

Understanding the Legal Barriers to the Education for Children of Indonesian Migrant Workers in Malaysia

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Indonesian government is committed to provide education for Indonesian citizen disregard of their whereabouts, especially children of migrant workers in Malaysia. Meanwhile, Malaysia had benefits from Indonesian migrant workers. State requires to create learning environments and opportunities for them to best achieve their potential, therefore the inability to provide education violates state responsibility. Considering the territorial jurisdiction of state power to implement their policy and the environments of where the children live in, two questions need to be addressed, the legal barriers that hinders Indonesian government effort and educational access to the children. This article aims to identify the legal barriers and will assist the Indonesian and Malaysian government to overcome on the rights to inclusive education especially in special education services. Many articles identify in the social aspect, but this article finds that legal aspect should be concerned according to the jurisdiction and considering the relations of both states.

Key words: *Right to Education, Children of Migrant Workers, Indonesia-Malaysia Relations.*

Introduction

About 53,000 Indonesian children in Sabah, Malaysia lack access to education services. They are the offspring of Indonesian migrant workers in Malaysia, especially those working in the plantation and livestock sectors (Kompas, 2018). In some instances, Indonesian migrant workers in Sabah oil palm plantations could not enrol their children due to a new regulation requiring the possession of student pass for such children before their enrolment in public

schools (Tempo.co, 2018). In Peninsula Malaysia, on the basis of data from the Consulate-General of Indonesia in Johor Bahru, Malaysia, Indonesian migrant workers in Johor Bahru were 360,000, excluding illegal migrant workers. There were, at least, 2,500 undocumented children of Indonesian migrant workers of school age. Yet, they could not get access to education. Those children are spread across the Malaysian states of Johor, Melaka, Negeri Sembilan and Negeri Pahang (Untari, 2018).

Education for the children of migrant workers remains a thorny issue of paramount importance within ASEAN countries. This is especially the case for Indonesian migrant workers in Malaysia. Within ASEAN, there is the Southeast Asian Ministers of Education Organization (SEAMEO), a regional intergovernmental organization concerned to improve the quality of life and ensure equity in education. SEAMEO has seven “Priority Areas” that must be achieved from 2015 to 2035. One of those priorities is overcoming barriers to inclusive education. This means that there is an access for children to have basic learning opportunities through innovations of education management for inaccessible and vulnerable groups. To ensure the realization of these priority objectives, in 2016, SEAMEO-INNOTECH (Southeast Asian Ministers of Education Organization – Innovation and Technology) has research called SEAMEO INNOTECH Regional Education Program (SIREP). In its report, SIREP identified five types of learners who, based on their difficult conditions, were the least likely to claim their right to education. One of such groups is undocumented children; specifically, the children of migrant workers.

The commitment of the ASEAN ministers of education to inclusive education is an acknowledgment that there should be no barriers to education for all. Thus, when the former Malaysian Prime Minister, Mahatir Mohammad visited Jakarta, the Indonesian capital, in June 2018, he expressed his conviction about the need for the children of Indonesian migrant workers in Malaysia to have their right to education fulfilled (The Jakarta Post, 2018). Further, Mahatir noted that a number of schools for Indonesian children, in particular, may be established either in Peninsular Malaysia or Sabah and Sarawak. Malaysia, therefore, needs to strive for improvement in this area (The Jakarta Post, 2018). Mahatir's statement was reemphasized by the Malaysian Minister of Foreign Affairs, Saifuddin Abdullah, in a meeting with his Indonesian counterpart, Retno Marsudi on July 23, 2018. Malaysia is ready to meet the educational needs of the children of migrant workers, especially in the Sabah region of Malaysia. This commitment is demonstrated by the establishment of a Community Learning Center (CLC), a school for the children of migrant workers in Sabah (Tempo.co, 2018).

The above statements coming from the Malaysian government open the way to the expeditious fulfilment of the right to education for the children of Indonesian migrant workers. This, however, is just a discourse that still leaves unresolved the problem of lack of access to education for the children of Indonesian migrant workers. This is especially in

respect of the legal barriers to the provision of education for such children. These barriers include requirements that are often difficult for the children of Indonesian migrant workers to fulfill before having access to educational services, such as children's personal documents, parental immigration status, residence and availability of places. The Indonesian government has tried to grapple with these challenges by prioritizing the right to education for the children of Indonesian migrant workers as part of its commitment to human rights in accordance with domestic and international rules.

