar pattern of dispute pyramid introduced by Miller and Sarat. This is in line with Hannah Andreovski and Samantha Lyneham insightful assertion. Based on their survey reveals that limited data was available on the involvement of domestic workers in legal proceedings. Of the six percent of cases where data on legal proceedings was available (110 or 1,732), only six individuals indicated that there had been a conviction (5%), four reported that their case was under investigation (4%) and one case was reported as being in the process

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<sup>68</sup> R. S. Parrenas, *Servants of Globalization: Women, Migration and Domestic Work* (Stanford, USA: Stanford University Press, 2001).

<sup>69</sup> Misra and Browne: 502.

<sup>70</sup> M. Romero, *Maid in the U.S.A* (New York: Routledge, 1992), 15.

<sup>71</sup> Misra and Browne.

of being prosecuted (1%). The majority reported that they had not filed a complaint (89%, n=98).

Similarly, in only 20 percent of cases (354 of 1,842) was data available in relation to whether the victims had been threatened by a previous employer or agent. Where data was available, 343 victims (97%) indicated they had not been threatened, while 11 victims indicated that they were (3%). Further, in only nine percent of cases could it be determined whether the victims were contacted by police to assist in investigations; of the available responses, 329 (96%) reported that they were not contacted, compared with 13 who were (4%).

Of all cases discussed in the project, none was brought to the court, except that of Hesti who once had attempted to report the mistreatment she had experienced to the police.

#### **6.3.4 Factors that affect dispute transformation and block litigation**

After knowing that grievances arise from a process of naming, blaming, and claiming, we have further questions to answer. What causes naming? What leads from naming to blaming? When will blaming lead to claiming? To answer such questions we may employ the framework introduced by Felstiner et al. The framework enables us to trace some significant processes through which the dispute goes. However, it will not be easy to explain the problem. Another serious problem is how to operate these concepts. Conceptually, the notion of stages may be excessively redundant and as Felstiner et al. acknowledge, in many actual situations, they may be impossible to isolate clearly.

In response to the difficulty in identifying subjective and perceptual grievance Coates and Penrod have attempted to synthesize and apply the findings of several branches of social psychology to help explain the naming, blaming, and claiming processes. They suggested a stimulating argument about how disputes emerge, and accordingly:

It is possible that people are more inclined to take personal responsibility for expected or predictable events.<sup>72</sup>

Someone who originally sees a [distressing event] . . . as the result of unstable causes is likely to view the offensive behaviour as more consistent if the [events] . . . persist. This change in consistency judgments would probably also result in more stable attributions for the [events] ... As the repeated [events] ... become more disturbing, the afflicted individual will also be more inclined to conclude that the [offenders] . . . are being intentionally malicious.<sup>73</sup>

When applied in social psychology, some will undoubtedly prove to be of more use than others in explaining the early stages of disputes. Even some of them seem to be so self-evident and/or general that further exploration is of little worth.

For example: [R]ecent work . . . indicates that people will form attributions even under conditions of causal ambiguity. Relying on personal theories and selective evidence, people usually devise some kind of explanation for significant events in their lives.<sup>74</sup>

Although such problems do exist, their article indeed provides real advances to explain naming, blaming, and claiming. However, they are neither the most important means of explaining naming, blaming, and claiming. There are several other sets of factors which may be involved. It is true that for the most part they have

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<sup>72</sup> D. Coates and S. Penrod, "Social Psychology and the Emergence of Disputes," *Law & Society Review* 15, no. 3/4 (1980-1981): 671.

<sup>73</sup> *Ibid.*, 666.

<sup>74</sup> *Ibid.*, 664.

received some recognition in the disputing literature. However, in spite of seemingly good nature, just the social psychological factors identified by Coates and Penrod need further sustained empirical investigation.

#### **6.3.4. 1 Trigger Event**

In addition to the aforementioned concepts, another useful concept is that of a "trigger event." In spite of its own tautological problems, this notion emphasizes the importance of particular events in leading to the naming phenomenon. An event may be present or absent before. The salience, vividness, seriousness, disruptiveness, rapidness, and continuity may trigger a naming process. Boyum<sup>75</sup>, has argued that the rate, magnitude, and scope of the change in circumstances are the crucial aspects of triggering events. Additionally, the significant characteristics of trigger events, together with its duration, may also determine the occurrence of blaming and claiming.<sup>76</sup>

#### **6.3.4. 2 Cultural context**

Particular cultural context in which the injurious experience occurs is the third influence upon the naming, blaming, claiming process. Culture and personality are assumed to be critical factors to explain why (for example) litigation seems to be very little among the Japanese, while it is massive among Americans. It is assumed that, "litigiousness" is related to specific cultural trait, custom, tradition, and way of life. It is assumed that the Japanese prefer compromise and interpersonal

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<sup>75</sup> Keith Boyum and Lynn Mather, eds., *In Empirical Theories of Courts* (New York: Longman, 1983).

<sup>76</sup> Coates and Penrod.

arrangements while Americans are more likely to be individualists, and accordingly, strive for rights.<sup>77</sup>

As revealed by a recent large-scale survey in 50 nations, countries can broadly be classified into individualism versus collectivism. In individualism, people are more likely to be more concerned about the consequences of their actions for their own needs, interests, and goals. Belonging to this individualistic culture are the English-speaking and European countries. On the contrary, collectivistic culture is characterized by more concern about the consequences of one's behaviour for other in-group members. This culture is represented by Asian and South American countries. Such values as autonomy, competitiveness, achievement, and self-sufficiency are emphasized more by individualistic societies while such values as interpersonal harmony and group solidarity are emphasized more in collectivistic societies. Successful application of the individualism-collectivism construct has been observed in explaining similarities and differences in the distributive behaviour of subjects from the United States and from several collectivistic societies.<sup>78</sup>

Accordingly, for instance, substantial value on harmony and conflict avoidance is thought to be strongly upheld in many East Asian cultures. Indirect or non-confrontational ways of dealing with conflict are commonly practiced in these cultures. On the contrary, European Americans are presumed to value fairness, because of the importance accorded that concept in British and Western European

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<sup>77</sup> Lawrence Meir Friedman, "Litigation and Society," *Annual Review of Sociology* 15, no. (1989b): 20.

<sup>78</sup> Kwok Leung and E. Allan Lind, "Procedural Justice and Culture: Effects of Culture, Gender, and Investigator Status on Procedural Preferences," *Journal of Personality and Social Psychology* 50, no. 6 (1986): 1135.

culture. Confrontational procedures may be advocated by European Americans on condition that fairness will result from these procedures.<sup>79</sup>

It can be explained that events may go unnoticed in one cultural context but will result in a grievance in another. Involvement of cultural change in the process may be present. The change in norms will usually result in new events becoming the source of perceived grievances.<sup>80</sup>

Litigation seems to be an unexpected way of dispute resolution for many of the domestic workers. Coming from rural areas in which tolerance is highly upheld, exposure to the risk of physical injury was simply an accepted part of life. Having used to be working in a primarily agricultural community with hard physical work and use of dangerous implements and machinery, they see such risks were unavoidably embedded.<sup>81</sup> It will be difficult to introduce litigation to the community which rarely expect litigation for personal injury actions. Partly, culturally-conditioned ideas of what constitutes an injury and how conflicts over injuries should be handled may explain this phenomenon.<sup>82</sup> These traditional values associated with domestic workers would be accurately classified as Collectivist. A strongly defined social framework in which individuals are expected to conform to the ideals of the society and the in-groups to which they belong are preferred. In line with previous research, the current study found that Indonesians are more likely to

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<sup>79</sup> E. Allan Lind, Yuen J Huo, and Tom R Tyler, " ... And Justice for All: Ethnicity, Gender, and Preferences for Dispute Resolution Procedures," *Law and Human Behavior* 18, no. 3 (1994): 270.

<sup>80</sup> Fitzgerald and Dickins: 686.

<sup>81</sup> David M. Engel, "The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community," *Law & Society Review* 18, no. 4 (1984): 558.

<sup>82</sup> Ibid., 554.

hold the avoiding style than Americans and that collectivism was positively correlated with the style. This can be explained by the fact that collectivistic cultures value harmony maintenance and perceive conflict as “an abnormal eruption disturbing the harmonious relationship” and accordingly, they have to avoid.

#### **6.3.4.3 Personality Types**

Finally, it is also tempting to seek explanations for the emergence of disputes in the personality types of the parties, such as a "disputing personality" (cf. "litigious personality"), "litigious behavior".<sup>83</sup> Such an all-embracing term may prove to be as elusive as the "authoritarian personality" type. It may well be more productive to think in terms of the importance of more specific aspects of personality such as tolerance, feelings of powerlessness, alienation, inferiority, and inadequacy, as well as the propensity to take risks.<sup>84</sup>

Several empirical studies have suggested that various personality characteristics are associated with persons who complain. Wall, Dickey, and Tarlarzyk found that consumers who complained tended to be more self-confident and assertive.<sup>85</sup> Landon found that some consumers tended to complain more than others, and they labeled this tendency "propensity to complain".<sup>86</sup> Landon found that persons high on internal control were more likely to complain than those high on external control. Some

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<sup>83</sup> Ibid., 553.

<sup>84</sup> Felstiner, Abel, and Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming."

<sup>85</sup> N. Wall, L. Dickey, and W. Talarzyk, "Predicting and Profiling Consumer Satisfaction and Propensity to Complain," in *Consumer Satisfaction, Dissatisfaction and Complaining Behavior*, ed. R. L. Day (Bloomington: Indiana University, School of Business, Division of Research, 1977).

<sup>86</sup> E. L. Landon, "A Model of Consumer Complaint Behavior," in *Consumer Satisfaction, Dissatisfaction, and Complaining Behavior*, ed. R. L. Day (Bloomington: Indiana University, School of Business, Division of Research, 1977).



studies have identified clusters of attitudes such as "consumerism" that are related to complaining. Other research, though not intended to bear specifically on claims consciousness, also seems consistent with the individual differences hypothesis. Sternberg and Dobson have shown that students exhibited consistent preferences for different styles of resolving conflicts, suggesting stable individual differences.<sup>87</sup> Kelley and Stahelski's study of behaviors exhibited in Prisoner's Dilemma games led them to posit two types of persons: competitors, who are more likely to take a cynical view of the motives of other persons, and cooperators, who are more inclined to give others the benefit of doubt. The research of Bem and Lord<sup>88</sup> also supports the notion that there may be stable personality dispositions associated with different styles of dealing with conflict

#### **6.4 Strategies deployed by domestic workers as alternative onto litigation**

Although to some extent and in different forms domestic workers experience mistreatments and abuses, only very few file lawsuits. Some others make limited complaints or grievances while still others develop resiliency through some kinds of passive resistance. Different cultural background will develop different responses to mistreatments and abuses. While Filipino domestic workers are more likely to be overt in expressing their resistance to inappropriate treatments by the employers, most Indonesian domestic workers develop uniquely passive responses. They seem to develop some kinds of defence strategies to cope with the consistently occurring

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<sup>87</sup> R. Sternberg and D. M. Dobson, "Resolving Interpersonal Conflicts: An Analysis of Stylistic Consistency," *Journal of Personality and Social Psychology* 52, no. (1987).

<sup>88</sup> N. Vidmar and R. Schuller, A. , "Individual Differences and the Pursuit of Legal Rights: A Preliminary Inquiry," *Law and Human Behavior* 11, no. 4 (1987).

mistreatments and abuses. These emotional buffering seems to be effective to endure the hard works until the end of the work term.

This sub-chapter presents the analysis of case studies of Indonesian domestic workers in Malaysia regarding their strategies of resistance in response to exploitation and coercion by their employers, as alternatives to litigation. The issue is worth-studying since it is widely believed that there seems to be inconsistent rates between the actually experienced exploitation and what is formally reported. It is thought that there seems to be some underlying factors that keep Indonesian domestic workers from expressing their personal or formal claim.

Previous studies have shown that in response to the mistreatment, the exploited, victimized, and marginalized women take either passive or proactive acts. While having to comply with the rules that the employers have set up, which can be very demanding and exhausting, some domestic workers take the necessary steps to have internally-driven personal cheers and to create strategic and tactful responses to the employers. These are clearly identified by Parrenas<sup>89</sup> when examining the narratives of domestic workers. The study reveals that domestic workers in Los Angeles and Rome abide by their employers' disciplinary measures, but simultaneously subvert them by using various strategies and tactics. Such strategies adopted by domestic employers as family-like relationship, frowning, and crying are effective to solicit loans or legalize their status, to make their employers apologize for offensive treatment or to ease the workload, or to evoke sympathy respectively. Likewise, as

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<sup>89</sup> Parrenas.

Romero<sup>90</sup> illustrates, domestic workers have successfully negotiated with their employers to improve working conditions. However, it is widely acknowledged that culture plays a significant role in creating the appropriate responses. Different cultures might result in different responses. In addition, different governance administrations are more likely to result in different policies as well. Therefore, in spite of successful adoption of these strategies and tactics by Western domestic workers in the West, they might be unequally successful in countries whose regulations concerning employment agencies and employers are less stringent. When the domestic workers in Asian Countries have to use these “immediate struggles”<sup>91</sup> they are at high risk of losing their work.

While resistance might result in termination of work contract, which most domestic workers fear of, it does exist in different forms. In Asia, most migrant domestic workers employ such forms of resistance as being covert, passive and discreet. As reported by Constable’s study of domestic workers from the Philippines in Hong Kong, domestic workers develop various forms of resistance such as jokes, which “symbolically reverse(s) the roles of employer and domestic worker”.<sup>92</sup> Meanwhile, Chin who insightfully studied Filipina and Indonesian domestic workers in Malaysia, reports the strategies to cope with consistent spying. Among others, the hidden strategies of resistance are subtle response, self-depreciation, advantage taking from

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<sup>90</sup> Romero.

<sup>91</sup> Parrenas, 188.

<sup>92</sup> Nicole Constable, *Maid to Order in Hong Kong : Stories of Migrant Workers*, 2nd ed., Cornell Paperbacks (Ithaca: Cornell University Press, 2007), 174.

employer's sense of gratitude, and persistent smile at nagging employer.<sup>93</sup> Meanwhile, domestic workers in Taiwan employ such strategies as false compliance to the employers and gossiping and ridiculing on days off.<sup>94</sup> Indeed, domestic workers are in dilemmatic position between obligation to comply with the irrationally set up heavy works and stringent schedules and urging protection mechanism. Whichever way they take will result in discomfort and inconvenience to their personal and professional disadvantages.

Indonesian migrant workers with their uniquely developed cultural background have developed particularly unique strategies of resilience and resistance to survive the inconvenient and uncomfortable work condition. To address this issue, the present study examines how Indonesian domestic workers pursue grievances against their employers. It starts by discussing the orientations of members of or subordinated groups like Indonesian domestic workers that will be more likely to be "against the law" and to employ methods of resistance to law. These narratives will be ended by elaborating the concept of legal consciousness of injustice introduced by Marshall that analyzes the role of law in everyday resistance to inequality. In the second part of the will be an explanation of hegemony and resistance. In the end, forms of resistance deployed by Indonesian domestic workers will be discussed further.

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<sup>93</sup> Chin, *In Service and Servitude : Foreign Female Domestic Workers and the Malaysian "Modernity" Project*.

<sup>94</sup> Lan Pei-Chia, *Among Women: Migrant Domestic Workers and Their Taiwanese Employers across Generations* ((Working Paper No. 30). Berkeley: Center for Working Families, University of California, 2001).

#### 6.4.1 Legal Hegemony

As an idea, legal consciousness has taken a long way and has been developed within law and society research in the 1980s and 1990s. The idea has been developed primarily to deal with legal hegemony issues with the focus of maintenance of institutional power in response to the constant discrepancy between theoretical law and empirical law. The discussion goes further to answer the underlying reason of people's reference to a particular legal system which fails to meet equal treatment promises and reproduces systematic inequality?<sup>95</sup>

The idea of hegemony has been relevant for this research since it will explore how dominant and marginal social actors constitute and are constituted within and through relations of power, domination and resistance. Accordingly, the idea of hegemony will be consequentially included in the discussion in this research to result in a clearer understanding the reciprocal influences between the two opposing powers.

It has been widely accepted that the hegemony construct is important in explaining such matters as practical determinacy of a legal system. There has been no theoretical definition since it merely refers to this kind of systemic power with the consequent result of practice of habitual transactions and privilege of stabilized transactional advantage.<sup>96</sup> Eventually, individuals have repeated and finally patterned transactions. Patterns may become principled and eventually naturalized.

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<sup>95</sup> Susan S. Silbey, "After Legal Consciousness," *Annual Review of Law & Social Sciences* 1, no. (2005): 323.

<sup>96</sup> J. Comaroff and J. L. Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa*, vol. 1 (Chicago: Univ. Chicago Press, 1991), 23-24.

“Hegemony does not arise automatically from a particular social arrangement; instead, hegemony is reciprocally produced and reproduced in everyday transactions, in which a given experience often goes unnoticed, uncontested, and nonnegotiable.”<sup>97</sup>

Perceivably, hegemony is related to culture. That is, hegemony stands along with cultural aspects. In explaining the idea of hegemony, Gramsci pointed that culture has the constraining role. It was asserted that hegemony is the permeation of an entire system of among others values, attitudes, beliefs, and morality throughout civil society. The hegemony includes all structures and activities such as trade unions, schools, the churches, and the family. It is implied that in one way or another, it is supportive of the set up order and the classes' interests that dominate it. Further, Gramsci said that massively internalized consciousness will become part of "common sense."<sup>98</sup>

According to Gramsci, there is a dialectical relation and mediation of control, consent and resistance in the whole society.<sup>99</sup> Gramsci also suggests that dominant groups take the power and establish their moral, political and intellectual interests through the diffusion of their 'world view' throughout society to become the interests of "whole society".<sup>100</sup> Running in this way, social hierarchy coordination

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<sup>97</sup> Silbey: 330-331.

