

Evaluation on Indonesian Labour Law to Protect Migrant Labour Rights in an ASEAN Economic Community Framework

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Indonesia is now facing a new era of worker globalization, particularly in the regional basis of the Association of Southeast Asian Nations (ASEAN). Indonesia has been known to be one of the largest migrant worker centres in ASEAN (Thea ASEAN Consensus, 2014) and this necessitates that Indonesia ensures the protection of its national migrant workforce while receiving migrant workers from other countries since the establishment of the ASEAN Economic Community. However, the norms of migrant worker rights have not been grounded firmly in Indonesia. This paper aims to suggests how Indonesia, as a participant, should prepare for further ASEAN Economic Community implementation, particularly regarding migrant worker rights.

Key words: *ASEAN, Migrant worker, Indonesia Labour Law, AEC Implementation).*

Introduction

In line with population growth, labour has also increased and the high level of population growth is one of the main factors in excess labour. Job creation is the government's main target in the agenda of improving welfare. However, the government cannot turn a blind eye to the Indonesian situation and conditions which do not create enough jobs for some job seekers. Global trade is expected to further enhance the national economy with the opening of an investment and information climate that involves labour as one of the pillars of development.

The stability of a professional workforce is needed in the current highly competitive labour market. (Sapoetra,1986). The use of foreign labour in Indonesia is unavoidable in the current era of globalization. In principle, the use of foreign workers in Indonesia is necessary because they can bring capital (as investors) and/or carry skills in the context of *transfer of knowledge* or *transfer of know-how* (Sumarprihatiningrum, 2006). The use of foreign workers in Indonesia is also inseparable from the role of international conventions followed by Indonesia (Tarlberg & Zum, 2019). Indonesia as a country engaged in international relations that cannot avoid existing conventions which certainly can benefit Indonesia as a large country.

The formation of regional cooperation blocks can be found in Europe, Asia, Africa, South America and North America. The European Union can be categorized as a multinational market groups established as a model of other regional organizations. Regional cooperation blocks in the economic field in other regions, such as NAFTA (*North American Free Trade Area*) which exists between the United States, Canada and Mexico; MECROSUR in South America and US ECOW in Africa apply 3 internal rules that facilitate business interaction in a free trade framework (Suherman &Krisnawati, 2003).

In Asia the ASEAN Summit in Singapore in January 1992, formally approved the establishment of the ASEAN Free Trade Area (AFTA) by giving birth to a Common Effective Preferential Tariff (CEPT). The formation of AFTA can be regarded as an anti-climax of globalization, especially the 1997 economic crisis that afflicted all ASEAN countries, even "Asian tigers" such as Korea. As an anticipatory step (Wong, Liew, & Arip,

2017), AFTA is increasingly concerned about reduction of tariff/non-tariff barriers among the ten ASEAN countries to ensure economic recovery and increased ownership bargaining in the eyes of the international community (Aritenang, 2015).

In planning and implementation, the ASEAN framework Instrument through ASEAN Economic Community has Four Pillars:

1. Single market and production base;
2. Economic area with high competitiveness;
3. Regions with equitable and equitable economic development; and
4. Regions that are integrated with the global economy.

The four pillars are contained in the *Blueprint* document agreed on at the 38th *Meeting of the ASEAN Economic Ministers Meeting* (AEM) in Kuala Lumpur in August 2006. In 2015, ASEAN member countries approved the 2025 ASEAN Economic Community Blueprint. The AEC 2025 Blueprint will be built on the 2015 AEC Blueprint which consists of five interrelated and mutually reinforcing characteristics:

1. Integrated and fully integrated economy;
2. ASEAN that is competitive, innovative and dynamic;
3. Increased sector connectivity and cooperation;
4. ASEAN is strong, inclusive and oriented and centred on society; and
5. ASEAN globally.