The problem of lack of access to education for the children of migrant workers seems inseparable from social problems and existing relations between Indonesia and Malaysia, but it is possible that this issue is also a legal matter. Social and economic issues are intertwined with legal ones, and the condition of the children of Indonesian migrant workers in Malaysia clearly highlights the legal dimension of this problem. For the purposes of clarity, this article explains key concepts in education, particularly inclusive education and special education services from the Indonesian point of view, and examines the legal aspect of inclusive education and legal measures taken by governments under domestic, as well as international law, and bilateral relations aimed at enforcing the right to education. In effect, this article is an investigation of the legal factors that may act as impediments to such cooperation.

Literature Review

Educational problems for children of migrant parents often occur in various countries and it is very diverse. These children find difficult attend to school due to domestic regulations, the inconsistency of educational resources between their origin and destination, unstable parental work, and lower parental education (Huang Zu-hui, Xu Kun-peng, 2006). The same thing is proven by the findings that children of migrant in China do not obtain free compulsory education and cannot attend public schools since they are not permanent residents of HuKou. This provision is regulated in law (Yuanyuan Chen, Shuaizhang Feng, 2013).

The problems that occur in China are more about the domestic problems of the education of migrant children in China itself, while the problem of education for Indonesian migrant workers' children concerns between two countries. When Children of Indonesian migrant workers follow their parents to work in Malaysia, they were able to enroll in Malaysian public school but due to documentation problems which later hampered their access to the learning process (Shylvia Windary, 2013). A similar statement was also conveyed by Manos Antoninis, Director of the 2019 Global Education Monitoring of United Nations Educational, Scientific and Cultural Organisation (UNESCO). He explains that children of Indonesian migrant workers including Filipinos cannot attend public school because they are identified as foreigner on their birth certificates (The Star Online, 2018). Even though in 2009, Malaysian government states that in order to enrol public schools in Malaysia, Indonesian

children who are born in Malaysia without birth certificates may obtain their birth validation. The validation comes from the Department of Social Welfare. Nevertheless, the awareness of migrant workers are modest regarding this policy, and according to Child Rights Coalition Malaysia in 2012, this policy does not provide reasonable exceptions for children to take official examinations (Makhtar, M., Asari, K. N., Mohd Yusob, M. L.).

International human rights law recognizes education as a human right. The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), UNESCO, Convention against Discrimination in Education and the Convention on the Rights of the Child (CRC) are part of several international instruments, which regulate education. UNESCO proclaimed Education for All (EFA) through a global agreement at the World Education Forum in Dakar in 2000. The goal of EFA is to achieve inclusive, equitable and quality education for all, including vulnerable populations, such as marginalized persons, persons with disabilities, indigenous people, refugee children and poor children in rural areas. This also converges with the Sustainable Development Goals (SDGs).

Inclusive education is one of the concepts devised under EFA to promote non-discrimination for all children. It is intended to provide equitable and quality education, eradicates barriers to education, recognizes and respects differences in needs and abilities due to social differences or perceptions. Thus, children can participate fully in education. Inclusive education attempts to address the necessity of children in education, particularly focus on vulnerable, marginalized and excluded children (Padhi, Soubhagya Ranjan, 2016).

Inclusive education for marginalized children is achieved by providing opportunities and necessary facilities that facilitate access to education. A fair opportunity and the provision of educational facilities forms part of strategy to promote social justice and remove discriminations (Bandyopadhyay, Madhumita, 2006). The state, therefore, has a proactive role in facilitating access to education for all children so that they can exit disadvantageous conditions and deprivation.

The concept of inclusive education resonates with existing conditions in Indonesia since Indonesia commit to human rights and the goals of EFA. Children in Indonesia face a diverse range of conditions, from special needs, indigenous children, children living in remote areas, to those in border areas. Geographical and economic conditions in several Indonesian regions draw special attention from the government. Of even greater concern is the right to inclusive education for the children of Indonesian migrant workers in Malaysia. They cannot be prevented from attending school for any reason.

Research Methodology

This is a qualitative, library-based study. It draws on both primary and secondary data. The primary data include international law principles, as well as national and international legal instruments. These are complemented with secondary data, which comprise academic texts, journal articles, government publications and online databases. The article is analytic and involves an analysis of international law principles. Moreover, the analytic approach helped in critically examining the enforcement of the right to inclusive education in Indonesia, enabling accurate conclusions and appropriate proposals for cooperation on human rights between Indonesia and Malaysia.