<sup>98</sup> Boggs, quoted in Sally Engle Merry, "Everyday Understandings of the Law in Working-Class America," *American Ethnologist* 13, no. 2 (1986): 253.

<sup>99</sup> A Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci* (Transl. ed. Q Hoare, G Nowell Smith. New York: Int. Publishers, 1999), 12.

<sup>100</sup> Terry Eagleton, *Ideology: An Introduction* (London: Verso, 1991), 116.

has no clear attribution of organizational functions and directions."<sup>101</sup> . Consequently, hegemony and ideology are daily naturalized and turn into the common sense. Likewise, Williams (1977/1998) also highlights the importance of exploration of hegemonic relationships in identifying the fact that ideology in addition to be a system of ideas, is also the quotidian, taken for granted, reproduction, performance, and maintenance of power.<sup>102</sup>

In this sense, hegemony is closely more related to legitimacy rather than force. It is gained through the consent of the governed rather than through coercion. Hegemony derives from the capacity to shape meanings and values to organize and understand the whole social world. Political authority always depends to a particular extent on the consent of the governed. To establish domination, consent and willingness to accept subordination is required from the dominated group. Unless consent is present, domination will cost extremely much .<sup>103</sup> When discussing the concept, Raymond William describes that hegemony is built upon the capacity of social and cultural forces to create submission to power.

The scholars of the Critical Legal Studies Movement state that legal doctrine is not the reflection of a systematic and coherent process of legal reasoning. Otherwise, it reflects the structures of political and economic power. As it has been acknowledged, law plays a critical role to justify and legitimate social order through which citizens perceive the power of ruling groups as fair and acceptable. Law confers legitimacy

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<sup>101</sup> Gramsci, 13.

<sup>102</sup> Eagleton, 116.

<sup>103</sup> Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, 7.

on the ruling dominant groups through the mystification of real power relationships and make them appear reasonable and just to the mass population. In this sense, Trubek argues:

Critical scholars perceive that social order is maintained by mutually reinforcing systems of belief and organization although these beliefs are not true at all. On the contrary, the belief systems which structures action and maintain order in capitalist societies seem eternal and necessary while actually only the transitory and arbitrary interest of a dominant elite whose unequal and unjust power is justified by some commonly acceptable ideas. Therefore, systems of ideas are reifications. They seem essential, necessary, and objective while actually they are contingent, arbitrary, and subjective. Also, they are hegemonic, in the sense that they are present to exclusively legitimate the interests of the dominant class.<sup>104</sup>

While the reason of why people accept domination by violence is clearly understood, the reason of people's consent to their own subordination is not clearly explained. To establish a hegemonic ideology, there has to be the believed inevitability and justice of a system. In explaining the complex arguments of hegemony and consciousness, James Scott reveals that subordinate groups' compliance is more likely to reflect a consciousness of unavailability and necessity, rather than justice, of the system.<sup>105</sup>

Likewise, Scott suggests the hegemony incompleteness and lack of full and complete acceptance of the necessity or justice of the system. The appearing hegemony characterized by widespread compliance may result from repression, not from willing compliance or from an acceptance of the social order justice.<sup>106</sup>

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<sup>104</sup> David M. Trubek, "Where the Action Is: Critical Legal Studies and Empiricism," *Stanford Law Review* 36, no. 1/2 (1984): 41.

<sup>105</sup> Scott, 314-351.

<sup>106</sup> Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, 7.



Frequently, the concept of hegemony is used with ideology, understood in a first but incomplete formulation as a process by which meaning is produced, challenged, reproduced, and transformed. However, ideology is not equivalent to general culture or structure, or to social construction as a general interactive process. An ideology always comprises particular power arrangements, and influences life chances in different way from some other ideology or power arrangement. We can say that meanings can contain ideological values only when they serve power. Therefore, the definition of ideology is limited by the specific content but by its contextual construction and role.<sup>107</sup>

There are various degrees of contestation and conventionalization in ideologies. Consequently, illustratively, ideology and hegemony stand at each end of a continuum. At one end of the continuum stands the ideology that represents the still-visible and active struggles. At the other end stands the harmony that represents the no-longer-active struggles and no-longer-visible representational and institutional struggles and evenly distributed power through social structures and meanings. In spite of possible documentation, of resistance, generally, there is not any notice, question, or claims against hegemony.<sup>108</sup>

To deal with resistance among the subordinated groups, the dominating ideology itself establishes the terms for acts of resistance. When examining the relations between rich and poor peasants in a rice-farming region of Malaysia, Scott argues

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<sup>107</sup> Patricia Ewick and Susan S. Silbey, "Narrating Social Structure: Stories of Resistance to Legal Authority," *The American Journal of Sociology* 108, no. 6 (2003); Silbey.

<sup>108</sup> Ewick and Silbey, "Narrating Social Structure: Stories of Resistance to Legal Authority."

that it is the capitalist elites themselves who challenge the dominant ideology as they form new patterns of organizing labour and of land ownership. Poor peasants resist this change with a backward-looking ideology, condemning the new patterns in terms of the ideology now being dismantled by the capitalist farmers. Since the dominating ideology have to contain elements appealing to the subordinated groups such as the obligations of a good Muslim and the responsibilities of a landlord to his workers has resulted in some internally-driven resistance among the dominating elites. Therefore, in this case, resistance from the dominating ideology seems to derive from the objection to assume obligations and responsibilities by the dominating group. Indeed, Scott argues, unless dominant ideology contains elements appealing to subordinate groups, the ideology would be resisted. Admittedly, these elements have provided grounds for resistance among the dominant ideology itself.<sup>109</sup>

When observed more thoroughly, as Merry emphasized, the situation is far more complex. Being an ideology, domination and resistance are equally contained in law. Ways of legitimating and challenging property and privilege are provided by law.<sup>110</sup> According to David Trubek, legal system must contain some benefits for subordinate groups or otherwise it would illegitimate.<sup>111</sup> Another kind of ambiguity is observed by Jean Comaroff in the Zionist churches in South Africa. On the one hand, they encourage people to comply with the system and urge the workers' participation in

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<sup>109</sup> Merry, *Getting Justice and Getting Even : Legal Consciousness among Working-Class Americans*, 7-8.

<sup>110</sup> Ibid., 8.

<sup>111</sup> David M. Trubek, "The Construction and Deconstruction of a Disputes-Focused Approach: An Afterword," *Law & Society Review* 15, no. 3/4 (1980-1981).

urban wage labour. On the other hand, resistance moments are welcome.<sup>112</sup> Likewise, legality symbols are prevalently used in revolutionary situations by the poor to challenge dominant groups. In the name of legality, the poor prosecute the rich in people's courts.

It can be concluded that as an ideological weapon, law has dual edges. Law is a domination source that also allows possible challenge to that domination. Law is not a mere simple part of a hegemonic ideology whose beliefs would induce compliance among subordinate groups, but rather, it is some form of struggle over control and to contest relative power. Thus, law ambivalently provides power construction and challenge at once.

#### **6.4.2 Strategies of Resistance**

According to Foucault resistance is inevitably inherent in the exercise of power. This is particularly true since the “effective exercise of power need not imply the removal of liberty.”<sup>113</sup> This implies that to comprehensively study the power, it is necessary to concurrently study 'total structure of actions brought to bear' on the actions of others in particular cases, and of the resistances and evasions encountered by those actions.<sup>114</sup> Based on this perspective, as 'subjects of the effects of power and hegemony' Indonesian domestic workers are equally capable of 'exercising their

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<sup>112</sup> J. Comaroff, *Body of Power: Spirit of Resistance: Culture and History of a South African People* (Chicago: Univ. Chicago Press, 1985).

<sup>113</sup> B. Hindess, *Discourses of Power: From Hobbes to Foucault* (Oxford: Blackwell Publishers, 1996), 101.

<sup>114</sup> Foucault 1982 cited in *ibid.*, 101.

power on their own account' since they are themselves 'in a position to act on the actions of others'.<sup>115</sup>

The focus of study on resistance by subordinated or dominated groups has shifted from collective violent uprisings and revolutions aimed at overthrowing systems and dominant ideologies to also encompass non-confrontational, fragmented and more ad-hoc styles of resistance pervasively practiced in everyday relations.<sup>116</sup> Some examples of these nonviolent forms of resistance identified by Scott, in his work on smallholders and landless labourers in Peninsula Malaysia are foot-dragging, discursive protests, ridicule, and petty acts of noncompliance, sarcasm, dissimulation, and perseverance against overwhelming odds.<sup>117</sup>

The individual and collective strategies and styles adopted by Indonesian domestic workers in particular and domestic workers in general to resist or cope with domination have been documented. Romero reviewed research looking at 'reactive strategies to minimize subjugation and familiarity'.<sup>118</sup> These works have documented such different strategies as moral high ground maintenance vis-a-vis employers, non-stigmatized role participation in community activities, collective consciousness inculcation of the social inequalities, and association with community, family, church and other organizations. All of the strategies are intended to lessen 'the psychological damage of embracing employer's belief system' while maintaining

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<sup>115</sup> Ibid., 101.

<sup>116</sup> L Abu-Lughod, "The Romance of Resistance: Tracing Transformations of Power through Bedouin Women," *Am. Ethnol* 17, no. (1990); Constable.

<sup>117</sup> Scott.

<sup>118</sup> Romero, 136.

'psychological and material independence from employers. By doing so, they resist employers' tactics of using 'feminine characteristics to establish the relationship of benevolent materialism that preserves racial, class and status difference'.<sup>119</sup>

Other strategies were also reviewed by Romero. Among others are chicanery, confrontation, tricks, silence and mockery. These strategies are utilized by domestic workers to manipulate their being degraded by employers.<sup>120</sup> Meanwhile, Dill revealed that domestic workers tactically employed deferential acts or 'to play the part expected of them' by white employers. These acts are aimed at 'fooling' white employers while she noted that Cock supposed that domestics put on deferential acts as a 'protective disguise' to maintain their integrity and personalities intact.<sup>121</sup> Therefore, these researchers similarly view domestics' displays of deferential acts as consciously employed strategies to manipulate employers and to lessen subjugation by defining what they would or would not give to employers in terms of time, commitment and personal involvement.<sup>122</sup>

In addition, the aforementioned works have given more emphasis on reading the effectiveness of resistance while ignoring the subjective ambivalence inherent in resisters, the ambiguity of resistive acts, or the reason of occasional acceptance of domination. This conforms to what Ortner has criticized that researchers have not

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<sup>119</sup> Ibid., 138.

<sup>120</sup> Ibid., 138-139.

<sup>121</sup> Ibid., 138-139.

<sup>122</sup> all cited in *ibid.*, 138.

accounted for inherent ambivalence in resistance studies.<sup>123</sup> On the other hand, some works that recognize deferential acts often simply attribute them to conscious manipulations to 'trick' employers and to lessen subjugation. This simplified view of domestic workers being 'cynical manipulators' when resorting to deferential acts is consistent with Haynes and Prakash's criticism of Scott's assumption. Scott argues that landless labourers in Peninsular Malaysia display social deference to landlords as a deliberate and calculative act. Haynes and Parkas highlight that Scott failed to ignore 'how such acts are necessarily conditioned by hegemony' and subscribed to 'the concept of the self-determining subject' by assuming autonomous consciousness.<sup>124</sup> They find this problematic because 'contradictory consciousness' is inherent in any given hegemony and 'may coexist in the outlooks both of single individuals and of groups'.<sup>125</sup>

Later works documenting how domestic workers resist certain aspects and effects of power have taken a broader view of power and of the means while underscoring paid domestic work. For example, Yeoh and Huang, in viewing the negotiations of public space use in Singapore between domestic workers and the host society, assume that domestic workers display certain styles and strategies to challenge the dominant discourse of the fixed identities as workers, domestics and aliens without any right of

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<sup>123</sup> S. B. Ortner, "Resistance and the Problem of Ethnographic Refusal," *Society for Comparative Study of Society and History* 34, no. 1 (1995): 176.

<sup>124</sup> D. Haynes and G. Prakash, "Introduction: The Entanglement of Power and Resistance", in *Contesting Power: Resistance and Everyday Social Relations in South Asia*, ed. D. Haynes and G. Prakash (Delhi: Oxford University Press, 1991), 11.

<sup>125</sup> *Ibid.*, 11.

public space occupation'.<sup>126</sup> Further, Yeoh and Huang noted cumulatively, the actions of individual domestic workers to re-immense themselves in their native culture and individual strategies are not deliberately arranged. Rather, they are habitual routinised practice that results in routinised colonisation such public spaces as parks and shopping malls on Sundays. This routinised occupation shows that they are not weak at all.<sup>127</sup> However, they also stressed that these strategies and styles do not always successfully eliminate the discriminative borders since there are more complex social relations underpinning the boundary construction.<sup>128</sup>

Likewise, Chin has documented that Indonesian domestic workers in Malaysia have had such infrapolitical activities as foot dragging, feigning illness, smearing employers' possessions with blood, and dressing and acting differently on rest days as means of challenging the extracting and exploitative practice of the dominant party.<sup>129</sup> She went further by highlighting that they also employed these strategies to contest the identity construction process based on symbolic and material dimensions of class intertwined with gender, race/ethnicity, religion and nationality'.<sup>130</sup> However, she questioned whether these activities were effective to contest the employer-constructed identities due to the potential backfire and further negative

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<sup>126</sup> B. S. Yeoh and S. Huang, "Negotiating Public Space: Strategies and Styles of Migrant Female Domestic Workers in Singapore," *Urban Studies* 35, no. 3 (1998): 599.

<sup>127</sup> *Ibid.*, 598-599.

<sup>128</sup> *Ibid.*, 599.

<sup>129</sup> Chin, *In Service and Servitude : Foreign Female Domestic Workers and the Malaysian "Modernity" Project*.

<sup>130</sup> *Ibid.*, 126.

representations of foreign domestic worker in and through the dominant discourse of paid domestic work as narrated by the dominant party.<sup>131</sup>

While these works recognize the more complex workings of power and its effects (e.g., power exercised through discourse as illustrated in Chin's research and the effect of contestation over the use and 'colonization' of public space in challenging the 'self other boundary' in Yeoh and Huang's works, they focus merely on the effects of noncompliance acts while overlooking domestic workers' deference/compliance or deliberate attempts to conform to idealized images and identities of domestic workers in the host states.

Constable<sup>132</sup> noted in her work on Filipino domestic workers in Hong Kong that the issue of social and psychological accommodation in paid domestic service is seldom pursued. Rather, they reduce it to the relative powerlessness of the workers and the inherent inequalities underlying paid domestic service. She criticized earlier works that focused on deferential behaviour for reading it as either a 'successful' style of resistance or a cultural adaptation to resist domination. For example, citing the works of Rollins and Cock on African-American domestics, Constable noted that obedience is read as a coping mechanism or a cultural adaptation to a powerless position vis-a-vis employers in order to decrease the performer's sense of exploitation.<sup>133</sup> On the other hand, she noted that Scott reads deferential behaviour as conscious resistance

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<sup>131</sup> Ibid., 126.

<sup>132</sup> Constable.

<sup>133</sup> Ibid., 204.



to domination and as something that is tactically employed to manipulate the dominant party.

Drawing on data from ethnographic fieldwork in Hong Kong, Constable noted that Filipino domestic workers neither simply resist oppression nor accept it. It is therefore can be said that they are neither 'simply passive objects of oppression nor are they active subjects who successfully control themselves and their labour'.<sup>134</sup> Various ways taken by Filipino domestic workers to resist certain types of control, such as seeking legal recourse and actively demonstrating against unfair rules and policies were also noted. Other subtler forms of resistance employed by Filipino domestic workers include personal confrontation to employers, overt cultural expressions on rest days, and the use of jokes, humour and languages employed. Occasionally, these acts do help set limits to employers' domination and challenge the host society's derogatory attitude towards them. Ambiguity of some of these 'subtler forms of resistance' was also found. For example, she noted that jokes neither teach resistance and disobedience among domestic workers nor submission and subordination.<sup>135</sup> In attempt to avoid romanticising resistance, Constable noted that overall; there was only limited success of Filipino domestic workers in improving the structure of domestic work and reputation of domestic workers.<sup>136</sup> While she highlighted domestic workers 'frustration over the types of imposed

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<sup>134</sup> Ibid., 13.

<sup>135</sup> Ibid., 178.

<sup>136</sup> Ibid., 179.

control in Hong Kong, such as bodily discipline, Constable noted that jokes also convey more positive aspects of life in Hong Kong.<sup>137</sup>

In addition to externally-driven subordination and the active attempts to resist control, Constable noted internally-driven subordination among Filipino domestic workers through particular imposition of self-discipline. One of the examples is image professionalization at a cost of more obedience and compliance.<sup>138</sup> However, according to Constable, these deferential acts of cultural struggles should not be dismissed unless we will miss the fact that such types of professionalism promoted by Filipinas would result in generate the ideal domestic workers desired by employers and agencies.<sup>139</sup> Therefore, there are subjective ambivalence of the subordinated and the 'contradictory consciousness' inherent in any given hegemony. She noted that, although Filipino domestic workers are aware of existing power structures underscoring their employment, they also desire to be treated with greater moral and personal consideration, empathy and fairness. To earn what they expect, they comply with the rules, instead of demanding through loud protest.<sup>140</sup>

While acknowledging the economic necessity of Filipino domestic workers through discourse of accommodation and/or moral encouragement from friends and families and their religious faith, Constable suggests the importance of such issues as accommodation, passivity and acquiescence.<sup>141</sup> Taking into account the

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<sup>137</sup> Ibid., 179.