The 2015 AEC aims to improve ASEAN welfare which is characteristic as a single market and production base, a more dynamic and competitive ASEAN region, has equal development and accelerates economic integration in the ASEAN region and with regions outside ASEAN (Hsieh & Mercurio, 2019). To implement the 2015 AEC *Blueprint*, a *scorecard* containing the *deliverables* was determined (Ministry of Foreign Affairs, 2017):

1. 611 steps in the *Full Scorecard* category
2. 506 steps of action in the *Focused Base* category

As of December 31, 2017, 72 out of 118 priorities (61%) of the implementation of AEC in 2017 had been successfully implemented. Of the 46 priorities that have not been implemented,

12 of have been implemented by several ASEAN member countries. Indonesia has to date implemented 85 of the 118 priorities.

AEC 2025 is a continuation of the 2015 AEC and aims to make the ASEAN economy increasingly integrated and cohesive; competitive and dynamic; connected and sector cooperative; tough, inclusive, oriented and centred on society and global. The scope of ASEAN economic cooperation comprises the fields of industry, trade, investment, services and transportation, telecommunications, tourism and finance. In addition, this collaboration includes the fields of agriculture and forestry, energy and minerals, as well as micro and small and medium enterprises (SMEs). The profile of the ASEAN economy is described as follows:

1. ASEAN countries are rich in natural resource commodities in the form of energy, minerals and food crops;
2. There is a large ASEAN population, 632 million people (2015), the majority of whom are of productive age;
3. Economic growth of ASEAN countries is relatively high, on average 5% - 6% per year. To encourage equality of development among member countries (narrowing *the development gap*), ASEAN has an *Initiative for ASEAN Integration (IAI)* also called the ASEAN Integration Initiative (IIA). IIA aims to create equitable development between the ASEAN-6 (Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand) and Cambodia, Laos, Myanmar and Vietnam (CLMV).

In addition, at the suggestion of Indonesia, ASEAN has approved the *ASEAN Framework on Equitable Economic Development (AFEED)* or the ASEAN Framework for Equal Economic Development. The framework emphasizes efforts, among others, to reducing development disparities, strengthen the quality of human resources, improve social welfare, develop small and medium micro enterprises (SMEs) and facilitate broader participation in the ASEAN integration process (Ministry of Foreign Affairs, 2017).

The movement of skilled labour in ASEAN is regulated through the *Mutual Recognition Agreement (MRA)*. ASEAN currently has 8 (eight) MRAs for the profession of engineers, architects, surveyors, general practitioners, dentists, nurses, tourism services and accountants.

ASEAN also regulated the movement of other professional workers through the signing of the *ASEAN Agreement on the Movement of Natural Persons* (MNP) in November, 2012. This agreement guarantees additional rights and rules set out in AFAS regarding MNP and also facilitates MNP in conducting trade in services and investments (Ministry of Foreign Affairs, 2017). The *ASEAN Economic Community* was realized by the end of 2025 with labour flow of foreigners from one country to another, such as Indonesia, without obstacles. To achieve this, the trade services should prepare the labour force, both *skilled* and unskilled labour (*Indonesia Trade Ministry, 2009*).

In the ASEAN Economic Community there are several provisions governing foreign workers in all ASEAN member countries. Problems arise regarding the enactment of foreign employment in Indonesia in order to be in harmony with the ASEAN Economic Community. The provisions of legislation in Indonesia itself have not been regulated in detail regarding the implementation of the *ASEAN Economic Community* in Indonesia, especially those related to employment.

Labour Provisions within the ASEAN Economic Community

In the era of liberalization, the interdependence of countries in the world is increasing. The liberalization of the workforce is one of the main issues in the AEC increase of interdependence of ASEAN member countries. The neo-mercantilist perspective liberal view of the labour force raises its own dilemma for ASEAN member countries. On the one hand, ASEAN countries have already agreed to the establishment of the AEC to encourage regional economic integration. On the other hand, there are fears that a country will be flooded with foreign workers from other ASEAN countries who seize hold of the local labour market. Indonesia is no exception in facing this kind of dilemma due to its lack of preparation of Indonesian workers to compete at the ASEAN level.