Discussion

Children of Indonesian Migrant Workers

Indonesia has a considerable number of migrant workers. According to Servulus Bobo Riti, the head of the National Authority for the Placement and Protection of Indonesian Overseas Workers (*Badan Nasional Penempatan Dan Perlindungan Tenaga Kerja Indonesia - BNP2TKI*), Indonesian migrant workers in Malaysia, at most, compared to those in other countries (BNP2TKI, 2018).

Generally, Indonesian migrant workers in Malaysia work as domestic workers or as manual laborers in plywood, manufacturing and construction companies, as well as plantations and refineries, among others. These workers tend to face a series of problems, such as physical violence, unpaid wages and immigration issues. In respect of the last of these problems, although some Indonesian migrant workers have valid immigration documents, there are others who do not have. The issue of immigration documents also creates problems when migrant workers have or migrate with their children.

The geographical location of Indonesian-Malaysian borders in Borneo and Peninsula allow Indonesian migrant workers to sneak easily into Malaysia for work. However, problems arise when they have families, and especially children. Many Indonesian migrant workers living in Malaysia have families, even with local residents. Those migrants who work in refineries and oil palm plantations generally live not far away from their workplaces, and sometimes, carry along their children. The children of those migrant workers, especially those who work in plantations or timber companies also work in their parents' workplaces.

The presence of those children is unavoidable because it is difficult for Indonesian migrant workers to be separated from their children or not to get married and bear children. Families separated by borders such as migrant workers and their children may provide economic benefits, but they also make sacrifices in terms of geographical and emotional proximity

(Graham, Elspeth and Lucy P. Jordan, 2011). In addition, it has an impact on children's education. Abandoned children become less supervised and lack effective care from their parents. Distant geographical locations always make migrant workers to long for their families. No doubt, socially and psychologically, a child needs to be close to both parents, and *vice versa*. Parents also have a responsibility to safeguard their children's rights, including the right to education.

According to some of the oil palm plantation employers, migrant workers will perform better if accompanied by their families because Indonesian migrant workers find it difficult to cope with restricted movement. This highlights the interdependence of both parties, the employer and the employee. By placing emphasis on economic motives, there is a tendency to underestimate migrants as human beings, including the psychological and social relationships between them and other individuals, as well as their social environments (Sukamdi, 2007). Migration is a very complex phenomenon and has many facets. Issues regarding security guarantees, legal status, civic status and social discrimination need to get more attention. Economic needs should not lead to a failure to fulfill fundamental rights such as the right to education.

Children of Indonesian migrant workers live in Malaysia does not waive their right to continue to enjoy the right to education. Before 2002, those children had no problems enrolling in Malaysian schools. This was because their parents were free to work in Malaysia and they were able to enroll in schools without legal documents. The Malaysian government could accept foreign children studying in both government and private schools as long as they met the requirements set out in Malaysian rules on education and immigration (Basori, 2010).

However, with the adoption of Malaysian Law 155 on Immigration Act 1959/63 (incorporating all amendments up to 1 January 2006), it became necessary for all foreign workers, as well as their children to have complete immigration documents. Part II of this law (Admission into and Departure from Malaysia), prohibits foreigners from working in Malaysia without formal legal documents. This law, therefore, also creates a barrier for their children to enroll in schools and enjoy access to education since they do not have complete legal documents, including student passes. In other words, their activities are limited (Basori, 2010).

The children of Indonesian migrant workers suffer additional difficulties in that their parents are often unable to pay levies collected by the Malaysian government, thus depriving them of access to education. Malaysian immigration regulations require migrant workers in Malaysia to pay levies to the local government. These levies are a work permit fee for migrant workers, which are paid annually. The work permit is valid for one year and must be extended as long as workers extend their work contract.

Indonesian Commitment to the Right to Education for the Children of Indonesian Migrant Workers

Inclusive education as: “a process of strengthening the capacity of the education system to reach out to all learners” (UNESCO 2009). Hence, schools should accommodate all children in an inclusive manner. Based on the Jomtien World Declaration on Education for All, 1990, as reaffirmed in the Dakar Framework for Action, inclusive education demands that effort be made to actively seek out children who are unable to enroll in school, and to respond flexibly to their needs and circumstances, without exception. Inclusive education, as an approach, seeks to overcome the learning needs of all children, youth and adults specifically for those who are marginalization and exclusion (Padhi, Soubhagya Ranjan, 2016). It should be viewed as an attempt to make invisible, traditionally excluded or marginalized groups to become visible. UNESCO states that the most marginalized children as a marginalized groups are often untouchable in society such as children with disabilities, girls, children in remote villages, the very poor children, and children in border areas.