<sup>138</sup> Ibid., 108.

<sup>139</sup> Ibid., 197.

<sup>140</sup> Ibid., 210.

<sup>141</sup> Ibid., 201.

accommodation and obedience displayed by Filipino domestic workers rather than simply interpreting their acts as 'cynical manipulation' or 'cultural coercion', Constable provides a more nuanced reading of 'resistance':

Domestic workers who accommodate to the demands of their work or "put on" deferential behaviour for their employers are not simply "cynical manipulators". They are both exerting power and simultaneously being dominated by it. This understanding of a domestic worker's behaviour, whether consciously deferential or unconscious but "necessarily conditioned by hegemony," forces us to alter our view of the larger picture of power.<sup>142</sup>

According to Ortner<sup>143</sup> resistance is a 'useful category' to 'highlights the presence and play of power in most forms of relationship and activity'. It seems to be arguable when Abu Lughod and Ortner posit that the value of resistance study lies in its acknowledgement of the complexity of the workings of power and its effects. Resistance should not be romanticized when examining the actions of the subordinate to resist power and domination. Instead, researchers have to be sensitive to the ambivalence displayed by 'resistors', as well as the ambivalence inherent in 'resistive acts'. By doing so, it is expected that researchers have a richer insight into forms of power and how people are caught up in them.<sup>144</sup>

Admittedly, the strategies described in these case studies are similar to resistance strategies detailed by Scott (1985). Here are some strategies exercised by Indonesian migrant domestic workers in practicing their resistance to their employer's power in different forms of conflict that they had been involved.

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<sup>142</sup> Ibid., 210.

<sup>143</sup> Ortner: 175.

<sup>144</sup> L Abu-Lughod, "The Romance of Resistance: Tracing Transformations of Power through Bedouin Women," *Am. Ethnol* 17, no. (1990): 42.

In response to scolding or complaints from employers, as consummate actors, migrant domestic workers shout out a recited “Yes, ma’am,” disguising their true feelings (dissimulation). In the case of Latifah, she considered her employer as ‘stubborn’ and determined not to change her argument, even though she was wrong. Once, Latifah was asked to cook a certain food (she cannot recall what it is). She argued the people in the house never wanted that food. The Datin seemed to be not happy and showed her anger. She insisted forcefully to cook the food. Since then, Latifah realised that her employer never accept the word ‘no’, any refusal or contradiction. She always pretended to cope with any situation, to make her employer happy. According to Latifah, her employer would always be happy to see her absolute obedience to the employer.

Likewise, Jumanah knew very well that talking back to the employer would result in even worse situation. Jumanah said that:

*“When I was at the training center in Indonesia, the teachers always reminded us not to argue to the employer, although we are right. Otherwise, the employers would be more upset. We were taught not to say even a word when the employer got angry.”*

*Jumanah (translated from Bahasa Indonesia)*

It happened also to Hesti. In times when she had to face up the fact that the female employer was angry with her and scolded her Hesti kept herself not to be reactive. She listened what the employer said but responded no single word. This kind of defensive mechanism was proven to be successful. The anger diminished and vanished gradually.

*“Being not reactive was effective to stop the conflict. Allowing the employer to burst into anger was good to release the temper to obtain emotional*

*stability. Meanwhile, listening to what she said was a wise way for me to know what she expected, while introspecting if I had probably done wrong.”*

*Hesti (translated from Bahasa Indonesia)*

A different strategy was adopted by Bibi Isah who was characteristically rebellious. In response to verbal assault, she verbally fought in harsh Sundanese that was certainly beyond the employer's comprehension. In doing so, Bi Isah gained the sense of equality through her reciprocal verbal attacks. Although Bibi Isah did not experience physical abuse, she indeed had psychological abuse. Such rude verbal expressions as lazy, rubbish, or useless were commonly addressed to Indonesian domestic workers. Some were understood, and thus, responded accordingly, but some were not since they were uttered in Chinese. On balance, Bi Isah expressed her emotional discomfort with Sundanese language. Poor Bi Isah that the employer usually called the agent to complain and accordingly the agent representative would come and stood on behalf of the employer. She was labeled as rebellious.

*“No, he had never hit me. But it was her rude words. When he spoke in Malayan language, I would respond accordingly, but when he murmured in Chinese language, I replied in Sundanese language. He had to know that I was mad. When this occurred, the boss would call the agent, and the agent would blame me.”*

*Bibi Isah (translated from Bahasa Indonesia)*

To swear honesty against accusation is what Nia Kurniawati did in response to the criminal conviction from her employer. Nia did so when conflict had mounted to the intolerable tension. Once she was accused of stealing, which she strongly denied. Although they could not prove the accusation, they insisted that she had wronged them. Getting rid of further dispute and conflict, she offered her 4-month salary to compensate the loss. This represented, unfortunately, a kind of admission of guilty.

*“I was accused of stealing some money. Of course I didn’t, but they insisted I did, although they failed to prove. I don’t want to get involved in dispute or conflict. I offered them to deduct my salary to compensate that loss; as much as 4-month salary.”*

*Nia Kurniawati (translated from Bahasa Indonesia)*

Such was also the case for Jumanah. The common way to prove innocence among the migrant domestic worker, as Jumanah did, was swearing which was hardly believed by the accuser. To assure her not being guilty for stealing, Jumanah naively offered the employer to charge the loss to her, and offered her to deduct her salary to compensate the accused loss, although she was strongly affirmed that she did not do the accused act. In her case, the missing skirt was finally found.

*“I am swearing, in the name of Allah I did not do it. Please cut my salary even a year, but I did not steal it.” Nevertheless, the sister-in-law did not believe on me and kept suspecting me on stealing. During a month she got angry, cut me off, and spoke above me and threatened to cut my salary. Finally she found the skirt somewhere in her room.”*

*Jumanah (translated from Bahasa Indonesia)*

Leave their workplaces legitimately (desertion). This was what Latifah had done. Actually, she always got along very well with her employer, but not with her daughter in law who lived in the same house. The daughter in law was a bit silent and speak very little or not at all. When she got angry she just went silent and became very noncommunicative. One day, Latifah made a mistake and she did not talk at all. On the contrary, she wrote a letter and dropped it to Latifah’s room. Unfortunately, this was very painful for her as she is very much into self-expression.

*“Can you imagine how painful it was, if we had lived at the same house and never talked? I simply glanced at that letter and then burned it. It hurted me and made me feel worse than if she had just done the deed with true courage.”*

*Latifah (translated from Bahasa Indonesia)*

At that time, I was stressed and think to step out, finding a place away from everybody. I felt it would be helpful to have a friend, relative or significant others with me. I eventually went to my uncle's home in Kuala Lumpur, about 2 (two) hours driving by taxi. I thought this might help me to keep my self calm during the tough times. I told him about what happened and the person that upset me. Fortunately, he understood and readdressed the situation to my employer. It took me only 3 (three) days to straighten the situation and I went back to Damansara and started to work again.

Such a mistreatment was experienced by Nia Kurniawati. Upon the looting accusation, she felt uncomfortable working for the incumbent employer. Since then she insistingly urged her employer to send her back through the recruitment agent and gave up the remaining 6-month contract. Nia had lost her wor spirit and prefer returning home.

Third party mediation. Hesti, an independent and brave girl was frequently assigned in shop assistance. Her extensive interaction during the shop-assisting service has opened up her mind about the inherent legal rights of domestic workers. She had good contact with the local policemen who always friendly greeted her whenever they met. She also had a good relation with the other some Chinese people from

whom she learned not to speak harshly or behave rudely. Her good relation with the local policemen had become a kind of protector or resolver to her.

*“The policemen once came to my employer and advised them not to be harsh and rude to the employees. Since then, the employer showed much better appreciation and respect to the employees. No more blaming!”*

In addition, it appears that a significant number of Indonesian women might use “black magic” to protect themselves from unreasonable employers; hence, Indonesian training centres regularly search and confiscate “black-magic”- related special stones, roses, and slips of paper with Arabic writing from departing domestic workers. Women also devise strategies to resist exploitation by family members in their home countries. In some conversation with Nia Kurniawati, implicitly she disclosed that reciting the wirid dan zikir suggested by her spiritual teacher would calm down any anger and madness and bring in mercy and love to her. Likewise, Latifah had conflict with other domestic workers. They were jealous for the close and favorable contact with the employer and had accused her of having exercised some form of magical spells to the employer. She declined the accusation and claimed that what she had performed had been the obligatory and advisable shalats and a bit longer of zikir recitation.

Many of these strategies are doable because domestic workers actually witness the power dynamics of family members and are aware of the family’s daily routine and schedule. This study provides evidence of various strategies of resistance used by domestic workers that go beyond those detailed by Scott.



## **6.5 What obstacles do domestic workers meet when seeking justice?**

Access to justice is based on analyses of the problems that the marginalised encounter when seeking justice, and of the obstacles to their empowerment. While studies have presented different analyses, there is also a great deal of agreement. There are main obstacles that the poor face when seeking justice or empowerment through the legal system, grouped according to: (1) problems related to justice institutions and (2) problems related to the justice seeker him/herself.

### **6.5.1 problems related to justice institutions**

Migrant domestic workers are vaguely protected in the legal framework. Minimum wage is not legally set up in Malaysia, and Indonesian domestic workers earn the lowest in the country.

Malaysia's Employment Act of 1995 has excluded domestic workers from the legal regulations concerning hours of work, days off, and termination of contracts. They are not covered in the Workmen's Compensation Act. Although domestic workers reserve the right to their wages and bring complaints about unpaid salaries to the Labor Department in the Malaysian Ministry of Human Resources, only a few have made complaints. Indonesian embassy and NGO provide free access and advocacy for domestic workers to file a complaint with the Labor Department for unpaid wages. The police and the Ministry of Home Affairs will deal with the reported physical or sexual assault.

The fact that their employment permits/visas/passes are usually limited to one employer only is a serious threat for domestic workers, since the employers can

terminate the work contract in response to the request for justice. Without those documents, they have to either leave the country or become undocumented migrants with the risk of arrest, detainment and deportation.<sup>145</sup>

With the help of NGO, few domestic workers have access to the Indonesian embassy to file a complaint against their employer for abuse and for unpaid wages. Unfortunately, it takes months and sometimes years to process a complaint, which is as long as criminal prosecutions. A special pass is required to stay in Malaysia. During that period, domestic workers are also prohibited from working. In that condition, most workers have to return to Indonesia and to give up any chance of redress.

The process turns to be more complicated because domestic workers' temporary work permits and entry visas are tied to their employers. Consequently, when domestic workers want to file complaints against their employers or pursue criminal cases they have to obtain special passes. Leaving their employer for any reason, including that of abuse, will mean the invalidity of their legal status which may lead to imprisonment, fine charge, and deportation under Malaysia's immigration laws. To legally move to another employer, a domestic worker has to leave Malaysia and return again with a new temporary employment visa.

Another factor that contributes to the low rate of complaint by Indonesian domestic workers in Malaysia is the fact that according to Malaysia's immigration laws, it is

difficult for domestic workers to report abuse, escape exploitation, or pursue redress when Indonesian embassy or NGO are involved. Without passports, domestic workers are at risk of being arrested and detained by the police and immigration officials.

Discriminative regulation has made domestic workers suffer even worse. They do not enjoy the benefits that other workers do. Domestic workers will not get any post-arrival orientation program while all other migrant workers enjoy. Consequently, domestic workers will not get knowledge about Malaysian law (30 hours), Malaysian culture (30 hours), and Malay language (30 hours). Although domestic workers may have that a post-arrival orientation, it is discretionary to the labour agency. Unfortunately, as we have expected, it is unlikely that recruitment agencies will provide such orientation. The reason is that providing such orientation program will increase the costs which mean lower competitive advantage.<sup>146</sup>

### **6.5.2 Problems related to the domestic workers themselves**

A great number of studies have theoretically and empirically explored whether social status and legal life are related. Consensually, law is perceived an elite-controlled instrument to achieve their objectives. It is widely perceived that legal agencies are too exclusive that people with lower-status have no or limited access. If they happen to have, lower-status people will stand as defendants against the people with higher standing. Sociologically, it is hypothesized that, higher-rank people are more likely

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<sup>146</sup> Human Rights Watch (Organization) and Nisha Varia, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004), 62.

to file complaints against the inferiors. In addition, the use of the law is more prevalent among higher-ranking individuals than lower-status individuals<sup>147</sup>

Equally important, reluctance seems to contribute to the low rate of complaint. Some cultures develop a reluctance to confront. Particularly, the poor are reluctant to deal with the courts. They are reluctant because the society strongly stigmatize law encounter for whatever reason and in spite of innocence. In these cultures, litigation is equivalent to trouble making and police investigation may be socially interpreted as guilty until proven innocent. In spite of the importance of these cultural factors, it is found that for the poor, avoidance to the legal system reflects a parochial traditionalism rather than a rational response. To this phenomenon, Hill suggested in a study of 17th Century England that as long as the content and application of the law is stacked against the poor, the poor will see the law a threat.<sup>148</sup>

Almost all of the participants of the study had little understanding of their rights under Indonesian or Malaysian law and the contracts they had signed. Further, they also had very limited awareness of redress mechanisms available to them should they suffer mistreatment. While some domestic workers seemed to know where to go if they had a problem in the destination country, they had not been informed and had no knowledge of the procedures or documentation required to seek redress.

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<sup>147</sup> M. P. Baumgartner, "Law and the Middle Class," *Law and Human Behavior* 9, no. 1 (1980).

<sup>148</sup> Anderson, "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in Ldcs."

Workers' lack of awareness and understanding of their legal rights and redress options is highly disempowering, and is likely the result of several factors. One factor often cited is the lack of formal education among many low-wage migrant workers, particularly those to Malaysia. This presents challenges to reading and understanding a contract or insurance policy or other key document, especially if it is not explained to the worker or is not provided in Indonesian (as employment contracts often are not). The central role of brokers in recruiting migrant workers also limits a worker's knowledge of her rights and options before departure, because the brokers handle all documentation and usually only ask the worker to sign where required, without effectively communicating anything to the worker about her rights and corresponding obligations.

Finally, information is difficult to access. If prospective migrant workers do not receive it during the training period, it is not easily available while abroad. The information available online is limited, and not available to workers without access to the internet or telephones. Embassies—charged with protecting and fulfilling the rights of migrant workers in the destination countries—provide assistance to some workers, but do not seem to prioritize educating workers about their rights or redress options on return. Moreover, despite some promising small paralegal-training programs, the quality of information that is generally available is still limited. This study reveals few if any resources that clearly and simply set out migrant workers' rights under various sources of law, or delineate the responsibilities of recruiters, insurers, and various government departments. Nor did the study identify publicly available materials that clearly and simply set out the procedures and documents required to seek redress through insurance or other Indonesia-based mechanisms, in

a manner accessible to a low-wage migrant worker or local civil society organization.

While there is a great deal of obstacles to justice, it is apparent that being poorly-informed comes first. Mauro Cappelletti suggested that “legal poverty” is the most critical problem to access the law. The disadvantaged people without basic information about legal rights will find it difficult to defend against mistreatment or abuse. Lack of information encompasses may be manifested in lack of knowledge about one’s rights, places and mechanism to complain, legal language and legal procedures, etc. In another study, Edgardo Buscaglia revealed that in Colombia, 66% respondents considered that their problem of justice access derive from the poor knowledge about rights and obligations. About 24% of the people perceived this factor the primary inhibitor. Still another, 22% of the people perceived that the main inhibitor is lack of basic information about the initial procedures.<sup>149</sup>

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<sup>149</sup> Roberto Gargarella, ““Too Far Removed from the People” Access to Justice for the Poor: The Case of Latin America,” (n.d.). [http://www.ucl.ac.uk/dpu-projects/drivers\\_urb\\_change/urb\\_society/pdf\\_violence\\_rights/gargarella\\_removed\\_from\\_people.pdf](http://www.ucl.ac.uk/dpu-projects/drivers_urb_change/urb_society/pdf_violence_rights/gargarella_removed_from_people.pdf).

## CHAPTER SEVEN

### CONCLUSION

#### 7.1 Summary of the findings

In the first chapter, some inquiries were asked, in aid of the general aims of this thesis. After attempting to address these issues in the previous chapters, the brief and summarized answers to these questions are as follows:

1. Why only small number of Indonesian domestic workers who had ~~been~~ experiencing employment mistreatment file lawsuit through litigation to the court?

Race, ethnicity, gender and class are socially constructed to produce and maintain social stratification among people within the society. Socially, people are classified into different classes based on particular aspects. Because domestic workers are generally female, migrant, and unskilled, they belong to the least respected class. The lowest stratum is attributed to numerous reasons such as race, ethnicity, gender and status socially constructed by the employers and agencies. The socially constructed images of domestic workers, resulting from the intersection of race, ethnicity, gender and status have resulted in high risk of oppression, rights violation, and discrimination in the society.