This neo-mercantilist perspective views interdependence between countries as not always symmetrical (Balaam and Veseth, 2001, P. 32). This point of this view is that there is always a possibility that a country is more dependent on other countries. In labour issues in ASEAN,



where there has been a free flow of labour, there is a threat that there will be many skilled workers from other ASEAN countries entering Indonesia and Indonesian workers are not ready to compete with them because of the low expertise and lack of skill. This generates a fear that the Indonesia's domestic labour market will be dependent on the supply of foreign labour from neighbouring countries. According to the neo-mercantilist view, it is only ideal *self-sufficiency* that can make a country safe politically and economically (Balaam & Veseth, 2001).

A Neo-mercantilist perspective view considers foreign workers from other ASEAN member countries as a threat to the domestic labour market. Such a view usually supports policies that hinder the influx of foreign workers and does not allow the domestic labour market to be flooded with foreign workers because of the consequent harm to national interest by reducing employment opportunities. The Geopolitical competition at this time is no different from geopolitics a thousand years ago. Nation states always compete for influence and *power* which ultimately only creates one winner (Mahbubani, 2013).

The Proven Implementation of Indonesian Workers Abroad

Indonesia has been known as the biggest migrant labour market in the ASEAN region. However, most migrant labourers sent to other countries by Indonesia are not well educated or are unskilled (Prasongko, 2017). Most Indonesia migrant workers are housemaids and are mainly employed in family homes or infrastructure and manufacturing companies. The BPS-Statistics Indonesia and World Bank survey in 2016 includes a deep explanation of aggregated Indonesian migrant worker conditions. As shown in Table 1 below, most migrant workers sent from Indonesia are not well-educated or skill oriented, most are sent as hard working domestic labourers who are mainly employed in infrastructure and manufacturing companies.

Table 1: Figures of Indonesian migrant worker educational level

	2015		2016		2017		2018	
	n	%	n	%	n	%	n	%
Postgraduate	31	0.01%	17	0.01%	24	0.01%	21	0.01%
Bachelor	1594	0.58%	1187	0.51%	1298	0.49%	1225	0.43%
Diploma	4685	1.70%	2976	1.27%	4060	1.54%	3081	1.09%
Upper secondary school	70309	25.50%	69931	29.83%	70185	26.70%	80280	28.30%
Lower secondary school	108725	39.43%	95945	40.92%	85545	32.54%	101824	35.90%
Primary school	90393	32.78%	64395	27.47%	101787	38.72%	97209	34.27%

Free worker flow is also of concerns, as worker statistics is one of many factors affecting economic development. In ASEAN, economic development impact from migrant workers in 2015 is up to USD 62 billion which is sent as remittance to their home countries. This remittance amount is almost the same as the GDP of Myanmar in the same year (Roughneen, 2017). Indonesian migrant workers impact in Indonesian economy is a total remittance of 128 trillion Rupiahs. This reality has a huge impact on the Indonesian aim to urge countries Indonesian receiving Indonesian workers, to protect them. As the ASEAN Free Trade Area emerges, free labour trade will also be a labour concerns as one of many factors affecting economic development.

The impact of this reality on the Indonesian aim to urge Indonesian labour receiving countries to protect Indonesian labour must be investigated as Indonesia cannot refuse its responsibility to protect migrant labours in the international labour market, particularly in neighbouring

ASEAN countries (Narjoko & Putra, 2014). To this end, in 2004 the Indonesian Government issued a regulation concerning the placement and protection of Indonesian workers working abroad, the Law of the Republic of Indonesia Number 39 of 2004 concerning Placement and Protection of Indonesian Workers Abroad.