Regarding such children, the Indonesian government has an obligation to fulfill their right to inclusive education. Article 31 of the Indonesian Constitution of 1945, as well as Article 12 of Law No. 39 of 1999 on Human Rights, affirms that every citizen has the right to the protection of his self-development, obtain education and improve the quality of his life. Article 60(1) of Law No. 39 of 1999 also provides clearly that; “every child has the right of access to education as befits his interests, talents and intellectual capacity”. Other pieces of legislation upholding the right to education in Indonesia include Law No. 20 of 2003 on the National Education System and Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 Concerning the Protection of Children. They reaffirm Indonesia's commitment to the implementation of education.

It is emphasized in Article 11 of Law No. 20 of 2003 that every citizen is obliged to obtain education, and the government and local governments are correspondingly obliged to provide necessary services and facilities, as well as guarantee the implementation quality education without discrimination. The implementation of inclusive education is done through special education and special education services. Article 32 of Law No. 20 of 2003 provides for the education of those who have special needs and require special services:

- a. “Special Education: education for learners who have difficulty in following the learning process because of physical, emotional, mental, social and/or have the potential for intelligence and special talents.”
- b. “Special Education Services: education for learners in remote or underdeveloped areas, remote indigenous communities, and/or natural disaster zones, social disaster zones, and are economically deprived.”

Special education services are intended for children mentioned in (b) above, since they do not get education that meets minimum education standards, or get education, but do not enjoy good education services (Mudjito, Elfindri, Harizal, 2012). This group often faces problems because of the distance of their place of living to available facilities, difficult geographical conditions, general regional backwardness in terms of infrastructure, isolation and social problems in their families. These children face problems of: concentrated living in disadvantaged areas; in remote areas; in coastal and island areas; in border areas; in former disaster areas; in isolated tribes; in uninhabitable communities; in conditions where they work illegally; on plantations that do not have education services; in prison for illegal acts; in former war and conflict areas; being left by their parents due to migration to another place; being drug victims and former drug users; and other specific and thematic challenges (Mudjito, Elfindri, Harizal, 2012).

Special Education Services aim to provide access to education for students so that their right to education can be fulfilled (Article 2, Regulation of the Minister of Education and Culture No. 72 of 2013 on Special Education Services). The Special Education Services Regulation is renewed by the Regulation of the Minister of Education and Culture No. 67 of 2016 on Special Education Services.

Based on its commitment to national development through the right to education, the Indonesian government strives to ensure that access and equity go together to realize the goal of inclusive education. Many Indonesian citizens live outside the country and find themselves in conditions where they face difficulty in enjoying the education, even though Indonesia has a strong commitment to the education of its citizens. Therefore, to strengthen access to education abroad, the Joint Regulation of the Minister of Foreign Affairs and the Minister of Education and Culture of the Republic of Indonesia No. 7 of 2015 and No. 1 of 2015 Concerning Management and Implementation of Indonesian Schools Abroad was adopted.

Under the regulations of the Malaysian government, there are two types of schools run by foreign countries, namely international schools and expatriate schools. International schools are educational institutions that adopt foreign country curricula and use English as the language of instruction for the children of foreign nationals. Expatriate schools are educational institutions that apply the curricula of their countries of origin and use the official language of each country as the language of instruction to provide education to their respective citizens (Embassy of The Republic of Indonesia in Kuala Lumpur, 2016). The provision of education services for Indonesian children in Malaysia started in 1969 through the establishment of the *Sekolah Indonesia Kuala Lumpur*, meaning the Kuala Lumpur Indonesian School (SIKL). Based on the above rules, SIKL is categorized as an expatriate

school. Today, with the increasing number of Indonesians in Malaysia, the need to pay attention to their right to education is increasing (See Table 1).