Being ethnically-minor, alien, unskilled, and migrant, they are more likely to differently treated than other racial-ethnic backgrounds or nationalities. Belonging to this group of unfortunate workers, female unskilled migrant domestic workers from such countries as Indonesia are treated as 'others'. With the inherently embedded negative stigma, domestic workers have been trapped in the ethnically-and-racially-based social hierarchy and unequal treatment as

reflected in the exclusion of migrant domestic workers from the local labour law. They suffer from exploitation and abuses normally practiced in the uniquely structured and characterized domestic work relationship. Most employment mistreatments go unnoticed because characteristically, domestic workers are isolated and solitary. Their lack of access to public support and legal protection systematically constructed to disfavor them. Another contributing factor to such poor practice is uniquely constructed one-on-one employee-employer relationship. The unfortunate experience seems also to derive from the socially prevalent negative perception about the informality and the precariousness of domestic works and from the fact that domestic workers work in private location.

Of equal importance, exploitation and mistreatment may be attributed to the perception that domestic workers are unpaid women's household labor. Consequently, because domestic work is naturally reserved for women and is privately located in homes, domestic workers physically and economically marginalized and devalued by both the market and the legal system.

The studies suggest how law and legality help people solve the everyday problems in their surroundings, homes, schools, workplaces, and neighborhoods. Constitutive perspective acknowledges that legal concepts indeed influence the way the average individuals deal with their goals, alternatives, choices, and troubles. This view sees that the law is not a mere conflict resolution tool. Accordingly, legal consciousness is not merely a reflected attitudes and opinions about the law and the legal system. Instead, legal consciousness can be explored through such stories of people's everyday lives and social practices as going to court, talking about problems, engaging in disputes, and avoiding conflict.



Admittedly, in the study of dispute processing, some scholars have grown interested in identifying their causes and cures. Among the interesting issues, dispute life-cycle has attracted the attention of scholars. They are interested in studying the life-cycle of a dispute from the initial phase in the social field to the eventual phase of the lawsuits. When researching are disputed-centered they explore why some situations produce disputes, and what happens to these disputes. The researchers will have to identify if there are the switching devices that either bring some disputes to court track, disappear, others, or divert still some others to alternative modes of resolutions? To understand the cycle, the study of the “transformation” of “injurious experiences” into legal claims may be conducted before the study of litigation.

It has been reported in earlier grievance resolution studies that sometimes the aggrieved persons are hesitant to bring grievances, although they believe that their claims are legitimate. In the workplace, for example, Bumiller explains that the absence of claims over workplace discrimination is due to the fact that the workers perceive they are "legitimately defeated ". Many domestic workers perceive that opposition against perpetrators will become in vain. To defensively compensate the mistreatment, they get rid of any kind of confrontation with the perpetrators or, otherwise, they will have ‘dual misfortune’. The fear grows even more intensely when the employers and agents are excessively perceived to have tyrannical power. It is not surprising that a great number of participants feared that instead of gaining the control power, they on the contrary will be defeated.

Some factors have been attributed to the “transformation” of “injurious experiences” into legal claims. Coates and Penrod have attempted to synthesize and apply the findings of several branches of social psychology to help explain

the naming, blaming, and claiming processes. It is likely that people take personal responsibility for expected or predictable events.

Another useful concept is that of a "trigger event" that acknowledges the importance of particular events that result in the naming phenomenon. An event may be present or absent before. Naming process may be triggered by the salience, vividness, seriousness, disrupts, rapidness, and continuity. Boyum added the rate, magnitude, and scope of the circumstance changes. Other factors include the characteristics and duration of trigger events.

The Indonesian are not fond of litigation, while Americans favor litigation. The different likelihood of litigation seems to derive from different culture and personality among the two people. "Litigiousness" is perceived to be related to specific cultural trait, custom, tradition, and way of life.

2. How do Indonesian domestic workers develop, maintain and establish the patterns of legal dispute processing, as alternatives to the courts?

It is widely acknowledged that as an ideological weapon law has dual edges. Law is a domination source with possible challenges. In addition to law being a part of a hegemonic ideology to exercise compliance among subordinate groups, it is a kind of struggle over control and relative power. Law ambivalently allows power construction on the one hand, and challenge on the other.

In response to the difficult employment, domestic workers have developed some strategies. The resistance strategies are aimed at alleviating the physical and psychological burdens. As detailed by Scott (1985), employees will call or talk to friends with the absence of the employer. Or else, they only complete the

observable works and leave the unnoticed parts. On the one hand, employers develop higher trust to domestic workers because they have daily interaction. On the other hand, employers exercise lower control on domestic workers. In fact, many domestic workers exercise some strategies of resistance such as dissimulation, murmuring in her own language, swearing honesty against accusation, leaving their workplaces legitimately (desertion), third party mediation and using “black magic”. Many of these strategies are successfully executed because domestic workers know very well about the family power dynamics and the family’s daily routine and schedule. This study provides evidence of various strategies of resistance used by domestic workers that go beyond those detailed by Scott. I found that domestic workers provide information to employers about neighboring families and use “family” claims in negotiating with their employers. In addition, it appears that a significant number of Indonesian women might use “invocation of zikir” to protect themselves from unreasonable employers.

3. What are barriers of access to justice that affect the patterns of legal disputes processing they developed;

In spite of the different analyses in studies, a great deal of agreement exists. The main obstacles that the poor face when seeking justice or empowerment through the legal system can be grouped into: (1) problems related to justice institutions and (2) problems related to the justice seekers themselves.

What is more, the particularity of domestic workers' employment relationship is not addressed in national legislation, denying them their status as ‘real workers’ entitled to labor protection. The domestic workers’ employment situation does

not meet the general requirements of the prevailing employment laws. Therefore, essentially there is not any regulation of their working conditions. Not only are domestic workers excluded from labor laws, but they are also excluded from optional protection under any other national law. Domestic works are excluded in any labor laws in the world with the consequent poor protection. This discrimination has created unnecessary artificial dichotomies between men's formal public work in, and women's private works.

Such is also the case of Malaysia's framework of its employment law. The 1955 Employment Act, which is the principal source of employment law in Malaysia, denies entitlement of rest days, limited hours of work, public holidays, annual leave, sick leave, and maternity protections for domestic servants. Domestic workers are also excluded from termination, layoff, and retirement benefits.

By Malaysia's employment laws, domestic workers are not legally protected. This condition is contractual to that enjoyed by other workers. These exclusions reflect discrimination against women and girls' works associated with such traditional female domestic roles as cleaning, child care, and cooking. Working in isolation at homes, female domestic workers are often at particularly high risk of mistreatment. The absence of legal protections has caused domestic workers in higher risks of mistreatment and equally prevented them from any legal redress. The deregulated labor market in Malaysia has made cost-conscious and competition-minded employers exploit migrant workers at the expense of formal employment and human rights protections. This is especially the case considering the rapid expansion of informal sector or "underground economy" in rich countries with the consequent result of increased risks and rewards for immigrants.

Characteristically, domestic workers are disadvantaged because they are poor women with less schooling. Meanwhile, Malaysian immigration laws compromise their bargaining power, as their legal status in the country is tied to their continuing employment. Consequently, they find it difficult to voice dissatisfaction, either to officials or directly to an employer. They will not complain the employer for fear of work dismissal. In competitive perspective, many other poor women seek for jobs. They are willing to take over the works the domestic workers currently hold. Holding the work in status quo is then perceived as a better choice than making any complaint that may result in work termination. The large supply of workers has declined the chances of effective lobbying.

## **7.2 The significance of the dissertation and its original contribution**

While a lot of studies on globalization and migration have largely been enlightening and impressive, only few have discussed the legal dimensions of the human rights of migrant workers in general, and of domestic workers in particular. Rather, the literature has focused more on such issues as gender, politics, and globalization; redefining citizenship; family reunification and other socioeconomic factors; and certain other areas of resistance and adaptation.

It will be useful to have critical legal consciousness theory movement to provide a pivotal perspective for this study. However, most scholars who write in this tradition and idiom have not adequately explored the status of migrant domestic workers. Therefore, it is expected that this work will contribute to the enrichment of this tradition.

Although there are growing number of studies on the mistreatment of domestic workers, they have failed to address the distinct situation of migrant domestic workers. Therefore, this study of legal consciousness among Indonesian migrant domestic workers in Malaysia will help theoretically explore and explain the mistreatment against worldwide migrant domestic workers.

It is expected that this research project will fill up the existing gaps in the scholarly literature and provide practical guidelines for policy reforms. Thus, human rights protection for migrant domestic workers will improve accordingly. The focus on the condition of migrant domestic workers in Malaysia will enrich the literature and inspire a better protection of migrant domestic workers.

### **7.3 Recommendations**

To provide holistic protection to domestic workers, the monitoring system has to be systematically constituted. It would be advisable that the Malaysian government ensure effective random checks on employers by the law enforcement officers. Of equal importance, the Indonesian embassy has to build the capacity to monitor migrant workers in Malaysia. This crucial commitment to such overhaul has not been exhibited by either government, especially given the lack of oversight mechanisms included in the new and long negotiated MOU. Without such an initiative, however, change seems unlikely.

Moreover, The Malaysian government should amend the Employment Act of 1955, the Workmen's Compensation Act, and other labor laws to include full and equal labor protections for domestic workers, including regulations on hours of work, rest days, and compensation for workplace injuries and occupational illnesses.

Furthermore, the government has to strictly monitor the work of the recruiters. They are obliged to provide support and protection for domestic workers. The government reserves the right to prosecute the abuser agents.

Therefore, the Indonesian government should adopt improved regulations for labor recruiters and migrant worker training centers that more clearly delineate minimum health and safety conditions, protect women workers' freedom of movement, outline standards for treatment of trainees, and create effective mechanisms to enforce the regulations.

Another important component is improved education of the women working for domestic work. Indonesia owes its citizens increased protections as they travel abroad in order to better their own and family conditions. Adequate and suitable vocational training prior to their leaving Indonesia would greatly improve their perceived worth as domestic workers to foreign employers. Equally important, they have to have adequate language training to ensure effective communication with employers and, should it be necessary, officials in their destination country. Malaysia also owes these workers on whom the country's households depend very much. Upon recruitment, Malaysia should require educational sessions on the laws governing domestic workers and employers and the rights guaranteed to all individuals in Malaysia. Such training is critical for providing domestic workers with some options to voice their complaints and would lessen the government's responsibility for systematic involuntary servitude. However, Malaysian officials have to be trained accordingly to appropriately handle domestic workers' complaints. While these changes may not prevent all cases of trafficking of domestic workers, they would be a start. They would also demonstrate the governments' good faith efforts to combat forced labor within the domestic worker system.

Other important attempts will include enhancing of local economic and educational opportunities so that domestic workers can migrate based on informed choice; setting standards for and monitoring transnational labour recruitment systems, which are often a determining factor in how such migrants fare; amending restrictive immigration policies that leave such workers particularly at risk of exploitation; and promoting international cooperation between sending and receiving states to prevent and respond to abuse.

#### **7.4 The Limitations of the Dissertation**

This thesis merely grazes the tip of the iceberg. In some ways, this work provides more questions than answers. Like other who has considered the lives of domestic workers, there are innumerable topics yet to be pursued.

Admittedly and not unusually, there are some limitations in this dissertation's attempt to be as interdisciplinary and comprehensive as possible, while maintaining focus on the objective of seeking answers and mapping out strategies for reform. Perhaps one most obvious omission is the lack of substantive, first-hand ethnographic accounts of the migrant domestic workers themselves. While there is no intention to ignore the importance of presenting their stories in their own words or hearing from them directly (which was nonetheless attempted through informal interactions during workshops, meetings, group discussions and interviews), extensive ethnographic research has been done by other scholars. Hence, it is on this secondary literature that this dissertation has largely relied for that aspect of the 'data'.

Another omission relates to the employers and employment agencies that have undoubtedly played significant roles in the lives of migrant domestic workers, and



who have definitely been a factor in their (non) enjoyment of human rights. Since the migrant domestic worker is dependent on the employer not only for employment but also for shelter, food and immigration status, this has conferred enormous power and facilitated the abusive treatment of migrant domestic workers, as has often been the case. The employment agencies on the other hand, are mainly responsible for encouraging these women from poor countries to apply for the LCP without adequately informing them of its true character. The exorbitant fees that they collect from these women are a powerful incentive for these agencies not to completely reveal the true conditions of the proposed employment. Their opposing interests to those of the migrant domestic workers are nonetheless implicitly covered in many aspects of the analyses undertaken in this dissertation.

As in any research endeavour, it is impossible to cover all issues on any given topic in a single piece of work. This dissertation has attempted to address the areas which are most relevant and useful to meeting the objectives of this initial undertaking.

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## **Appendix A**

### **Checklist for life-story interviews with migrant domestic workers**

#### **1. Background information**

- What's your full name?
- Where do you come from? (region in Indonesia)
- Where were you born?
- When were you born?
- What is the background of your family?
- Where does your family originally come from?
- What work did your parents do?
- What is the educational level of your parents?
- What is their religious background?
- Did they own land? Or other property?
- Do they own a house?
- How many sisters and brothers do you have?
- What is your position in the family?
- Where is your family living?
- Are other relatives living there too?
- What is your educational background?
- What is the educational background of your sisters and brothers?
- Did you take up paid work at home?
- If yes, what type of work were you doing?
- How much did you earn?
- What did you do with the money that you earned?
- What was the standard of living of your family?
- In what type of house were they living?
- Did you get married?
- If yes, when did you get married?
- With whom did you get married?
- Why did you marry this person?
- What work was/is your husband doing?
- Was/is he educated?
- Did you move to another place?
- If yes, where did you move?
- Do you have any children?
- If yes, how many children do you have
- How old are your children now?
- Are you still married?
- If not, can you tell me what happened?

#### **2. The migration**

- What was the reason that you decided to migrate?

- Did you take the decision to migrate yourself?
- If yes, when did you take the decision to leave?
- Where did you want to go?
- Why did you want to go to that particular place?
- How did you want to leave?
- What did you want to do abroad?
- Did you know other people who had migrated?
- Did you know what type of work you could do abroad?
- Why did you want to do that type of work?
- Why did you decide to go to Malaysia?
- How did you migrate? (means of transport)
- Who was involved in arranging your migration? (e.g. relatives, friends, agents, subagents)
- Which costs were involved in your migration? (e.g. recruitment fee, travel costs, passport costs, other documents, medical clearance?)
- How much did you pay in total?
- How did you get that money?
- Did you borrow money?
- From who did you borrow money?
- How did the borrowing take place?
- When did you leave?
- How did you leave? (means of transportation)
- Had you been out of the country before?
- How was it to travel?
- Can you tell me your experiences during the trip?
- Who were travelling with you?
- Did you leave your children behind?
- Are your children still in your home country?
- If yes, who is taking care of your children now?

### **3. Living in a new country**

- When did you arrive in Malaysia?
- What did you think of Malaysia when you first arrived?
- Where did you arrive when you migrated?
- Was Malaysia the first country you came to?
- Have you been in other countries before?
- Can you tell me about your experiences in other countries?
- What type of work did you do in the other country?
- Why did you leave that country?
- Can you tell me about your first experiences in Malaysia?
- Where did you live?
- With whom were you living?
- Did you meet any Malaysian people?
- In how many different places have you lived since you first arrived?

- With whom are you living?
- How much rent do you pay?
- How is it to live in Malaysia as a migrant woman?
- Can you tell me about your experiences?
- What do you think of Malaysia?
- What do you like about Malaysia?
- What do you not like about Malaysia?

#### **4. Working as a domestic labor trajectory**

- What type of work did you want to do?
- How did you find work? (agency, friends/relatives)
- What type of work did you do in the beginning?
- How many different jobs have you had since you are in Malaysia?
- Who were you working for in previous jobs?
- Why did you leave those jobs?
- Who is your employer at the moment?
- How big is the family of the employer? (number of persons)
- Can you describe the family you are working for? (e.g. nationality, job of employer, type and reason of family need's for domestic labor)
- Can you describe the house of your employer? (e.g. number of rooms, kitchens, bathrooms, halls, garden etc.)
- Are there other domestic workers employed by your employer?
- What type of work are they doing?
- What type of work are you doing? (e.g. cleaning, cooking, taking care of children, serving meals, ironing, etc.)
- When do you work?
- How many days per week do you work?
- How many hours per day do you work?
- Can you describe an average day of work for me?
- Do you like your work?
- What do you like of your work?
- What do you not like of your work?
- How is the workload?
- Are you satisfied with the workload?
- Why not?
- Does the woman employer also perform housework?
- How is the division of labour between you?
- Is she at home when you are at work?
- Are there any children you have to take care of?
- If yes, how many children are there and how old are they?
- How is your contact with the children?
- Who else is living in the house of the employer?
- How much do you earn?
- Are you satisfied with your salary?

- How is your salary compared to the salary of others?
- Do you know other domestics?
- How much do they earn?
- How much did you earn in previous jobs?
- Do you have a labour contract?
- Are there any allowances included in your labour contract? (e.g. free housing, free medical care, free clothing, free food, free return ticket, paid vacation)
- Do you have a work permit?
- Do you have a residence permit?
- Do other domestics you know have a labour contract/work permit/residence permit?
- Do you have your own passport or is it with your employer?
- What are the advantages of a legal status?
- What are the disadvantages of a legal status?
- How do you spend your income?
- Do you send money home?
- To who do you send money?
- How much money do you send home?
- Has the amount of money you send home changed in the time that you are in Malaysia?
- If yes, how?
- Do you know what your family spends the money on?
- Is your family satisfied with the amount of money you send home?
- Do you also send presents home? What kind of presents do you buy?
- Are you able to save money for yourself?
- For what do you want to use the saved money?