The Law of the Republic of Indonesia Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad was issued with several considerations:

- a) that work is a human right that must be upheld, respected and guaranteed enforcement;
- b) that loyal workers have the same rights and opportunities without discrimination to obtain decent work and income, both at home and abroad in accordance with their skills, skills, talents, interests and abilities;
- c) that Indonesian workers abroad are often used as objects of human trafficking, including slavery and forced labour, victims of violence, abuse, crimes for human dignity and dignity and other treatment that violates human rights;
- d) that the state must guarantee and protect the human rights of its citizens who work both at home and abroad based on the principle of equality, democracy, social justice, gender equality and justice, anti-discrimination and anti-people trafficking;
- e) that the placement of Indonesian workers abroad is an effort to realize equal rights and opportunities for workers to obtain decent employment and income, the implementation of which is carried out while taking into account the dignity, human rights and legal protection and equal distribution of employment opportunities and provision of labour in accordance with national law;
- f) that the placement of Indonesian workers abroad needs to be carried out in an integrated manner between the Central and Regional Government agencies and the participation of the community in a legal system to protect Indonesian workers placed abroad;
- g) that the existing laws and regulations in the field of manpower have not adequately, decisively and in detail regulated regarding the placement and protection of Indonesian workers abroad;
- h) that Law Number 13 of 2003 concerning the labour force states that the placement of Indonesian workers abroad is regulated by law.

According to the Republic of Indonesia Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad, the placement and protection of prospective migrant workers is based on integration, equality, democracy, social justice, gender equality and justice, anti-discrimination and anti-human trafficking. The placement and protection of prospective migrant workers aims to:

- a. Empower and utilize the workforce optimally and humanely;
- b. Guarantee and protect prospective migrant workers from within the country, in the destination country and on return to their place of origin in Indonesia;
- c. Improve the welfare of migrant workers and their families.

The government is tasked with regulating, fostering, implementing and supervising the implementation of placement and protection of migrant workers abroad. In carrying out its duties, the Government can delegate its authority and/or duty of assistance to regional government in accordance with the laws and regulations. In carrying out the duties and responsibilities for protecting migrant workers, (BNP2TKI, 2017) the Government has an obligation to:

1. guarantee the fulfilment of the rights of prospective migrant workers both those concerned depart through the executor of the placement of migrant workers, as well as those who depart independently;
2. supervise the implementation of placement of prospective migrant workers;
3. establish and develop information systems for placement of prospective migrant workers abroad;
4. make diplomatic efforts to ensure the fulfilment of the rights and protection of migrant workers optimally in the destination country; and
5. provide protection to migrant workers during the period of departure, placement and full placement.

Both the Government and private migrant workers placement agencies can carry out the placement of migrant workers abroad. Placement of Indonesian migrant workers abroad by the Government can only be done on the basis of a written agreement between the respective Governments (Lipson, 1991). Employers of migrant workers are incorporated in the destination

country. Companies that become implementers of the placement of private migrant workers must obtain written permission from the Minister. Permission to carry out placement of Indonesian migrant workers abroad is given for a period of five years and can be extended every subsequent 5 (five) years. Extension of permits can be given to executors of placement of private migrant workers and must also meet the following conditions:

1. carry out its obligations to provide periodic reports to the Minister;
2. arrange a placement of at least 75% (seventy five percent) of the planned placement at the time of obtaining a migrant worker's form;
3. have facilities and infrastructure that are in accordance with established standards;
4. have a financial balance sheet for the past 2 (two) years that has not suffered losses as audited by public accounting and
5. not be in a suspended circumstance.

The Minister may revoke migrant workers' permits when implementing private placement workers no longer meet the requirements and have not carried out their obligations and responsibilities and/or violate the prohibition on the placement and protection of migrant workers abroad. The revocation of migrant worker permits by the Minister does not reduce the responsibility of monitoring the placement of private Indonesian migrant workers who have been placed and are still abroad. It is prohibited to place prospective migrant workers in positions and work places that are contrary to human values and moral norms as well as legislation, both in Indonesia and in the destination country or in a destination country that has been declared closed.