Especially for the children of Indonesian migrant workers in Sabah and Sarawak, that realization began with several timber and plantation companies in Malaysia, as well as Non-Governmental Organizations (NGOs). Some Malaysian companies employing migrant workers in Sabah and Sarawak, as well as the Swedish NGO, *Humana*, have provided education services for the children of migrant workers by establishing schools in plantation areas where migrants work. Those companies facilitated access to education by providing teachers from among several migrant workers who were willing to become voluntary teachers (Notoprayitno, 2015). Unfortunately, limitations in the quantity and quality of teachers, facilities, infrastructure and teaching materials caused the quality of education to be less than optimal. Moreover, the schools still used the Malaysian curriculum. Thus, it became necessary for the Indonesian government to provide education services, especially for the children of Indonesian migrant workers.

The provision of education for them continued on the basis of cooperation between the two governments and a joint statement of former Indonesian President, Soesilo Bambang Yudhoyono, and former Malaysian Prime Minister, Abdullah Ahmad Badawi, in Putrajaya in 2006. Hence, education services were provided for the children of Indonesian migrant workers on oil palm plantations in the Sabah and Sarawak regions through the CLCs, which are places for learning activities spread across the fields of Sabah and Sarawak.

Subsequently, the Indonesian government established the *Sekolah Indonesia Kota Kinabalu* (SIKK) to which the CLCs were affiliated. Further, the Indonesian government set up a pilot school in Johor called the *Sekolah Indonesia Johor Bahru* (SIJB). Currently, SIJB is an affiliate of the SIKL. The CLCs, SIKL, SIKK, SIJB fully use the Indonesian curriculum. Thus, the key components of these schools are completely Indonesian, including the teachers. The children of Indonesian migrant workers are able to study freely and follow the curriculum of the Indonesian national standard education. This conforms to Article 7 of Law No. 72 of 2013, which requires special education services curriculum to follow the national standard education.

Nonetheless, SIJB is still a pilot school because it is yet to obtain full permission from the Johor government, which requires educational activities to be carried out in the CLC format (Embassy of The Republic of Indonesia in Kuala Lumpur, 2016). However, this should not be seen as a barrier because the Indonesian Minister of Education and Culture supported the establishment of that school. At least, there has been a progressive step toward the attainment of the right to education, as stipulated in Article 2 of the ICESCR (Article 2 of the ICESCR).

Table 1: Number of Students in Indonesian Schools in Malaysia

Schools	Number of Students
<i>Sekolah Indonesia Kuala Lumpur</i> (SIKL)	455 students
<i>Sekolah Indonesia Kota Kinabalu</i> (SIKK)	792 students
<i>Sekolah Indonesia Johor Bahru</i> (SIJB)	202 students
Community Learning Centers (CLCs)	829 students from 16 CLCs in Sabah and Sarawak

Sources: Embassy of the Republic of Indonesia in Kuala Lumpur 2016

From the table above, the total number of students enrolled in Indonesian schools has reached 2,278. Among the four schools, the children of Indonesian migrant workers are mostly enrolled in SIKK, SIJB and CLCs, while Indonesian children who study at SIKL are mainly the children of office staff, the children of Indonesian students in Malaysia and the children of the Indonesian embassy staff. With such a large number of students, the establishment of CLCs and Indonesian schools in Malaysia is appropriate. It is part of special education provided by the Indonesian government to enforce the right to education for its citizens.

The Responsibility of States to Enforce the Right to Education for the Children of Migrant Workers

The governments of Indonesia and Malaysia have had agreements on the placement of Indonesian migrant workers. Examples of such agreements are the Memorandum of Understanding (MoU) between Indonesia and Malaysia on the Placement of Indonesian Migrant Workers, 2004. The MoU provide that during the contract period, Indonesian migrant workers are not allowed to bring their families to Malaysia and cannot get married. According to Appendix A, Point D, Number V of MoU in 2004, “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.”

Aside from MoU on Placement of Indonesian Migrant Workers in 2004, Indonesia and Malaysia have had a MoU on Indonesian Domestic Workers in 2006. In Annex of The MoU in 2006 explains the responsibilities of domestic workers regarding the cost structure of the requirement and placement of Indonesian domestic workers, include the payment of annual levy, work permit fees, visas, processing fees and other fees set by the Malaysian government in accordance with applicable laws and regulations. In the first year of placement, the employer can bear these costs in advance, and is allowed to make a deduction of not more than 50% from the monthly salary of the employee for 12 months. The employer must get approval from the Malaysian Ministry of Manpower, and the number and duration of deductions must be clearly stated in the employment contract. The provision of subsidies for levies is permissible and depends on the policy of the employer. The MoU 2006 was

amended in 2011 and has, unfortunately, now lapsed. Related to this policy, Devadson and Meng argue that the current levy system needs to be reconsidered. Levies on migrant workers should be lower for companies in the manufacturing industry which have labor deficiencies. This is necessary to keep away the imposition of unfair adjustment costs across industries. The levy system should be designed based on differential industrial levies and according to workers 'skill levels (Devadason, Evelyn Shyamala, Chan Wai Meng, 2014).