##### **5. Working Condition**

- Did you sign a contract?
- Did you know that you would work as a domestic helper before your arrival in Malaysia?
- If no, what was the job you were promised to have?  
.....
- How long have you been working with this family?  
.....
- How many persons live in the house? Adults ..... Children  
.....
- How big is the house? ..... No. of bedrooms  
.....
- How many maids are there in the house? .....
- Who trained you to work?
  - The house worker who worked before me
  - The housewife
  - I had previous experience
  - Other specify

- Please check the tasks you are in charge of:
  - General cleaning of the house
  - Washing clothes
  - Washing dishes
  - Cooking
  - Buying things from the supermarkets
  - Cleaning cars
  - Ironing
  - Caring for children
  - Washing dishes
  - Taking children for walk
  - Assisting children to be ready for school
  - Assisting children in their homework
  - Caring for elderly
- Do adults in the house help you?
- Are you asked to work in other houses?
- How much is your salary?
- Do you get a weekly day off?
- If you are sick, do you stay in bed?
- Are you entitled to a paid annual leave?
- How many hours do you work per day? .....

## **6. Adaptability & Living Conditions**

- Where do you sleep at night?
- Are you allowed to:
  - Visit friends
  - Receive visits
  - Use telephone for personal calls
  - Practice your religion
  - Watch T.V.
- Please check the item that you get free of charge
  - Meals
  - Soap, toothpaste, shampoo, etc ...
  - Air ticket
  - Clothes
  - Medical treatment
  - Accommodation
- To whom do you refer if you have a dispute regarding your work?  
.....
- Do you get presents & gifts from the family you are working with
- How did you feel when you arrived at this house?
- How did you adjust to this new life?

## **7. Contacts with the employer**

- How is the contact with your employer?
- Which language do you speak with him/her?
- How did you learn this language?
- Is the employer involved in your work?
- Are there any timetables or work schedules?
- If yes, what do they look like?
- Is the time that you work clearly defined or not?
- In case of live-in, where do you sleep? Do you have a separate bedroom?
- Are you allowed to leave the house by yourself or is your mobility restricted?
- Do you, for example, have to be home at a certain time when you go out in the evening?
- What kind of appliances are available in the house? (e.g. air-conditioning, fans, electricity, water on tap, bath or shower, television or radio, telephone)
- Are you allowed to use those appliances?
- Are you allowed to enter every space/room in the house?
- If not, which spaces can you not enter?
- Where do you eat?
- With whom do you have your meals?
- At what times do you have your meals?
- Do you eat at the same times as your employer?
- What do you eat when you are at work?
- What do you eat when you are at home?
- What do you wear when you are at work?
- What do you wear when you are at home?
- Do you cover your hair at work?
- Do you cover your hair at home?
- Does your employer tell you what to wear?
- What is the religious background of your employer?
- What is your religion?
- Which religious obligations do you observe when you are at home?
- Can you practice your religion at work?
- How does the religious background of your employer come to the fore?
- Do you have any problems with the different religious background of your employer?
- How does your employer treat you?
- Do you feel respected?
- How is your contact with the children of the employer?
- How is your contact with other people in the house?
- Do you ever get presents/gifts from your employer?
- If yes, what do you get?
- Have you ever had conflicts with your employer?
- Where were these conflicts about?
- How did you solve those conflicts?
- Have you ever had conflicts with other people in the house?

- Where were these conflicts about?
- How did you solve those conflicts?
- What are the advantages of working for this employer?
- What are the disadvantages of working for this employer?
- Would you like to change jobs?
- Where would you prefer to work?

#### **8. Free time**

- When do you have free time?
- What do you do in your free time? (differences between live-in and live-out)
- Are you allowed to leave the house when you don't have to work?
- If yes, where do you go?
- If not, why not?
- Do you have any friends?
- Do you have contacts with other domestics?
- Do you have contacts with other migrants, from your country, or from other countries?
- How do you meet them?
- Are there any associations for people of your nationality/religious background?
- Do you practice your religion?
- How do you practice your religion?
- Would you like to practice your religion better?
- If yes, how and why?
- How often do you contact your family back home?
- How do you contact them?
- Have you visited them since you are here?
- If yes, how often did you visit them?
- Who paid the air ticket?
- When would you like to visit them again?
- What does it depend on?

#### **9. Future plans/ Perspectives**

- Why do you work as a domestic helper?
- How do you spend your salary?
- Do you save money?
- How long do you plan to work as a maid?
- Do you want to stay in Malaysia?
- If no, where do you want to go?
- Why do you want to go there?
- How do you plan to go there?
- Do you know people who succeeded in leaving Malaysia?
- To which country did they go?
- How did they manage to leave?
- What are you planning to do when you go back home?

## 10. Abuse Experience

- Do you experience one or more of the following treatments by the family you are working for?

	Yes	Sometimes	Never
<ul style="list-style-type: none"><li>• Verbal insults</li><li>• Beating</li><li>• Sexual harassment</li><li>• Rape</li><li>• Not paying you the salary</li><li>• Leaving you alone in the house and traveling</li><li>• Not giving you food</li><li>• Punishing you by locking you in a room</li></ul>			

- Have you ever sought protection order from the court?
- Was the order granted?
- How satisfied were you with your treatment in court?
- Do you think the judge/commissioner treated you fairly?
- Did your employer/agency ever violate the order?
- How satisfied were you with the police response to violation of the protection order?
- Have the police ever responded to an abuse involving you and your employer/agent?
- How many times have the police been called because of an abuse involving you and your employer/agent?
- Who usually calls the police?
- In general, how satisfied were you with the police response?
- Have the police made an arrest when they responded to the abuse reported?
- Who have they arrested?
- Do you think the police have treated you fairly?
- If your employer/agent were arrested, did you want the prosecutor to file charges?
- Has the prosecutor ever filed charges?
- If the prosecutor filed charges, what happened?
- Were you asked to testify in court about the abuse?
- In general, were you satisfied with how the prosecutor handled the case?
- Do you think the prosecutor treated you fairly?
- Do you think the involvement of the police, prosecutor and court improve the situation?



Appendix B

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

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 the 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 Note of Agreement on the Guidelines on the Hiring of Indonesian Maids between Indonesia and Malaysia of 30 January 1996;

**TAKING INTO ACCOUNT** the Joint Statement of the Annual Consultation between the Prime Minister of Malaysia and the President of the Republic of Indonesia at Bukittinggi, Indonesia on 12-13 January 2006;

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

**REALIZING** that recruitment of domestic workers requires a separate framework to facilitate the selection, conveyance and recruitment of domestic workers from the Republic of Indonesia;

**PURSUANT** to the prevailing laws, rules, regulations, policies and directives of the respective countries;

**HAVE REACHED AN UNDERSTANDING** on the following matters:

### **Article 1**

For the purpose of this Memorandum of Understanding (MOU):

**"Domestic Workers"** means a citizen of the Republic of Indonesia who is contracting or contracted to work in Malaysia for a specified period of time for specific individual as a domestic servant as defined in the Employment Act 1955, the Labour Ordinance Sabah (Chapter 67) and the Labour Ordinance Sarawak (Chapter 76).

**"Employer"** means any individual granted approval by the relevant authorities in Malaysia to employ Domestic Workers from the Republic of Indonesia.

**"Indonesian Mission"** means the Embassy of the Republic of Indonesia and/or Consulate General of the Republic of Indonesia and/or Consulate of the Republic of Indonesia, in Malaysia.

**"Malaysian Mission"** means the Embassy of Malaysia and/or Consulate General of Malaysia and/or Consulate of Malaysia, in Indonesia.

**"Indonesian Recruitment Agency" (IRA)** means an Indonesian recruitment agency approved by the Indonesian Government for the purpose of recruiting Indonesian Domestic Workers.

**"Malaysian Recruitment Agency" (MRA)** means a private employment agency licensed under the Private Employment Agency Act 1981 and approved by the Malaysian Government for the purpose of recruiting Domestic Workers from Indonesia.

**"Work Pass"** means a visit pass (temporary employment) issued by the Immigration Department of Malaysia (IDM) to permit the Domestic Worker to work in Malaysia.

Words and expressions in the singular include the plural, and words and expressions in the plural include the singular.



## **Article 2**

The objective of this MOU is to develop the existing cooperation between the Parties for the purpose of strengthening the mechanism on the conveyance and recruitment of Domestic Workers from the Republic of Indonesia.

## **Article 3**

The Parties agree that the recruitment of Domestic Workers for employment in Malaysia shall be conducted in accordance with this MOU.

## **Article 4**

The Government of Malaysia recognizes that the Domestic Workers shall be employed in accordance with the terms and conditions of employment as provided under the relevant laws, rules, regulations, policies and directives relating to employment in Malaysia.

## **Article 5**

1. Any Employer who wishes to employ a Domestic Worker without the service of MRA or through IRA must obtain prior approval from the relevant authorities in Malaysia. The relevant authorities shall, as soon as practicable, inform such approval to the Indonesian Mission.
2. The Parties agree that the implementation of the employment as referred to in paragraph 1, shall be dealt with by the Joint Working Group as stipulated in Article 12.

## **Article 6**

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

- (a) be at least 21 years of age but not more than 45 years of age;
- (b) possess sufficient knowledge of Malaysian laws, culture and social practices;
- (c) possess the ability to communicate either in Malay and/or English language;
- (d) satisfy Malaysian immigration procedures in Malaysia;
- (e) must be certified fit and healthy in accordance with the requirements of the relevant authorities in Malaysia and Indonesia; and
- (f) do not possess any previous criminal records.

#### **Article 7**

1. The Domestic Workers under employment in Malaysia shall comply with all Malaysian laws, rules, regulations, policies and directives; and respect Malaysian traditions and customs in their conduct as Domestic Workers in Malaysia.
2. The Employers shall comply with all Malaysian laws, rules, regulations, policies and directives.

#### **Article 8**

The Parties acknowledge that the responsibilities of the Employer, MRA, IRA and Domestic Workers for the purpose of the implementation of this MOU shall be in accordance with **Appendix A**.

#### **Article 9**

The Domestic Workers who are recruited under this MOU shall work in Malaysia:

- (a) for a specified period of time in accordance with the Contract of Employment as per **Appendix B**; and
- (b) subject to the terms and conditions of the Contract of Employment as per **Appendix B**.

#### **Article 10**

Subject to Article 9, the Domestic Workers may be allowed to continue working in Malaysia as required by the Employer.

#### **Article 11**

1. The Parties shall facilitate the repatriation of the Domestic Workers upon the termination of their Contract of Employment.
2. The respective Party shall take appropriate action against Employers or MRA or IRA or Domestic Workers that contravene the provisions of this MOU.

#### **Article 12**

1. The Parties agree to establish a Joint Working Group comprising the relevant officials from the respective Governments to discuss any matter arising from the implementation of this MOU.
2. The Joint Working Group shall meet from time to time and designate the venue and date of the meeting.



### **Article 13**

Each Party reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily either in whole or in part the implementation of this MOU which shall take effect immediately after notification has been given to the other Party through diplomatic channels.

### **Article 14**

This MOU shall substitute and supersede the Notes of Agreement on the Guidelines on the Hiring of Indonesian Maids between Malaysia and Indonesia of 30 January 1996.

### **Article 15**

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

### **Article 16**

Any dispute arising out of the interpretation or implementation of this MOU shall be settled amicably through consultations or negotiations between the Parties without reference to any third party.

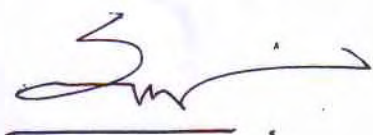
### **Article 17**

1. This MOU shall enter into force on a date to be mutually agreed upon by the Parties, which shall be notified through the exchange of Diplomatic Notes.
2. This MOU shall remain in force for a period of five (5) years from the date of signing subject to extension by mutual agreement of both Parties.
3. Either Party may terminate this MOU by notification through diplomatic channels, which shall enter into force six (6) months after the date of such notification.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto by their respective Governments, have signed this MOU.

**DONE** at Bali, Indonesia on the 13<sup>th</sup> day of May in the year 2006, in Bahasa Indonesia, Bahasa Malaysia and English, all texts being equally authentic. In case of any divergence of interpretation of this MOU, the English text shall prevail.

**On Behalf of the Government of  
the Republic of Indonesia**



**Erman Suparno**  
**Minister of Manpower and  
Transmigration**  
**Republic of Indonesia**

**On Behalf of the Government  
of Malaysia**



**Dato' Seri Mohd Radzi bin Sheikh Ahmad**  
**Minister of Home Affairs**  
**Malaysia**



**UUM**  
**Universiti Utara Malaysia**



## **APPENDIX A**

### **A. Responsibilities of the Employer**

- i. The Employer is responsible personally or through an authorised MRA to obtain the approval from the relevant authorities in Malaysia for the purpose of recruitment/employment of Domestic Workers.
- ii. Subject to article 5 of the MOU, the Employer may personally or through an authorised MRA recruit Domestic Workers in Indonesia through IRA.
- iii. The Employer shall pay the Domestic Workers monthly wages in the amount as agreed in the terms and conditions of the Contract of Employment.
- iv. The Employer shall sign the Contract of Employment in Malaysia before or at the time of commencement of employment and a copy of such contract shall be provided to the Domestic Workers.
- v. The Employer shall be responsible for the following payments:
  - (a) Transportation cost from the original exit point in Indonesia to the place of employment in Malaysia;
  - (b) Security deposits as required by the Immigration Department of Malaysia;
  - (c) Processing Fees;
  - (d) Work Pass;
  - (e) Medical examination for the purpose of renewal of the Work Pass; and
  - (f) Annual levy.
- vi. The Employer shall, in the event that the Domestic Workers are recruited pursuant to Article 5 of the MOU, be responsible for the necessary arrangement of the entry of the Domestic Workers upon arrival at the entry point in Malaysia and thereafter.
- vii. The Employer shall ensure the Domestic Workers undergo medical examination within one (1) month from the date of arrival in Malaysia as required by the Government of Malaysia.
- viii. The Employer shall, in the event that the Domestic Workers are recruited pursuant to Article 5 of the MOU, be responsible for the repatriation cost of the Domestic Worker who is not certified as fit and healthy from the medical examination conducted under paragraph vii above.

- ix. The Employer shall provide coverage for Domestic Workers under the Foreign Workers Compensation Scheme as prescribed by the Minister of Human Resources, Malaysia.
- x. The Employer shall ensure that Domestic Workers receive their foreign worker cards from the Immigration Department of Malaysia as soon as practicable and the card shall be kept by the Domestic Workers.
- xi. The Employer shall renew the Domestic Workers' Work Pass three (3) months before the expiry date. Any fee, penalty or compound due to the failure of the Employer to do so shall be borne by the Employer.
- xii. The Employer shall be responsible for the safe keeping of the Domestic Worker's passport and to surrender such passport to the Indonesian Mission in the event of abscondment or death of the Domestic Workers.
- xiii. The Employer shall bear the cost of using the services of MRA where applicable.
- xiv. In the event of death of the Domestic Workers, the Employer shall bear the cost of funeral or the repatriation of the remains of the Domestic Workers and such cost shall be reimbursed from the Foreign Workers Compensation Scheme.
- xv. The Employer shall at all times respect and pay due regards to the sensitivity of religious belief of the Domestic Workers, including the right to perform prayers and to refuse to handle and consume non-Halal food.
- xvi. The Employer shall provide the Domestic Workers with reasonable accommodation with basic amenities.
- xvii. The Employer shall provide the Domestic Workers with adequate rest.
- xviii. The Employer shall undertake that the Domestic Workers shall be employed for the purpose of household duties.
- xix. The Employer shall furnish the Malaysian Labour Department particulars of the Domestic Workers including the worker's next of kin within fourteen (14) days from the commencement of the employment.
- xx. The repatriation cost of the Domestic Workers from their place of work to their original exit point in Indonesia shall be borne by the Employer in accordance with the following circumstances:
  - a. at the completion of Contract of Employment;
  - b. termination of the Contract of Employment by the Employer; or



- c. termination due to non-compliance of the terms and conditions of the Contract of Employment by the Employer.
- xxi. The Employer shall, prior to leaving Malaysia to work in a foreign country and intending to bring together the Domestic Workers, do all things necessary to ensure the termination of the Work Pass and obtain the necessary approval from the Indonesian Mission.
- xxii. The Employer shall, as reasonably practicable, and if requested by the Domestic Worker, assist the Domestic Worker to open an account at any Malaysian financial institution.

**B. Responsibilities of the Malaysian Recruitment Agency (MRA)**

- i. MRA shall, upon request of the Employer, apply on behalf of the Employer approval from the relevant authorities in Malaysia for the purpose of recruiting/employing Domestic Workers.
- ii. MRA shall provide biodata of potential Domestic Workers according to the Employer's specification for the purpose of selection of the Domestic Workers.
- iii. MRA shall ensure that the Domestic Workers provided to the Employer fulfil the specification as required by the Employer.
- iv. MRA, shall be responsible for the arrangement of the entry of the Domestic Workers upon arrival at the entry point in Malaysia and thereafter.
- v. MRA shall provide a substitute Domestic Worker in the event of abscondment of the Domestic Worker or such Domestic Worker has been certified as medically unfit during the first three (3) months as agreed between MRA and the Employer.
- vi. MRA shall arrange for the renewal of Domestic Worker's Work Pass three (3) months before the expiry date if authorized by the Employer.
- vii. MRA shall maintain and update records of the Employer and the Domestic Workers including the Domestic Workers' next of kin. The MRA shall keep the Indonesian Mission informed on such update records.
- viii. MRA shall not instruct the Employer to deduct the Domestic Worker's wage save in accordance with the relevant laws.
- ix. MRA shall ensure that the Domestic Workers who are selected for employment in Malaysia are certified fit and healthy in accordance with the relevant authorities in Malaysia.

