

# INDONESIAN IRREGULAR MIGRANT WORKER IN MALAYSIA

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**ABSTRACT:** *Southeast Asia or in particular ASEAN is an emerging entity that has potential to be one of the largest economies and markets in the world. ASEAN is one of the most open economic regions in the world, with total merchandise exports of over \$1.2 trillion – nearly 54% of total ASEAN GDP and 7% of global exports. Its population and labor force varies throughout the member states. Irregular migration takes place across the region, including movements of labour migrants and forced migrants in mixed flows, which are characterized by vulnerability of all, while smuggling and trafficking in persons also occurs. Irregular migration is often the result of restrictions on migration, and puts the lives and human rights of migrants at risk. In the case of Indonesian irregular migrant worker especially in Malaysia mostly the lack of employment opportunities and intense level of job competitiveness contribute to the increasing number of job seekers in Indonesia. By the availability of opportunities to work abroad, people choose to work as migrant workers. Fact reveals many legal problems faced by migrant workers, especially those who work as domestic workers in foreign countries. The reasons and legal issues that cause Indonesian migrant workers to experience many violations of their rights, particularly in the pre-departure period. It discusses the rights and protection for migrant workers as stipulated in relevant laws and regulations.*

## I. INTRODUCTION

Southeast Asia or in particular ASEAN is an emerging entity that has potential to be one of the largest economies and markets in the world. It was reported<sup>1</sup> that “if ASEAN were one economy, it would be seventh largest in the world with a combined gross domestic product (GDP) of 2.4 trillion in 2013, it could be fourth largest by 2050 if growth trends continue. With over 600 million people, ASEAN’s potential market is larger than the European Union or North America, next to China and India. ASEAN is one of the most open economic regions in the world, with total merchandise exports of over \$1.2 trillion – nearly 54% of total ASEAN GDP and 7% of global exports. Its population and labor force varies throughout the member states.

In a commentary published by the S. Rajaratnam School of International Studies, Senior Analyst with the Centre for Multilateralism Studies (CMS), Phidel Vineles, argues that the region – especially the ASEAN-5 (Singapore, Malaysia, Thailand, Indonesia, and the Philippines) – lack industry-ready skilled workers in spite of its vibrant demography. In Singapore, Vineles cites the nation’s dependence on foreign workers and a lack of innovation in the Singaporean education system as primary challenges to its labour force. Malaysia and Thailand, face similar challenges in equipping their respective workforces with engineering and science skills. Besides that, Indonesia and the Philippines have high youth unemployment rates due to a workforce that is ill-equipped with skills and knowledge needed by key industries.

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migrants at risk. The multi-directional nature of labour migration flows has resulted in an increasing number of countries having become both senders and receivers of regular and irregular migrants. However, some countries continue to see themselves primarily as senders and so ignore their role as a receiving country, which can have negative implications for the rights of migrants in their territory. Using the example of Indonesia, which is State Party to the 1990 UN Convention on the Rights of All Migrant Workers and Their Families, Irregular migrant workers in Indonesia has the legal right to protection against labour exploitation even when they work despite the government's prohibition on employment. These happen due to social capital within their network expands through various channels, particularly friendship, brotherhood, neighborhood, community and ethnic grouping. It also permeates strongly beyond government authority and regulation.

ASEAN leaders had established the **Cebu Declaration** which discussed on the protection of migrant workers which in this particular declaration, it is an obligation of the member states to established a charter to ensure a decent working environment to protect the workers from all sort of abuse, plus the minimum wage for intra-ASEAN migrant was introduced. The Cebu Declaration emphasized for the ASEAN states to cater the fundamental rights of a migrant and their families, work together in handling the issue of irregular migrant and encourage the potential and dignity of migrant. Nevertheless, the Cebu Declaration is not binding and does not require the member states to change their national labour laws. In addition to that, Cebu Declaration emphasizes on the host country to ensure access to decent work for every citizen, in abiding the migration work force international provision by providing a legit contract of service. In addition to that, Cebu Declaration is a reminder to the receiving countries to provide protection of rights, welfare and dignity of migrant workers, including work protection and access to problem resolving system.

In the case of Indonesian irregular migrant worker especially in Malaysia mostly the lack of employment opportunities and intense level of job competitiveness contribute to the increasing number of job seekers in Indonesia. By the availability of opportunities to work abroad, people choose to work as migrant workers. Fact reveals many legal problems faced by migrant workers, especially those who work as domestic workers in foreign countries. The reasons and legal issues that cause Indonesian migrant workers to experience many violations of their rights, particularly in the pre-departure period. It discusses the rights and protection for migrant workers as stipulated in relevant laws and regulations. The violations of Indonesian Migrant workers' rights occurred due to the lack of implementation of before working (pre-departure) protection. Besides, numerous migrant workers departed without going through a departure mechanism as determined in Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers and revised by Government Regulation number 59 of 2021.

Government Regulation Number 59 of 2021 concerning the Implementation of Protection for Indonesian Migrant Workers which aims to Implement the Protection of Indonesian Migrant Workers to ensure the fulfillment of the rights of Indonesian Migrant Workers before work, during work, and after work. Every migrant worker and member of his family has the right to freedom to leave, enter and settle in any country, the right to life, the right to be free from torture, the right to be free from slavery, the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to privacy, the right to be free from arbitrary arrest, the right to equal treatment before the law, the right to equal treatment in terms of contracts/work relations, the right to associate and assemble, the right to health care, the right to access education for children of migrant workers, the right to respect their cultural identity, the right to freedom of movement, the right to form associations, the right to participate in government affairs in their country of origin, the right to transfer income. This includes additional rights for migrant workers who fall into certain employment categories such as cross-border workers, seasonal workers, itinerant workers, project workers and self-employed workers.