From the explanations provided above, rather woefully that Indonesian migrant workers experience a dilemma in respect of the educational needs of their children. Both of the MoUs mentioned above explain the rights and obligations of migrant workers and employers, but fail to address problems relating to the education of the children of Indonesian migrant workers in Malaysia. Thus, problems arise with regard to the fate of those children. The children of Indonesian migrant workers who were born in or taken by their parents to Malaysia are, on average, of school age. If there is no clarity about their status, it would be difficult for them to enjoy the right to education and develop themselves.

Although there is a birth validation in order to attend public schools in Malaysia, children of migrant workers encounter the problem in examinations and their parents encounter the levy burdens. Therefore, various communities in Indonesia continue to push for the renewal of the MoU which must be adjusted to Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers and the Principles of the ASEAN Consensus on Protection and Promotion of the Rights of Migrant Workers. Law No. 18 of 2017 stipulates that the Indonesia Government guarantees the fulfillment of the rights of Prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers and their families. This guarantee was previously supported by a joint commitment of ASEAN countries in 2007 contained in the ASEAN Consensus on Protection and Promotion of the Rights of Migrant Workers. One of the principles is; "ASEAN Member States Take into account the fundamental rights and dignity of migrant workers and family members already residing with them without undermining the application by the Receiving States of their laws, regulations and policies".

Given the continuing absence of agreement regarding the children of Indonesian migrant workers in Malaysia, their legal status, as well as rights, it is the responsibility of the Indonesian government to take cognizance of the rights of such children. Steps so far taken by the Indonesian government to establish the CLCs and other Indonesian schools, as a basis for strengthening human rights, especially the right of children to education, are efforts in that regard and should be appreciated. Further, the bilateral, mutual consent approach adopted by the Indonesian and Malaysian governments is crucial.

Mahatir's statement, noted at the beginning of this article, highlights the importance of upholding human rights, especially the right to education for the children of migrant workers.

Such discourse ought to be included in joint agreements as MoUs. Of course, MoUs must be agreed by both parties with mutual benefits. Although in international law, MoUs are not binding, the Vienna Convention on the Law of Treaties, 1969 provides that it would be a violation of the *pacta sunt servanda* principle, if parties did not demonstrate good faith (Article 18) (Davidson, Scott, 2004). This principle demands that parties fulfill the terms of a treaty as agreed.

Indonesia and Malaysia are both ASEAN member countries that have committed to the ASEAN Consensus on Protection and Promotion the Rights of Migrant Workers, and both uphold the enforcement of human rights. A key challenge for both countries is often related to migrant workers. These workers are at risk to violations of human rights since they are not recipient citizens, and often live under conditions of uncertainty because of their legal status. States have the power to determine the admission of foreigners into their territory, detention of migrant workers and remove or expulsion of them. Without doubt, states have the authority to protect state sovereignty, their borders and establish their own laws. Considering that human rights are inalienable, Declaration on the Human Rights of Individuals Who Are Not Citizens of the Countries in Which They Live recognize that individuals who are foreigners or not nationals in which they live should be protected of human rights and fundamental freedoms provided in international instruments. Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, adopted by General Assembly Resolution 40/144 of 13 December 1985. Notwithstanding, the core human rights conventions, including the International Convention for the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), 1990 recognize that all migrant workers are entitled to legal protection within the international human rights rule. The ICRMW vests both documented and undocumented migrants with civil, social and labour rights (United Nations Chronicle, 2013).

Indonesia has ratified the ICRMW through Law No. 6 of 2012, but Malaysia has yet to do so. Under international law, a state that has not ratified an international convention incurs no legal obligation under that particular convention. But the violation of a convention by a state party creates an international responsibility toward other state parties for an internationally wrongful act. Article 2 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts stipulates the elements of an internationally wrongful act of a state; they are attributable to the state under international law and constitutes a breach of its international obligation.