- x. MRA shall be responsible for the repatriation cost of the Domestic Workers who are not certified fit and healthy from the medical examination conducted under paragraph (ix) above.
- xi. MRA shall be responsible to ensure that the terms and conditions of the Contract of Employment are fully explained and understood by the Employer and Domestic Workers respectively.
- xii. MRA shall maintain a record on the placement of the Domestic Workers for purposes of inspection by relevant authorities in Malaysia.
- xiii. MRA shall comply with the fees for the recruitment and placement of Domestic Workers as agreed upon by the relevant Malaysian and Indonesian authorities.
- xiv. MRA shall not operate / conduct the business of recruitment and placement of Domestic Workers in Indonesia.

**C. Responsibilities of the Indonesian Recruitment Agency (IRA)**

- i. IRA shall be responsible to provide potential Domestic Workers according to the Employer's specification to be interviewed and/or selected by the Employer or MRA.
- ii. IRA shall be responsible on behalf of the Domestic Workers to obtain the necessary travel documents and to arrange for medical examination at the designated medical centers in Indonesia.
- iii. IRA shall ensure that the Domestic Workers who are to be interviewed and selected are certified fit and healthy by the medical authorities in Indonesia.
- iv. IRA shall be responsible to ensure that the terms and conditions of the Contract of Employment are fully explained and understood by the Domestic Workers during the selection exercise.
- v. IRA shall be responsible to furnish the Domestic Workers with a copy of their passport; the original contract of placement, information and particulars of Employer, and contact persons of the Indonesian Mission, MRA and IRA.
- vi. IRA shall provide a substitute Domestic Worker in the event of abscondment of the Domestic Worker or such Domestic Worker has been certified as medically unfit during the first three (3) months as agreed between IRA and MRA and/or the Employer.
- vii. IRA shall ensure that the Domestic Workers provided to the Employer fulfil the specification as required by the Employer.



- viii. IRA shall be responsible for the repatriation cost of the Domestic Workers who are not certified fit and healthy from the medical examination conducted under paragraph B(x) above.
- ix. IRA shall maintain and update records of the Employer and the Domestic Workers including the Domestic Workers' next of kin. The IRA shall keep the Malaysian Mission in Indonesia informed on such update records.
- x. IRA shall comply with the fees for the recruitment and placement of Domestic Workers as agreed upon by the relevant Malaysian and the Indonesian authorities.
- xi. IRA shall not operate/conduct the business of recruitment and placement of Domestic Workers in Malaysia.

**D. Responsibilities of the Domestic Workers**

- i. The Domestic Workers shall sign the Contract of Employment before the time of commencement of employment. A copy of such contract shall be provided to the Domestic Workers.
- ii. The Domestic Workers shall be responsible for the following payments:
  - (a) Visa;
  - (b) Travelling document and other related documentation imposed by the relevant authority in Indonesia;
  - (c) Medical examination prior to employment of the Domestic Worker's Work Pass;
  - (d) Accommodation and incidental expenses charged by IRA in Indonesia before departure;
  - (e) Transportation cost from the place of residence of the Domestic Workers to the original exit point in Indonesia; and
  - (f) Other expenses incurred in Indonesia.
- iii. Domestic Workers shall ensure a copy of the medical examination report is available to be shown upon request at the entry point.
- iv. The Government of Malaysia reserves the right to revoke the Work Pass in the event that the Domestic Workers marry in Malaysia during the period of employment.
- v. No members of family or any other person shall be allowed to stay with the Domestic Workers in the place of employment without the consent of the Employer.
- vi. The Domestic Workers shall be responsible to produce their foreign worker card for identification purposes to enforcement agencies whenever required during their stay in Malaysia.

- vii. The Domestic Workers shall abide by all Malaysian laws, rules, regulations and policies and respect Malaysian traditions and customs during their stay in Malaysia.
- viii. The Domestic Workers shall perform assigned responsibilities towards children, young persons and persons under their care in a responsible manner.
- ix. The repatriation cost of the Domestic Workers shall be borne by the Domestic Workers in the event of:
  - a. termination due to negligence or abuse of children and young persons or persons under their care;
  - b. resignation or abscondment of the Domestic Workers; or
  - c. termination of employment pursuant to paragraph 7 of the Contract of Employment.



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## **APPENDIX B**

### **CONTRACT OF EMPLOYMENT**

This Contract is made on this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between \_\_\_\_\_, I/C No. \_\_\_\_\_ of \_\_\_\_\_ (hereinafter referred to as the Employer) of the one part and \_\_\_\_\_, holder of Indonesian Passport No. \_\_\_\_\_ of \_\_\_\_\_ (hereinafter referred to as the Domestic Worker) of the other part.

**IT IS HEREBY AGREED** as follows:

#### **1. Duration of the Contract**

- (a) The Employer shall employ the Domestic Worker in accordance with the terms and conditions of this Contract and subject to the provisions of the relevant laws, regulations, rules, policies and directives of Malaysia;
- (b) This Contract shall commence from the date of the arrival of the Domestic Worker at the Employer's home;
- (c) The Domestic Worker shall continue in the employment under the terms and conditions of this Contract for a period of \_\_\_\_\_ (\_\_\_\_\_) years or until such time the Contract is terminated in accordance with the terms and conditions of this Contract.

#### **2. Place of Work / Residence of Domestic Worker**

The Domestic Worker shall work and reside only at \_\_\_\_\_ during the duration of the Contract.

#### **3. Duties and Responsibilities of the Domestic Worker**

- (a) The Domestic Worker shall work only with the Employer and shall not seek employment or be employed elsewhere;
- (b) The Domestic Worker shall comply with reasonable instructions of the Employer in the performance of the assigned household duties;

- (c) The Domestic Worker shall perform diligently, faithfully and sincerely all household duties assigned by the Employer which shall not include commercial activities;
- (d) The Domestic Worker shall not use or take advantage of the Employer's possessions without the Employer's permission;
- (e) The Domestic Worker is expected at all times to observe proper attire and shall be courteous, polite and respectful to the Employer and family members of the Employer;
- (f) The Domestic Worker shall abide by the laws, rules, regulations, national policies and directives of Malaysia and respect the customs and traditions of Malaysia;
- (g) In the event that the Domestic Worker marries in Malaysia during the period of employment, the Government of Malaysia reserves the right to revoke the Work Pass;
- (h) No member of family or any other person shall be allowed to stay with the Domestic Workers in the place of employment without the consent of the Employer.

#### **4. Duties and Responsibilities of the Employer**

- (a) The Employer shall provide the Domestic Worker with reasonable accommodation and basic amenities;
- (b) The Employer shall provide the Domestic Worker reasonable and sufficient daily meals;
- (c) The Employer shall not require the Domestic Worker to work or to be engaged in any activities other than that related to household duties;
- (d) The Employer shall insure the Domestic Worker with the Foreign Worker Compensation Scheme in respect of any medical expenses the Domestic Worker may incur in the event of an injury where such injury arises out of and in the course of employment;
- (e) The Employer shall at all times respect and pay due regard to the sensitivity of religious beliefs of the Domestic Worker, including the right to perform prayers and to refuse to handle and consume non-Halal food;



**5. Payment of Wages**

- (a) The Employer shall pay the Domestic Worker a monthly wage of RM\_\_\_\_\_ (RINGGIT MALAYSIA) and the payment shall be in accordance with labour laws of Malaysia;
- (b) No deduction of the monthly wages of the Domestic Worker shall be done save in accordance with the law.

**6. Rest Period**

The Domestic Worker shall be allowed adequate rest.

**7. Termination of Contract by the Employer**

The Employer may terminate the service of the Domestic Worker without notice if the Domestic Worker commits any act of misconduct inconsistent with the fulfilment of the Domestic Worker's duties or if the Domestic Worker breaches any of the terms and conditions of this Contract.

For the purposes of this clause, misconduct includes the following:

- (i) working with another Employer;
- (ii) disobeying lawful and reasonable order of the Employer;
- (iii) neglecting the household duties and habitually late for work;
- (iv) is found guilty of fraud and dishonesty;
- (v) is involved in illegal and unlawful activities;
- (vi) permitting outsiders to enter the Employer's premises or to use the Employer's possessions without Employer's permission;
- (vii) using the Employer's possessions without the Employer's permission.

Provided always that the Employer terminating the Contract under this clause shall provide proof of existence of such situation upon request of the Domestic Worker.

## 8. Termination of Contract by the Domestic Worker

The Domestic Worker may terminate this Contract without notice if:

- (i) the Domestic Worker has reasonable grounds to fear for his or her life or is threatened by violence or disease;
- (ii) the Domestic Worker is subjected to abuse or ill-treatment by the Employer; or
- (iii) the Employer has failed to fulfil his obligation under paragraph 5.

Provided always that the Domestic Worker terminating the Contract under this clause shall provide proof of existence of such situation upon request of the Employer.

## 9. General Provisions

- (a) Transportation cost from the Domestic Worker's original exit point in Indonesia to the place of employment shall be borne by the Employer.
- (b) In the event that the Contract is terminated by the Employer on the ground that the Domestic Worker has committed misconduct, the Domestic Worker shall bear the costs of his/her repatriation.
- (c) The repatriation cost of the Domestic Worker from the place of employment to the original exit point in Indonesia shall be borne by the Employer in the following circumstances:
  - (1) at the completion of Contract of Employment;
  - (2) termination of the Contract of Employment by the Employer;  
or
  - (3) termination due to non-compliance of the terms and conditions of the Contract of Employment by the Employer.
- (d) Any dispute arising between the Employer and the Domestic Worker concerning the grounds for termination of the Contract of Employment pursuant to Paragraph 7 or 8 of this Contract shall be dealt with in accordance with the applicable laws in Malaysia.
- (e) For the purpose of this Contract, the terms "original exit point" shall mean \_\_\_\_\_, in Indonesia.



**10. Extension of the Contract**

Notwithstanding the expiry of the duration of the Contract, the Employer and the Domestic Worker may agree that this Contract may be extended based on similar terms and conditions therein.

**11. Time is Essence**

Time whenever mentioned shall be essence of this Contract in relation to all provisions of this Contract.

**12. Governing Law**

This Contract is governed by, and shall be construed in accordance with the laws of Malaysia.

**IN WITNESS WHEREOF**, the parties to this Contract have hereunto affixed their signature this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Employer,

Domestic Worker,

Name : \_\_\_\_\_  
Date : \_\_\_\_\_

Name : \_\_\_\_\_  
Date : \_\_\_\_\_

Witnessed by,

Witnessed by,

Name : \_\_\_\_\_  
Date : \_\_\_\_\_

Name : \_\_\_\_\_  
Date : \_\_\_\_\_

*\* Note : A copy of this Contract must be submitted to the nearest Labour Department.*

Appendix C

**PROTOKOL PERUBAHAN TERHADAP NOTA KESEPAHAMAN  
ANTARA  
PEMERINTAH REPUBLIK INDONESIA  
DAN  
PEMERINTAH MALAYSIA  
MENGENAI  
PEREKRUTAN DAN PENEMPATAN PEKERJA DOMESTIK INDONESIA  
YANG DITANDATANGANI DI BALI, INDONESIA PADA 13 MEI 2006**

Pemerintah Republik Indonesia dan Pemerintah Malaysia (selanjutnya secara bersama-sama disebut sebagai “Para Pihak” atau masing-masing sebagai “Pihak”),

**BERKEINGINAN** untuk menjunjung tinggi hak-hak dan perlindungan para Pengguna Jasa dan Penata Laksana Rumah Tangga (PLRT) di Malaysia, serta pemenuhan hak-hak asasi mereka;

**MERUJUK** kepada dokumen-dokumen sebagai berikut:

- (a) Risalah Pertemuan Kelompok Kerja Bersama Ketiga antara Pemerintah Malaysia dan Pemerintah Republik Indonesia mengenai Rekrutmen dan Penempatan PLRT Indonesia di Kuala Lumpur, Malaysia pada 20 Agustus 2009;
- (b) Risalah Pertemuan Kelompok Kerja Bersama Keempat antara Pemerintah Republik Indonesia dan Pemerintah Malaysia mengenai Rekrutmen dan Penempatan PLRT Indonesia pada Pertemuan Kelompok Kerja Bersama Keempat dan Kelima, di Jakarta, Indonesia pada 5 September 2009;
- (c) Risalah Pertemuan Kelompok Kerja Bersama Kelima antara Pemerintah Malaysia dan Pemerintah Republik Indonesia mengenai Rekrutmen dan Penempatan PLRT Indonesia di Kuala Lumpur, Malaysia pada 19 November 2009;
- (d) Risalah Pertemuan Kelompok Kerja Bersama Keenam antara Republik Indonesia dan Malaysia mengenai Rekrutmen dan Penempatan PLRT Indonesia di Jakarta, Indonesia pada 23 Agustus 2010;
- (e) Surat Pernyataan Berkehendak untuk Perubahan Nota Kesepahaman mengenai Rekrutmen dan Penempatan PLRT Indonesia 2006 di Putrajaya, Malaysia pada 18 Mei 2010;
- (f) Risalah Pertemuan antara Yang Mulia Datuk Dr. S. Subramaniam, Menteri Sumber Manusia, Malaysia dan Yang Mulia H. A. Muhaimin Iskandar, Menteri Tenaga Kerja dan Transmigrasi, Republik Indonesia, di Kuala Lumpur, Malaysia pada 21 Maret 2011; dan

- (g) Risalah Pertemuan Teknis Indonesia-Malaysia tentang Rancangan Protokol Nota Kesepahaman antara Pemerintah Republik Indonesia dan Pemerintah Malaysia mengenai Rekrutmen dan Penempatan PLRT Indonesia di Putrajaya, Malaysia pada 26 – 27 April dan 5 – 6 Mei 2011, serta di Kedutaan Besar Republik Indonesia di Kuala Lumpur pada 18 – 19 Mei 2011;

**SESUAI** dengan Pasal 15 Nota Kesepahaman antara Pemerintah Republik Indonesia dan Pemerintah Malaysia mengenai Rekrutmen dan Penempatan PLRT Indonesia yang ditandatangani pada tanggal 13 Mei 2006 (selanjutnya disebut “MOU 2006”),

**TELAH MENYEPAKATI** hal-hal sebagai berikut:

## **PASAL 1**

Protokol Perubahan Nota Kesepahaman antara Pemerintah Republik Indonesia dan Pemerintah Malaysia mengenai Rekrutmen dan Penempatan PLRT Indonesia yang ditandatangani di Bali, Indonesia, pada 13 Mei 2006 (selanjutnya disebut “Protokol”), merubah MOU 2006.

## **PASAL 2**

Pasal 1 MOU 2006 akan diubah dengan menambahkan sesudah definisi “Work Pass” paragraf sebagai berikut:

- (a) **“Melarikan Diri”** adalah suatu tindakan yang dilakukan oleh PLRT atas kemauan sendiri tanpa paksaan, meninggalkan tempat kerja, sebagaimana tercantum dalam Perjanjian Kerja dalam kurun waktu yang berlaku dalam Perjanjian Kerja, tanpa seizin Pengguna Jasa, tetapi tindakan tersebut tidak termasuk tindakan melarikan diri karena alasan-alasan keselamatan diri, penganiayaan atau perlakuan buruk oleh Pengguna Jasa.
- (b) **“Tidak Kompeten”** adalah suatu keadaan dimana PLRT tidak mampu melakukan pekerjaan rumah tangga sesuai dengan ruang lingkup kerja berdasarkan Sertifikat Kompetensi Keahlian yang dikeluarkan oleh *Badan Nasional Sertifikasi Profesi* (BNSP) Indonesia.

## **PASAL 3**

Pasal 5 MOU 2006 digantikan menjadi sebagai berikut:

### **“Pasal 5**

Suatu permohonan khusus untuk mempekerjakan PLRT yang diajukan oleh Pengguna Jasa tertentu, jika memenuhi persyaratan, dapat dilakukan melalui prosedur khusus, dan tunduk pada persetujuan sebelumnya oleh Para Pihak melalui pihak yang berwenang sesuai dengan hukum nasional yang berlaku, peraturan dan kebijakan Para Pihak. Pihak yang berwenang tersebut wajib memberitahukan kepada Perwakilan Indonesia dan Perwakilan Malaysia mengenai persetujuan dimaksud.”