While Irregular migrant worker from Indonesia to Malaysia, also the main concern of the Government of Malaysia. More than 70 percent of the undocumented workers are from Indonesia. In the initial years, illegal entry and employment was more common, especially among the Indonesians and the Filipinos entering Sabah.

However, with the increase in border surveillance, irregular migrants are predominantly those who enter the country lawfully under different visa conditions but overstay. The cultural and linguistic similarities between the major races in Malaysia and nationals from these countries make it easy for them to remain undetected for a long period of time. Nonetheless, irregular migrants equally contribute to economic growth and development of the country. They help alleviate labour market imbalances, and especially enhance labour market flexibility by providing a reserve labour pool that can be easily tapped when needed. The heavy reliance of the economy on this manpower reserve is clearly evident in policy reversals each time a crackdown on irregular migrants is implemented.

There is greater inclination on the part of labour sending countries to strike labour accords with the receiving countries by the agreement of intergovernmental management between the Government of Indonesia and Malaysia. The G toG agreement was reintroduced in February 2002 to ensure that the process of recruitment was more systematic, transparent, and beneficial to all parties. Sending countries were also more willing to engage in bilateral agreements following Malaysia's tough legislation and other repressive preventive measures to combat irregular migration. The wide publicity in sending countries on the harsh treatment of irregular migrants has brought immense public pressure on their governments to play a more active role to protect their workers overseas. The main shortcomings of earlier bilateral agreements have been addressed by allowing private labour agencies to process the recruitment, depending on the memorandum of understanding signed with the labour exporting country. The bilateral agreements included several clauses dealing with the responsibilities of the signing parties, the employers, and the migrant workers on conditions of residence and employment.

## II. METHODS

These study examine of such regulation especially in combating the irregular migrant worker between the Government of Indonesia and the Government of Malaysia using qualitative perspectives. The reason is that the irregular migrant worker is still remain high and such agreement is heavily skewed towards controlling the supply of migrant labour, while efforts to enhance the supply and demand for labour have been compromised by the pervasive ethnic-based affirmative policies.

## III. RESULTS

Irregular Migrant (IM) is actually part of migration, but in terms of illegally administration (Wickramasekara, 2008). Therefore, irregular migration is often described as a constitutional threat to state sovereignty (Ruhs, 2012). In simple terms, it says that declaring irregular migrants threatens sovereignty by undermining control over sovereign rights and who crosses their borders. In this term, irregular migration has been considered a threat to state security. In particular, irregular migration is a channel sanctuary for potential terrorists to enter the country (Koser, 2010).

Due to illegal entry point, illegal migrants participate in illegal activities, such as participating in the spread of communicable diseases, especially HIV/AIDS (Boso & Vancea, 2016). It is happened because irregular migrants (and asylum seekers) are indeed criminals and some carry infectious diseases, which often result from long periods spent in transit. However, these charges do not apply to most migrants and therefore misrepresent the evidence criminalizing and demonizing all irregular migrants (Bloch & Chimienti, 2011).

Irregular migration can also undermine the human security of the migrants themselves. Human security is a concept that does not focus on security as it is normally understood, but on security from a human perspective (bottom-up approach to security). Human security addresses the human condition much broader than conventional security, and the human security debate is designed to elevate this issue to a higher level of priority in the international system.

Irregular migrations are highly emotional about issues, and tend to polarize opinions. Those who are concerned about border controls and national security are often opposed by those whose primary concern is the human rights of the migrants concerned (Larrison & Raadschelders, 2020). As a result, they often do not always make use of public services for what they are entitled to, such as emergency health care. In most countries, they are also barred from using many of the services available to nationals and migrants with regular status. Repressed NGOs, religious institutions, and other civil society institutions that should be obligated to provide assistance to migrants with irregular status, sometimes at the expense of their own legality.

From explanation above, we can see that irregular migrations are people who are moving without legal administration, cause trouble such as spreading disease, and do not use public service. These factors are part of management problem. In this term, management problem occurs between states. Management problem in irregular migration is a new subject study in the field of public administration. Many studies are looking at the connection between irregular migration and the management of single country. In this study, we would like to discover the connection between irregular migration and intergovernmental management.

The context of intergovernmental management cannot be separated from the fact that problem of migration is a problem of transnational management. Intergovernmental management activities itself, are occasional assignments (Agranoff & McGuire, 2003). There are two dimensions of GI, namely horizontal and vertical. In the vertical realm, managers do more than seek grants and comply with regulations. They administer the program through outreach and adjustment programs in contact with state and federal officials. Meanwhile, they manage horizontally by involving other local governments and non-governmental organizations in certain development programs and development efforts. this joint agreement develops the concept of adjustment and inter-local adjustment.

Managing grants, regulations, and sustainability cooperative arrangements are the core part of IM's work. IM also has complementary task such as financial assistance in economic development, includes loan arrangements, negotiating interest rate adjustments, attempting to forge sale-leaseback arrangements, and a number of other financial transactions (Agranoff & McGuire, 1999). In this case, IM sees relevant operational information, asking about interpretations related to running the program, seeking guidance on proposed actions on the program, and requesting and implementing technical assistance. Dealing with intergovernmental regulations does include compliance-related activities, but not every regulated government complies in every case.

#### IV. CONCLUSION

In conclusion, IM does replace the traditional lists of managerial actions across locales, structural adaptation, and joint buying or servicing, but they add to the broadening nature of what needs to be known about the activities of network managers within the community. In the intergovernmental literature, uncovering this network of activities further expands the hidden dimension of management . To sum the explanation, this study will look at irregular migration of Indonesia in Malaysia. The context of Indonesia-Malaysia is interesting due to the fact that connection of migrant worker between two countries.

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