There is a breach of an international obligation by a state when an act of that state is not in conformity with what is required of it under that obligation, regardless of its origin or character (Article 12 of Responsibility of States for Internationally Wrongful Acts). However, an act of a state does not constitute a breach of an international obligation, unless

that state was bound by the obligation in question at the time the act occurred (Article 13 of Responsibility of States for Internationally Wrongful Acts).

According to Article 30 of the ICRMW, 1990 stipulates that each child of a migrant worker shall have the basic right of access to education and access to schools shall not be refused by reason of the irregular situation of either parent or by reason of the irregularity of the child's stay in the state of employment. Since the Malaysian government has not ratified the ICRMW, Article 30 of ICRMW does not apply to Malaysia as far as the treatment of the children of migrant workers in Malaysia is concerned, particularly the children of Indonesian migrant workers. However, through good faith and mutual consent to maintain harmonious relations between both countries, the Indonesian government encourages its Malaysian counterpart to grant the right to education to the children of Indonesian migrant workers in Malaysia through the establishment of Indonesian schools.

International law has clearly recognized the rights of migrant workers and their families. Therefore, while a state has the power to organize migration flows into its territory and from its territory, state has an obligation in a way to upholds the rights of individuals within its territory and its jurisdiction. This obligation is under international law. Further, according to the cosmopolitan view of international relations theory, migrants are autonomous agents and fall outside notions of citizenship and state sovereignty. If anything, they are citizens of a community of humankind. Moreover, they play crucial roles in their host states. This system of thinking can be used to better manage migrant populations whose labor supports the strategies of neo-liberal economies (Nair, Sheila, 2010). When Malaysian calls for better border policing or adopts anti-immigration policies, it is apparently taking actions that are responsive to local fears, and building a hegemonic view of who is or is not within the national borders (Nair, Sheila, 2010). Therefore, it should view wider that the presence of national interest to develop national economic on both sides reduce national fears which come from migrants.

Conclusion

The implementation of education for the children of Indonesian migrant workers is part of inclusive education. It can be argued that inclusive education consists not only in special education, but also in special education services. The essence of inclusive education is education for all, without any barriers and discrimination. The Indonesian government responds to the needs of its citizens who have problems with school enrollment by establishing CLCs or other Indonesian schools in Malaysia. The establishment of those CLCs and schools by the Indonesian government is legal and clearly in line with domestic law and international human rights provisions, such as the ICESCR, especially regarding inclusive education, and the ICRMW.



Nevertheless, it is regrettable that Malaysia is yet to ratify the ICRMW. Still, the Malaysian government supports that convention since it is inevitable. The interdependence of both countries allows for the enforcement of human rights, without prejudice to each state's own sovereignty. It is important to realize that migrant workers do not undermine state sovereignty, meanwhile they can strength states and their economies. Additionally, the good relations between Indonesia and Malaysia regarding migrant workers can be continued through a joint agreement such as an MoU that prioritizes migrant workers and their families in accordance with the provisions of the ICRMW.

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REFERENCES

- BNP2TKI. (2017). *148.285 TKI Ditempatkan di Luar Negeri*. www.bnp2tki.go.id
- Bandyopadhyay, M. (2006). Education of marginalised groups in India: From the perspective of social justice. *Social Change*, 36(2), 98-113.
- Basori, A. (2010). *Pelayanan pendidikan untuk anak-anak WNI di Sabah, Malaysia*. www.kemlu.go.id
- Davidson, S. (2004). *The law of treaties*. New York: Routledge.
- Declaration on the Human Rights of Individuals who are not nationals of the country in which they live, 13 December 1985
- Devadason, E. S., & Meng, C. W. (2014). Policies and laws regulating migrant workers in Malaysia: A critical appraisal. *Journal of Contemporary Asia*, 44(1), 19-35.
- Diantha, I M. P. (2015). Protecting migrant workers, An Indonesian experiences, *International Journal of Business, Economics and Law*, Vol. 7, Issue 3 (Aug.): 53-57
- Embassy of The Republic of Indonesia in Kuala Lumpur. (2016). *Layanan Pendidikan bagi Anak-anak Indonesia di Malaysia*
- Graham, E., & Jordan, L. P. (2011). Migrant parents and the psychological well-being of left-behind children in Southeast Asia. *Journal of Marriage and Family*, 73(4), 763-787.
- Huang, Z. H., & Xu, K. P. (2006). Education of migrant workers and their children and its solutions. *Journal of Zhejiang University (humanities and social sciences)*, 36(4), 108-114.
- Kompas. (2018). <https://edukasi.kompas.com/read/2018/05/07/08100041/pemerintah-kirim-guru-ke-malaysia-untuk-layani-anak-tki>.
- Makhtar, M., Asari, K. N. and Mohd Yusob, M. L. (2015). Right to Education for Irregular Migrant Children in Malaysia; A Comparative Analysis, *Pertanika Journal of Social Science and Humanities*. 23 (S): 85 – 96
- Maya Indrasti Notoprayitno. (2015). *Right to Education for Children of Indonesian migrant workers*. Proceedings of Turkey INTCESS15 2nd International Conference on Education and Social Sciences
- Mudjito, E. H. (2012). *Pendidikan inklusif*. Jakarta: Baduose Media