#### **PASAL 4**

MOU 2006 diubah dengan menambahkan Pasal 13 yang baru ke dalam MOU 2006 sebagai berikut:

#### **“Pasal 13**

- (1) Para Pihak sepakat, untuk tujuan pelaksanaan teknis MOU 2006 dan Protokolnya, membentuk *Joint Task Force* atau Satuan Tugas Gabungan (selanjutnya disebut “JTF”) baik di Jakarta maupun di Kuala Lumpur;
- (2) JTF terdiri dari perwakilan yang ditunjuk oleh masing-masing Pihak;
- (3) JTF berupaya memberikan penyelesaian yang tepat bagi masalah-masalah terkait PLRT;
- (4) JTF melaporkan secara berkala kepada Kelompok Kerja Bersama sesuai dengan Pasal 12 MOU 2006 dan Protokolnya;
- (5) Pengaturan rinci mengenai pembentukan dan fungsi JTF dicantumkan dalam Kerangka Acuan yang disetujui oleh Para Pihak.”;

#### **PASAL 5**

#### **Lampiran A dari MOU 2006 diubah menjadi –**

##### **5.1 mengganti Paragraf A (i) menjadi sebagai berikut:**

“Pengguna Jasa wajib bertanggung jawab secara pribadi atau melalui MRA (agen penempatan di Malaysia) yang berwenang, untuk memperoleh perizinan dari pihak berwenang Malaysia dalam hal perekrutan atau mempekerjakan PLRT.”;

##### **5.2 mengganti Paragraf A (ii) menjadi sebagai berikut:**

“Tunduk pada ketentuan Pasal 5 MOU 2006, Pengguna Jasa dapat mengajukan permohonan secara khusus untuk perekrutan PLRT yang melalui prosedur khusus menurut MOU ini kepada pihak berwenang terkait sesuai dengan hukum nasional, peraturan dan kebijakan para Pihak.”;

##### **5.3 mengganti Paragraf A (iii) menjadi sebagai berikut:**

“Pengguna Jasa wajib memberi upah bulanan kepada PLRT yang disepakati dalam persyaratan dan ketentuan Perjanjian Kerja dalam jumlah yang ditentukan oleh mekanisme pasar dengan memperhatikan kisaran upah yang disepakati Para Pihak.”;

##### **5.4 mengganti Paragraf A (vi) menjadi sebagai berikut:**

“Pengguna Jasa wajib, menurut ketentuan baru Pasal 5 MOU 2006, terikat oleh segala keputusan yang diambil oleh pihak berwenang terkait, mengenai pengaturan dalam hal mempekerjakan PLRT dimaksud dan melaksanakan arahan yang diberikan

dalam keputusan dan tanggung jawab tersebut, yang merupakan persyaratan dalam Perjanjian Kerja.”;

5.5 mengganti Paragraf A (viii) menjadi sebagai berikut:

“Pengguna Jasa wajib, dalam hal PLRT dipekerjakan sesuai ketentuan Pasal 5 MOU 2006, bertanggung jawab atas pengembalian ke Negara asal PLRT dan penggantian biaya PLRT yang dinyatakan tidak sehat secara medis berdasarkan hasil pemeriksaan kesehatan yang dilaksanakan menurut paragraf (vii) di atas.”;

5.6 mengganti Paragraf A (xii) menjadi sebagai berikut:

- “(a) Paspor wajib berada dalam penguasaan PLRT; dan
- (b) Paspor dapat dipegang oleh Pengguna Jasa dengan seizin PLRT untuk tujuan keamanan. Paspor tersebut wajib dikembalikan setiap saat diminta.”;

5.7 mengganti Paragraf A (xvii) menjadi sebagai berikut:

- “(a) PLRT berhak atas satu hari libur dalam satu minggu;
- (b) PLRT dapat menyetujui untuk bekerja pada hari liburnya; dan
- (c) Dalam hal PLRT menyetujui untuk bekerja pada hari liburnya, PLRT wajib dibayarkan upah dalam jumlah tertentu yang diperhitungkan secara proporsional / *pro rata* sebagai kompensasi hak hari libur yang telah disepakati bersama oleh Pengguna Jasa dan PLRT dalam Perjanjian Kerja.”;

5.8 menambahkan satu paragraf baru A (xxiii) sebagai berikut:

“Pengguna Jasa wajib tunduk pada semua hukum, peraturan perundang-perundangan, kebijakan dan arahan Malaysia.”;

5.9 mengganti Paragraf B (v) menjadi sebagai berikut:

- “(a) Dalam hal PLRT melarikan diri atau tidak kompeten pada 6 (enam) bulan pertama, Pengguna Jasa berhak atas –
  - (i) penggantian PLRT yang disediakan oleh MRA dalam -2 (dua) minggu terhitung sejak PLRT melarikan diri atau dinyatakan tidak kompeten; atau
  - (ii) penggantian biaya oleh MRA atas biaya dan pengeluaran yang telah dikeluarkan oleh Pengguna Jasa dalam Struktur Biaya yang telah direvisi seperti tercantum dalam *Annex* dan Lampiran *Annex* MOU 2006 mengenai Struktur Biaya perekrutan dan penempatan PLRT Indonesia. Penggantian biaya tersebut wajib dibayarkan oleh MRA kepada Pengguna Jasa dalam waktu 4 (empat) minggu terhitung sejak tanggal permintaan penggantian diajukan.
- (b) Dalam hal PLRT dinyatakan tidak sehat secara medis pada 3 (tiga) bulan pertama, Pengguna Jasa berhak atas –
  - (i) penggantian PLRT yang disediakan oleh MRA dalam waktu -2 (dua) minggu terhitung sejak PLRT dinyatakan tidak sehat secara medis; atau

- (ii) penggantian biaya oleh MRA atas biaya dan pengeluaran yang telah dikeluarkan oleh Pengguna Jasa dalam Struktur Biaya yang telah direvisi seperti tercantum dalam *Annex* dan Lampiran *Annex* MOU 2006 mengenai struktur biaya perekrutan dan penempatan PLRT Indonesia. Penggantian biaya tersebut dibayarkan oleh MRA kepada Pengguna Jasa dalam waktu 4 (empat) minggu terhitung sejak tanggal permintaan penggantian diajukan.
- (c) Dalam hal Pengguna Jasa memilih hak atas penggantian seperti tercantum dalam paragraf (a)(i) dan (b)(i) di atas, penggantian dimaksud wajib dilakukan oleh MRA menurut kurun waktu yang tertera. Dalam hal MRA tidak dapat melakukan penggantian PLRT tersebut, Pengguna Jasa berhak untuk meminta penggantian kepada MRA terhadap biaya dan pengeluaran yang telah dikeluarkan oleh Pengguna Jasa.
- (d) Dalam hal Pengguna Jasa memilih hak atas penggantian seperti tercantum dalam paragraf (a)(ii) dan (b)(ii) di atas, penggantian dimaksud wajib dilakukan oleh MRA menurut kurun waktu yang tertera. Dalam hal MRA tidak dapat melakukan pembayaran, pihak yang berwenang wajib menghentikan sementara izin MRA. Apabila MRA tidak dapat melakukan pembayaran, maka pihak yang berwenang wajib dengan segera membatalkan izin MRA.”;

5.10 mengganti Paragraf C (vi) menjadi sebagai berikut:

- “(a) Dalam hal PLRT melarikan diri atau tidak kompeten pada 6 (enam) bulan pertama, Pengguna Jasa dan/atau MRA berhak atas –
  - (i) penggantian PLRT oleh IRA (agen penempatan di Indonesia) dalam waktu -2 (dua) minggu terhitung sejak PLRT melarikan diri atau dinyatakan tidak kompeten; atau
  - (ii) penggantian biaya oleh IRA atas biaya dan pengeluaran yang telah dikeluarkan oleh Pengguna Jasa dan/atau MRA dalam Struktur Biaya yang telah direvisi seperti tercantum dalam *Annex* dan Lampiran *Annex* MOU 2006 mengenai Struktur Biaya perekrutan dan penempatan PLRT Indonesia. Penggantian biaya tersebut wajib dibayarkan oleh IRA kepada Pengguna Jasa dan/atau MRA dalam waktu 4 (empat) minggu terhitung sejak tanggal permintaan penggantian diajukan.
- (b) Dalam hal PLRT dinyatakan tidak sehat pada 3 (tiga) bulan pertama, Pengguna Jasa dan/atau MRA berhak atas –
  - (i) penggantian PLRT yang disediakan oleh IRA dalam waktu -2 (dua) minggu terhitung sejak PLRT dinyatakan tidak sehat secara medis; atau
  - (ii) penggantian biaya oleh IRA atas biaya dan pengeluaran yang telah dikeluarkan oleh Pengguna Jasa dan/atau MRA dalam struktur biaya yang telah direvisi seperti tercantum dalam *Annex* dan Lampiran *Annex* MOU 2006 mengenai struktur biaya perekrutan dan penempatan PLRT Indonesia. Penggantian biaya tersebut wajib dibayarkan oleh IRA kepada Pengguna Jasa dan/atau MRA dalam waktu 4 (empat) minggu terhitung sejak tanggal permintaan penggantian diajukan.



- (c) Dalam hal Pengguna Jasa dan/atau MRA memilih hak atas penggantian seperti tercantum dalam paragraf (a)(i) dan (b)(i) di atas, penggantian dimaksud wajib dilakukan oleh IRA menurut kurun waktu yang tertera. Dalam hal IRA tidak dapat melakukan penggantian PLRT tersebut, Pengguna Jasa berhak untuk meminta penggantian biaya kepada IRA terhadap biaya dan pengeluaran yang telah dikeluarkan oleh Pengguna Jasa dan/atau MRA.
- (d) Dalam hal Pengguna Jasa dan/atau MRA memilih hak atas penggantian seperti tercantum dalam paragraf (a)(ii) dan (b)(ii) di atas, penggantian dimaksud wajib dilakukan oleh IRA menurut kurun waktu yang tertera. Dalam hal IRA tidak dapat melakukan pembayaran, pihak yang berwenang wajib menghentikan sementara izin IRA. Apabila IRA masih tidak dapat melakukan pembayaran, maka pihak yang berwenang wajib dengan segera membatalkan izin IRA.”;

**5.11 mengganti Paragraf B (xiii) menjadi sebagai berikut:**

“MRA wajib memenuhi biaya perekrutan dan penempatan PLRT yang telah disepakati oleh pihak berwenang Malaysia dan Indonesia terkait seperti tercantum dalam *Annex* dan Lampiran *Annex* MOU 2006 mengenai struktur biaya perekrutan dan penempatan PLRT Indonesia.”;

**5.12 mengganti Paragraf C (x) menjadi sebagai berikut:**

“IRA wajib memenuhi biaya perekrutan dan penempatan PLRT yang telah disepakati oleh pihak berwenang Malaysia dan Indonesia terkait seperti tercantum dalam *Annex* dan Lampiran *Annex* MOU 2006 mengenai struktur biaya perekrutan dan penempatan PLRT Indonesia”;

**5.13 menambahkan satu paragraf baru D (x) sebagai berikut:**

“Dalam hal PLRT dinyatakan melarikan diri, izin kerja sementara yang bersangkutan akan dicabut dan tidak diperbolehkan untuk memasuki Malaysia untuk bekerja sesuai dengan hukum dan kebijakan Malaysia yang berlaku.”

## **PASAL 6**

**Lampiran B MOU 2006 diubah sebagai berikut –**

**6.1 menambahkan sub-paragraf baru (i) setelah sub-paragraf (h) pada Paragraf 3 sebagai berikut:**

“(i) PLRT dapat memperbolehkan dan menyetujui Pengguna Jasa untuk menyimpan paspornya demi alasan keamanan. Persetujuan dimaksud wajib dibuat secara tertulis. Paspur wajib dikembalikan setiap saat diminta.”;

**6.2 menambahkan sub-paragraf baru (f) setelah sub-paragraf (e) pada Paragraf 4 sebagai berikut:**

“(f) tunduk pada ketentuan Paragraf 3(i), Pengguna Jasa dapat menyimpan paspor PLRT untuk alasan keamanan setelah disetujui secara tertulis oleh PLRT. Paspur wajib dikembalikan setiap saat diminta.”;

- 6.3 menambahkan sub-paragraf baru (g) setelah sub-paragraf baru (f) pada Paragraf 4 sebagai berikut:

“(g) Pengguna Jasa wajib memperbolehkan PLRT berkomunikasi dengan keluarganya.”;

- 6.4 mengganti Paragraf 5 (a) menjadi sebagai berikut:

“Pengguna Jasa wajib memberikan upah setiap bulan kepada PLRT sebagaimana yang telah diindikasikan dan disepakati oleh Pengguna Jasa dan PLRT, dalam jumlah RM \_\_\_\_\_ (Ringgit Malaysia .....), sesuai dengan Undang-Undang Ketenagakerjaan Malaysia. Pembayaran tersebut wajib dilakukan melalui rekening Bank.”;

- 6.5 mengganti Paragraf 5 (b) menjadi sebagai berikut:

“PLRT wajib menanggung biaya perekrutan dan penempatannya untuk bekerja di Malaysia.”;

- 6.6 menambahkan sub-paragraf 5 (c) menjadi sebagai berikut:

“Pengguna Jasa dapat melakukan pembayaran dimuka untuk perekrutan dan penempatan PLRT, dengan ketentuan bahwa Pengguna Jasa berhak untuk memotong tidak lebih dari 50% upah pokok PLRT setiap bulan hingga pembayaran di muka tersebut telah dilunasi oleh PLRT.”;

- 6.7 mengganti Paragraf 6 menjadi sebagai berikut:

**“6. Hari Libur**

- (a) PLRT berhak atas satu hari libur setiap minggu.
- (b) Dalam hal PLRT tidak menggunakan hak liburnya sebagaimana disebutkan dalam sub-paragraf (a) di atas, PLRT berhak atas upah yang dihitung secara proporsional/*pro rata* sebagai kompensasi hari libur yang telah disepakati oleh Pengguna Jasa dan PLRT.”;

- 6.8 mengganti kata “*employment*” pada Paragraf 9 (a) dan (c) dalam Ketentuan Umum dengan kata “*work*”; dan

- 6.9 menambahkan persyaratan mendapatkan persetujuan dari masing-masing Perwakilan Para Pihak setelah kolom tanda tangan.

**PASAL 7**

Protokol ini mulai berlaku sejak tanggal penandatanganan.

**PASAL 8**

Protokol ini menggantikan kesepakatan dan pengaturan sebelumnya antara para Pihak yang dilakukan sebelum Protokol ini mulai berlaku.



## PASAL 9

Pasal 9 MOU 2006 diganti menjadi sebagai berikut:

“PLRT yang direkrut menurut MOU ini wajib bekerja di Malaysia untuk-

- (a) Jangka waktu tertentu sesuai dengan Perjanjian Kerja sebagaimana Lampiran B yang telah dirubah dengan Protokol ini; dan
- (b) Tunduk pada persyaratan dan ketentuan Perjanjian Kerja sebagaimana Lampiran B yang telah dirubah dengan Protokol ini.”

## PASAL 10

Sesuai dengan ketentuan pada Pasal 17 MOU 2006, Para Pihak menyepakati sebagai berikut:

- (a) MOU 2006 diperpanjang selama 5 (lima) tahun terhitung sejak penandatanganan Protokol ini; dan
- (b) Protokol ini menjadi satu kesatuan yang tidak terpisahkan dari MOU 2006.

**SEBAGAI BUKTI**, yang bertandatangan di bawah ini, diberikan kuasa penuh oleh Pemerintah masing-masing, telah menandatangani Protokol ini.

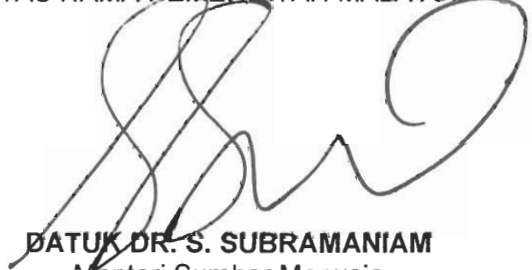
**DIBUAT** dalam (2) dua rangkap di Bandung, Indonesia, pada tiga puluh Mei dua ribu sebelas, dalam Bahasa Indonesia dan bahasa Inggris, semua naskah tersebut adalah asli dan berkekuatan hukum sama. Apabila terdapat perbedaan dalam penafsiran, maka yang digunakan adalah naskah bahasa Inggris.

ATAS NAMA PEMERINTAH REPUBLIK  
INDONESIA



**Drs. H. A. MUHAJMIN ISKANDAR, MSI**  
Menteri Tenaga Kerja dan Transmigrasi

ATAS NAMA PEMERINTAH MALAYSIA



**DATUK DR. S. SUBRAMANIAM**  
Menteri Sumber Manusia

**PROTOCOL AMENDING THE MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA  
AND  
THE GOVERNMENT OF MALAYSIA  
ON  
THE RECRUITMENT AND PLACEMENT OF INDONESIAN DOMESTIC WORKERS  
SIGNED AT BALI, INDONESIA ON 13 MAY 2006**

The Government of the Republic of Indonesia and the Government of Malaysia (hereinafter referred to collectively as “the Parties” and singularly as “the Party”),

**DESIRING** to promote the rights and protection of both the Employers and the Domestic Workers in Malaysia, as well as the fulfillment of their fundamental human rights;

**REFERRING** to the following documents:

- (a) Records of Discussion For the Third Joint Working Group Meeting between the Government of Malaysia and the Government of the Republic of Indonesia on the Recruitment and Placement of Indonesian Domestic Workers in Kuala Lumpur, Malaysia on 20 August 2009;
- (b) Records of Discussion For the Fourth Joint Working Group Meeting between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers in Fourth Joint Working Group, in Jakarta, Indonesia on 5 September 2009;
- (c) Record of Discussion For the Fifth Joint Working Group Meeting between the Government of Malaysia and the Government of the Republic of Indonesia on the Recruitment and Placement of Indonesian Domestic Workers in Kuala Lumpur, Malaysia on 19 November 2009;
- (d) Records of Discussion For the Sixth Joint Working Group Meeting between the Republic of Indonesia and Malaysia on the Recruitment and Placement of Indonesian Domestic Workers in Jakarta, Indonesia on 23 August 2010;
- (e) Letter of Intent For the Amendment to the Memorandum of Understanding on the Recruitment and Placement of Indonesia Domestic Workers 2006 in Putrajaya, Malaysia on 18 May 2010;
- (f) Record of Discussion of the Meeting between Hon. Datuk Dr. S. Subramaniam, the Minister of Human Resources, Malaysia and Hon. H. A. Muhaimin Iskandar, the Minister of Manpower and Transmigration, Republic of Indonesia, in Kuala Lumpur, Malaysia on 21 March 2011; and

- (g) The Records of Discussion for the Technical Meetings Indonesia - Malaysia on the Draft Protocol to the Memorandum of Understanding (MOU) between the Government of Malaysia and the Government of the Republic of Indonesia on the Recruitment and Placement of Indonesian Domestic Workers in Putrajaya, Malaysia on 26-27 April and 5-6 May 2011, and at the Indonesian Embassy in Kuala Lumpur on 18-19 May 2011;

**PURSUANT** to Article 15 of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers signed on 13 May 2006 (hereinafter referred to as "the MOU 2006"),

**HAVE AGREED** as follows:

## **ARTICLE 1**

This Protocol Amending the Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers signed at Bali, Indonesia on 13 May 2006 (hereinafter referred to as "Protocol") amends the MOU 2006.