Every prospective migrant worker has the right to obtain protection. Protection must be carried out from the pre-placement period through the placement period to post-placement. Representatives of the Republic of Indonesia provide protection for Indonesian migrant workers abroad in accordance with laws and regulations as well as international law and customs. In the context of protecting Indonesian migrant workers abroad, the Government can determine the position of Labour attached to specific Republic of Indonesia Representatives.

D. Workforce in the ASEAN Economic Community

At the 124th ASEAN Summit in January 2007, the leaders affirmed their strong commitment to accelerate the establishment of the ASEAN Community in 2015 as envisioned in the ASEAN Vision 2020 and ASEAN Concord II and signed at the Cebu Declaration on the Acceleration of the Establishment of the ASEAN Community in 2015. Specifically, the leaders agreed to accelerate the establishment of the ASEAN Economic Community in 2015 and to transform ASEAN into a more free movement of goods, services, investment, skilled labour and capital flow. In enabling managed mobility or facilitated entry access for the movement of individuals involved in the trade of goods, services and investments, in accordance with applicable regulations in the recipient country, ASEAN seeks to action the facilitation of the issuance of visas and work permits for both ASEAN professionals and the unskilled workforce involved in cross-border trade and investment-related activities (Gerard, 2018).

Through facilitation of the free flow of services since 2015, ASEAN strives to harmonize and standardize migrant worker practice with the aim of facilitating their movement in the region. Necessary actions include:

- i. Enhanced cooperation between members of the ASEAN University Network (AUN) to improve mobility for students and staff in the region;
- ii. Development of core competencies and qualifications for job/employment skills and trainers needed in priority service sectors (before 2009); and in other service sectors (from 2010 to 2015); and
- iii. Strengthened research capability of each ASEAN member state in terms of promoting skills, job placement and developing labour market information networks among ASEAN Member States (Association of Southeast Asian Nations (ASEAN), 2015; King, 2016; Le, 2016; Mutebi, 2018; Tsai & Chang, 2018).

ASEAN itself has made Mutual Recognition Arrangements for several professions such as:

1. ASEAN Mutual Recognition Arrangements on Engineering Services (2005)
2. ASEAN Mutual Recognition Arrangement on Nursing Services (2006)
3. ASEAN Mutual Recognition Arrangement on Architectural Services (2007)

4. ASEAN Framework Arrangement on Mutual Recognition of Surveying Qualifications (2007)
5. ASEAN Mutual Recognition Arrangement on Dental Practitioners (2009)
6. ASEAN Mutual Recognition Arrangement on Medical Practitioners (2009)
7. ASEAN Mutual Recognition Arrangement on Tourism Professionals (2012)
8. ASEAN Mutual Recognition Arrangement Framework on Accountant Services (Signed 2014)

The Mutual Recognition Arrangement regulates the standards of the eight professions, each standard is formed by ASEAN and is also in accordance with the country addressed. All professions must have a standard to protect the workforce in working in the destination country also protect the country visited in meeting their criteria for accepting migrant workers. Professionals from these 8 fields also work under oath and additionally must have certification compliant with the rules of the destination country.

Conclusions

The Ministry of Manpower must protect all registered Indonesian migrant workers in accordance with the rules of Law 18/2017. If cases still occur where the employer has a problem which ultimately causes migrant worker casualties, then the state must work to protect her migrant workers so they do not become victims. If there are illegal Indonesian migrant workers, the state is obliged to immediately repatriate these workers to their home country, providing information and knowledge about the techniques and procedures to become legal migrant workers to improve illegal migrant worker awareness and avoid repetition of mistakes. The ministry must in these cases revoke all immigration administration, including revoking the passport of the migrant worker.

The Indonesian state cannot work alone to verify and collect data on Indonesian migrant workers as well as employers, therefore AEC should have ASEAN worker labour data, which details the number of ASEAN migrant workers, including ASEAN students. The migrant workers, government and relevant agencies in each country should collaborate to collect and re-verify migrant worker processes so that their supervision is not imposed solely on the state but is also the responsibility of all stakeholders.



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