- Rimilton, R. (2014). *Pendidikan layanan khusus, model-model dan implementasi. How to Reach Unreachable*. Jakarta: Kementerian Pendidikan dan Kebudayaan RI, Direktorat Jenderal Pendidikan Dasar, Direktorat Pembinaan Pendidikan Khusus dan Layanan Khusus.
- Nair, S. (2010). *Sovereignty, security, and migrants, international relations and states exception. in international relations and states of exception, margins, peripheries, and excluded bodies*, ed. Shampa Biswas, Sheila Nair, 95-115. New York: Routledge.
- Padhi, Soubhagya Ranjan. (2016). Overcoming exclusion and marginalization in education through inclusive approaches: Challenges and vision of arunachal pradesh in India, *International Journal of Social Science and Humanity*, Vol. 6, No. 4, April: 256-261
- Pratama, Gita Nanda. (2016). Kekuatan hukum memorandum of understanding (Mou) dalam hukum perjanjian di Indonesia, *Jurnal Unpar*, Parahyangan University, Volume 2/2: 424-440
- Shylvia, W. (2013). Kerjasama Indonesia – Malaysia dalam pendidikan anak TKI di Sabah, *Thesis of Master in Political Science/International Relations, Gajah Mada University*
- Sukamdi. (2007). Memahami Migrasi Pekerja Indonesia Ke Luar Negeri, *Journal Populasi*, Gajah Mada University, 18 (2): 115-128
- Tempo.co (2018). *Malaysia Janji Fasilitasi Pendidikan Anak-anak TKI*, <https://dunia.tempo.co/read/1116471/sedang-buron-tersangka-kasus-1mdb-mengecam-pm-mahathir>, July 2018
- Tempo.co. (2017). <https://en.tempo.co/read/news/2017/01/11/313834876/Schooling-for-Migrant-Children>, November 2017
- The Jakarta Post. (2018). *Jokowi, Mahathir discuss migrant worker protection, border settlement*, <http://www.thejakartapost.com/news/2018/06/29/jokowi-mahathir-discuss-migrant-worker-protection-border-settlement.html>, June 2018
- The Star Online. (2018). *Malaysia stumbles on education for children of migrants and refugees, says UNESCO*, <https://www.thestar.com.my/news/nation/2018/11/20/malaysia-stumbles-on-education-for-children-of-migrants-and-refugees-says-unesco#X9kaThf1G5erUmrI.99>, 20 November 2018
- UNESCO. *Inclusive Education*. <http://www.unescobkk.org/education/inclusive-education/what-is-inclusive-education/>



United Nations Chronicle. (2013). Protection of Migrants' Rights and State Sovereignty, Vol. L No. 3

Untari Narulita Madyar Dewi. (2018). *Kebijakan KJRI Johor Bahru Dalam Mengatasi Permasalahan Pelayanan Pendidikan Bagi Anak-Anak Pekerja Migran Indonesia*, 7th National Conference Proceeding on Association of Muhammadiyah Postgraduate Program Aisyiyah (Asosiasi Program Pascasarjana Perguruan Tinggi Muhammadiyah Aisyiyah - APPPTMA)

Wulandari, Ria. (2009). Legal opinion terhadap mou 2004 tentang penempatan tenaga kerja Indonesia (TKI) Di Malaysia (Dalam Rangka Menyongsong Aturan Baru Mengenai Penempatan TKI Di Malaysia), *Jurnal Varia Bina Civika*: 1-8

Yuanyuan C. Shuaizhang,. (2013). Access to Public Schools and the Education of Migrant Children in China, *Journal of China Economic Review* no. 26: 75-88