## **ARTICLE 2**

Article 1 of the MOU 2006 shall be amended by inserting after the definition of "Work Pass" the following paragraphs:

- "(a) **"Abscond"** means a voluntary conduct by the Domestic Worker to leave the place of work, as stipulated in the Contract of Employment within the valid period of the Contract of Employment, without the consent of the Employer, but such act does not include abscond due to personal safety reasons, abuse or ill-treatment by the Employer.
- (b) **"Incompetent"** means a state of incompetence due to inability of the Domestic Worker to perform his/her assigned household duties in accordance with the job specification based on the Skills Competence Certificate as certified by *Badan Nasional Sertifikasi Profesi* (BNSP) Indonesia."

## **ARTICLE 3**

Article 5 of the MOU 2006 shall be substituted with the following:

### **"Article 5**

Any specific request of employment of the Domestic Worker by any Employer, where appropriate, may be made through specific procedures, and subject to prior approval of the Parties through the relevant authorities in accordance with relevant national laws, regulations and policies of the Parties. The relevant authorities shall inform the Indonesian and Malaysian mission of such prior approval."

#### ARTICLE 4

The MOU 2006 shall be amended by inserting a new Article 12 A of the MOU 2006 as follows:

##### **“Article 12 A**

- (1) The Parties agreed, for the purpose of technical implementation of the MOU and its Protocol, to establish a Joint Task Force (hereinafter referred to as “the JTF”) based each in Jakarta and Kuala Lumpur;
- (2) The JTF shall be comprised of the representatives to be appointed by the respective Parties;
- (3) The JTF shall endeavor to provide appropriate solutions on matters concerning Indonesian Domestic Workers;
- (4) The JTF shall report regularly to the Joint Working Group in accordance with Article 12 of the MOU and its Protocol; and
- (5) Detailed arrangement on the establishment and functions of the JTF shall be stipulated in the Terms of Reference to be agreed upon by the Parties.”

#### ARTICLE 5

**Appendix A to the MOU 2006 shall be amended -**

5.1 by substituting Paragraph A (i) with the following:

“The Employer shall be responsible personally or through an authorized MRA, to obtain approval from the relevant authorities in Malaysia for the purpose of recruitment or employment of the Domestic Worker.”;

5.2 by substituting Paragraph A (ii) with the following:

“Subject to Article 5 of the MOU, the Employer may make a specific request for recruitment of a Domestic Worker through specific procedures under this MOU to the relevant authorities in accordance with the national laws, regulations and policies of the Parties.”;

5.3 by substituting Paragraph A (iii) with the following:

“The Employer shall pay the Domestic Worker a monthly wage as agreed in the term and conditions of the Contract of Employment at a rate determined by the market forces taking into account the indicative range of wages to be agreed upon by the Parties.”;

5.4 by substituting Paragraph A (vi) with the following:

“The Employer shall, under Article 5 of the MOU, be bound by all decisions taken by the relevant authorities, regarding the arrangement for such employment and to fulfill any direction given in such decision and responsibilities thereupon, which shall be the condition precedent of the Contract of Employment.”;



5.5 by substituting Paragraph A (viii) with the following:

"The Employer shall, in the event that the Domestic Worker is employed pursuant to Article 5 of the MOU, be responsible for the repatriation and substitution cost of the Domestic Worker who is certified as medically unfit from the medical examination conducted under paragraph (vii) above.";

5.6 by substituting Paragraph A (xii) with the following:

- "(a) The Passport shall remain in the possession of the Domestic Worker; and
- (b) The Passport may be allowed to be kept by the Employer, with prior consent of the Domestic Worker for safekeeping purposes. The passport shall be returned at any time requested.";

5.7 by substituting paragraph A (xvii) with the following:

- "(a) The Domestic Worker shall be entitled to 1 (one) rest day in a week;
- (b) The Domestic Worker may agree to work on his/her rest day; and
- (c) In the event the Domestic Worker agrees to work on any of his/her rest day, the Domestic Worker shall be paid a certain amount of money to be calculated on pro-rate basis in lieu of the rest day as agreed upon by the Employer and the Domestic Worker in the Contract of Employment.";

5.8 by inserting a new paragraph A (xxiii) with the following:

"The Employers shall comply with all Malaysian laws, rules, regulations, policies and directives.";

5.9 by substituting paragraph B (v) with the following:

- "(a) In the event the Domestic Worker absconds or is incompetent during the first 6 (six) months, the Employer shall have the right to the following –
- (i) a substitution of the Domestic Worker provided by the MRA within 2 (two) weeks from the date of the Domestic Worker absconds or is incompetent; or
- (ii) reimbursement by the MRA of the relevant costs and expenses incurred by the Employer in the revised Cost Structure as stipulated in the Revised Annex and Attachment of Annex to the MOU concerning the cost structure of the recruitment and placement of Indonesian Domestic Workers. The said sum shall be reimbursed by the MRA to the Employer within 4 (four) weeks from the date of the demand for reimbursement.
- (b) In the event the Domestic Worker is certified as medically unfit during the first 3 (three) months, the Employer shall have the right to the following –
- (i) a substitution of the Domestic Worker provided by the MRA within 2 (two) weeks from the date the Domestic Worker has been certified medically unfit; or

- (ii) reimbursement by the MRA of the relevant costs and expenses incurred by the Employer in the revised Cost Structure as stipulated in the Revised Annex and Attachment of Annex to the MOU concerning the cost structure of the recruitment and placement of Indonesian Domestic Workers. The said sum shall be reimbursed by the MRA to the Employer within 4 (four) weeks from the date of the demand for reimbursement.
- (c) In the event the Employer chooses the right to a substitution as stipulated in paragraph (a)(i) and (b)(i) above, such substitution shall be made by the MRA within the stipulated period. In the event of default by the MRA, the Employer shall be entitled to seek reimbursement from the MRA on the costs and expenses of recruitment incurred by the Employer.
- (d) In the event the Employer chooses the right to reimbursement as stipulated in paragraph (a)(ii) and (b)(ii) above, such reimbursement shall be made by the MRA within the stipulated period. In the event of default by the MRA, the competent authorities shall suspend the MRA's license. Pursuant to the subsequent default of the MRA, the competent authorities shall immediately cancel the MRA's license.”;

5.10 by substituting paragraph C (vi) with the following provision:

- “(a) In the event of the Domestic Worker absconds or is incompetent during the first 6 (six) months, the Employer and/or MRA shall have the right to the following –
  - (i) a substitution of the Domestic Worker by the IRA within 2 (two) weeks from the date of the Domestic Worker absconds or is incompetent; or
  - (ii) reimbursement by the IRA of the relevant costs and expenses incurred by the Employer and/or MRA in the revised Cost Structure as stipulated in the Revised Annex and Attachment of Annex to the MOU concerning the cost structure of the recruitment and placement of Indonesian Domestic Workers. The said sum shall be reimbursed by the IRA to the Employer and/or MRA within 4 (four) weeks from the date of the demand for reimbursement.
- (b) In the event of the Domestic Worker is certified as medically unfit during the first 3 (three) months, the Employer and/or MRA shall have the right to the following–
  - (i) a substitution of the Domestic Worker by the IRA within 2 (two) weeks from the date of the Domestic Worker has been certified as medically unfit; or
  - (ii) reimbursement by the IRA of the relevant costs and expenses incurred by the Employer and/or MRA in the revised cost structure as stipulated in the Revised Annex and Attachment of Annex to the MOU concerning the cost structure of the recruitment and placement of Indonesian Domestic Workers. The said sum shall be reimbursed by the IRA to the Employer and/or MRA within 4 (four) weeks from the date of the demand for reimbursement.
- (c) In the event the Employer and/or MRA chooses the right to a substitution as stipulated in paragraph (a)(i) and (b)(i) above, such substitution shall be made by the IRA within the stipulated period. In the event of default by the IRA, the

Employer shall be entitled to seek reimbursement from the IRA on the costs and expenses incurred by the Employer and/or MRA.

- (d) In the event the Employer and/or MRA chooses the right to reimbursement as stipulated in paragraph (a)(ii) and (b)(ii) above, such reimbursement shall be made by the IRA within the stipulated period. In the event of default by the IRA, the competent authorities shall suspend the IRA's license. Pursuant to the subsequent default of the IRA, the competent authorities shall immediately cancel the IRA's license.”;

- 5.11 by substituting paragraph B (xiii) with the following:

“MRA shall comply with the fees for the recruitment and placement of Domestic Workers as agreed upon by the relevant Indonesian and Malaysian authorities as stipulated in the Revised Annex and Attachment of Annex to the MOU concerning the cost structure of the recruitment and placement of Indonesian Domestic Workers.”;

- 5.12 by substituting paragraph C (x) with the following:

“IRA shall comply with the fees for the recruitment and placement of Domestic Workers as agreed upon by the relevant Indonesian and Malaysian authorities as stipulated in the Revised Annex and Attachment of Annex to the MOU concerning the cost structure of the recruitment and placement of Indonesian Domestic Workers.”; and

- 5.13 by inserting a new paragraph D (x) with the following:

“In the event the Domestic Worker absconds, their temporary work/employment pass shall be revoked and they shall not be allowed to enter Malaysia for employment purpose in accordance with the applicable Malaysian laws and policies.”

Universiti Utara Malaysia

#### ARTICLE 6

#### **Appendix B to the MOU 2006 shall be amended –**

- 6.1. by inserting a new sub-paragraph (i) after sub-paragraph (h) in paragraph 3 as follows:

“(i) The Domestic Worker may allow and agree for the Employer to keep his/her passport for safekeeping purposes. Such agreement shall be made in writing. The passport shall be returned upon request.”;

- 6.2 by inserting a new sub-paragraph (f) to be inserted after sub-paragraph (e) in Paragraph 4 with the following:

“(f) Subject to sub-paragraph 3 (i), the Employer may keep the passport of the Domestic Worker for safekeeping purposes upon being agreed in writing by the Domestic Worker. The passport shall be returned at any time requested.”;



- 6.3 by inserting a new sub-paragraph (g) to be inserted after the new sub-paragraph (f) in Paragraph 4 with the following:

“(g) the Employer shall allow the Domestic Worker to communicate with his/her family.”;

- 6.4 by substituting Paragraph 5 (a) with the following:

“The Employer shall pay the Domestic Worker a monthly wage as indicated and agreed by the Employer and the Domestic Worker, in the amount of RM\_\_\_\_\_ (Ringgit Malaysia.....) in accordance with Malaysian labour laws. The payment of the monthly wages shall be made through a Bank account.”;

- 6.5 by substituting Paragraph 5 (b) with the following:

“The Domestic Worker shall bear his/her recruitment and placement fee to work in Malaysia.”;

- 6.6 by inserting new sub-paragraph 5 (c) with the following:

“The Employer may pay for the recruitment and placement fee of the Domestic Worker concerned in advance, provided that the Employer shall be entitled to deduct the monthly wage of the Domestic Worker not exceeding the amount of 50% (fifty percent) of the Domestic Worker's basic wage per month until such advance payment is fully settled by the Domestic Worker.”;

- 6.7 by substituting paragraph 6 with the following:

**“6. Rest Day**

(a) The Domestic Worker shall be entitled to 1 (one) rest day every week.

(b) In the event the Domestic Worker waives the entitlement of the right as mentioned in sub-paragraph (a) above, the Domestic Worker shall be paid a certain amount of money to be calculated on pro-rate basis in lieu of the rest day or as agreed upon by the Employer and the Domestic Worker.”;

- 6.8 by substituting the word “employment” in Paragraph 9 (a) and (c) of the General Provisions with “work”; and

- 6.9 by inserting the requirement for endorsement of the respective Missions of the Parties after the signatures column.

**ARTICLE 7**

This Protocol shall enter into force on the date of signing.

**ARTICLE 8**

This Protocol shall supersede earlier understandings and arrangements between the Parties which arise prior to the date of entry into force of this Protocol.



## ARTICLE 9

Article 9 of the MOU 2006 shall be substituted with the following:

"The Domestic Worker who is recruited under this MOU shall work in Malaysia-

- (a) For a specified period of time in accordance with the Contract of Employment as per Appendix B as amended by this Protocol; and
- (b) Subject to the terms and conditions of the Contract of Employment as per Appendix B as amended by this Protocol."

## ARTICLE 10

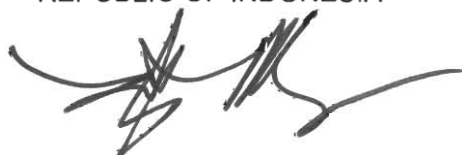
Pursuant to Article 17 of the MOU 2006, the Parties have agreed to the followings:

- (a) The MOU 2006 shall be extended for 5 (five) years from the date of signing of this Protocol; and
- (b) This Protocol shall be read as an integral part of the MOU 2006.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.


**DONE** in duplicate at Bandung, Indonesia on this thirtieth day of May in the year two thousand and eleven, each in Indonesian and English languages, all texts being equally authentic. In the event of any divergence of interpretation between any of the texts, the English text shall prevail.

FOR THE GOVERNMENT OF THE  
REPUBLIC OF INDONESIA



**Drs. H. A. MUHAIMIN ISKANDAR, MSi**  
Minister for Manpower and Transmigration

FOR THE GOVERNMENT OF MALAYSIA



**DATUK DR. S. SUBRAMANIAM**  
Minister for Human Resources

## REVISED ANNEX

### TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF MALAYSIA ON THE RECRUITMENT AND PLACEMENT OF INDONESIAN DOMESTIC WORKERS DONE AT BALI, INDONESIA, ON MAY 13, 2006

#### CONCERNING THE REVISED COST STRUCTURE OF THE RECRUITMENT AND PLACEMENT OF INDONESIAN DOMESTIC WORKERS

1. This Revised Annex is concluded pursuant to Paragraph B (xiii) and Paragraph C (x) of Appendix A of the Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia on the Recruitment and Placement of Indonesian Domestic Workers, signed at Bali, Indonesia, on May 13 2006 ("MOU") as amended by its Protocol signed at Bandung, Indonesia, on 30 May 2011, which stipulates that fees (cost structure) for the recruitment and placement of the Domestic Workers shall be agreed by the Parties.
2. The Meeting of the Seventh Joint Working Group of the MOU held in Bandung, Indonesia on 31 May 2011 agreed that the fees to be borne by the Employers and the Domestic Workers for the purpose of the MOU shall be as follows:
  - a. Fees to be borne by the Employers:

NO	ITEM	AMOUNT (RP)	AMOUNT (RM)
1	Annual levy	1,008,000	360
2	Work process and document	238,000	85
3	Stamping, airport clearance, documentation, service tax, food and lodging, insurance, etc.	1,806,000	645
4	Medical check-up in Malaysia	532,000	190
5	Fees for Malaysian agency	1,778,000	635
6	Transportation cost from the original exit point in Indonesia to the place of employment in Malaysia	1,400,000	500
7	Airport tax and handling	280,000	100
8	Training (50%)*	550,000	196
<b>TOTAL</b>		<b>7,592,000</b>	<b>2,711</b>

b. Fees to be borne by the Domestic Workers:

NO	ITEM	AMOUNT (RP)	AMOUNT (RM)
1	Medical check-up in Indonesia	400,000	143
2	Transportation cost from original city of the Domestic Workers to the original exit point in Indonesia	225,000	80
3	Visa imposed by the Malaysian Embassy	45,000	16
4	Travelling document	120,000	43
5	Insurance	400,000	143
6	Government levy	135,000	48
7	Training (50%)*	550,000	196
8	Competency examination	110,000	39
9	Accommodation	1,405,000	502
10	Fee for Indonesian agency	1,650,000	589
<b>TOTAL</b>		<b>5,040,000</b>	<b>1,800</b>

Note:

\*The total training fees of Rp.1,100,000 or RM 392 to be equally borne by the Employers and the Domestic Workers.

3. This Revised Annex shall replace the Annex to the MOU concerning the Cost Structure of the Recruitment and Placement of Indonesian Domestic Workers signed at Jakarta on 20 November 2006.
4. This Revised Annex shall take into effect on the date of signature and will be subject to review every one (1) year or at any time to be agreed by the Parties.

Signed at Bandung, Indonesia in duplicate on 31 May 2011.

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF INDONESIA**



**Tatang Budie Utama Razak**  
Acting Director General  
for Protocol and Consular Affairs  
Ministry of Foreign Affairs

**FOR THE GOVERNMENT OF MALAYSIA**



**YM Dato' Raja Azahar bin Raja Abdul Manap**  
Deputy Secretary General  
Ministry of Home Affairs