



BRILL

ASIAN INTERNATIONAL STUDIES REVIEW

(2022) 1–28

Asian
International
Studies
Review

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Partial Implementation of Migrant Rights Protection? Indonesia's Short-Sighted Approach towards Foreign Migrant Workers

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Abstract

This article examines the disparity between Indonesia's efforts to protect its migrant workers abroad with its efforts to ensure the rights of migrant workers within its borders. As a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Indonesia is obliged to uphold the rights of migrant workers regardless of their migratory pattern. Despite its efforts to protect Indonesian migrant workers abroad, it often seems to neglect its obligation to enforce migrant workers' rights at home. This article will show how the state-sanctioned mechanisms to settle labor disputes between foreign migrant workers and employers are generally designed to benefit the latter. These mechanisms usually focus on the legality of the workers to determine to which rights they are entitled, if any. Furthermore, the absence of support from Indonesia in enforcing other migrant workers' rights at ASEAN regional platforms reinforces this short-sighted approach of defining migrant workers exclusively as Indonesians overseas, while overlooking its obligations to migrant workers within Indonesia.

Keywords

migrant workers – transnational governance – ICRMW – ASEAN – human rights

1 Introduction

Indonesia has traditionally been regarded as a migrant-sending country. Most studies on Indonesian migration issues focus on the exploitation, struggle, and labor activism of Indonesian migrant workers in migrant-receiving countries such as Hong Kong (Special Administrative Region), Taiwan, Singapore, and Malaysia (Ford, 2004; Rother, 2017; Amalia, 2020; Bal and Palmer, 2020). Additionally, the Indonesian state also portrays itself as a migrant-sending country. This conception is clearly articulated in its state institutions, structures, and laws focusing on the agenda of streamlining outgoing labor migration (Lindquist, 2018; Platt, 2018). The country even has a dedicated body to organize Indonesian migrant workers' outgoing migration and develop national laws to protect and regulate the outgoing labor migration program (Palmer, 2016; Karim, 2017).

Since 2012, Indonesia has been a state party to the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) through Law No. 6 of 2012. As a state party to this convention, Indonesia must enforce its migrant workers' rights abroad as well as uphold the rights of migrant workers at home. This article aims to shift this common perspective on labor migration discourse by re-aligning the focus to look at the incoming labor migration of migrant workers into Indonesia. There were more than ninety thousand migrant workers in Indonesia in 2020 (Databoks, 2021). According to international standards, the Indonesian Government should enforce these migrant workers' rights in Indonesia. Therefore, this article aims to assess the difference between Indonesia's efforts to protect its own migrant workers overseas and its efforts to ensure meeting the rights of migrant workers within the country.

This article will demonstrate that Indonesia often overlooks its international obligations to ensure equal protection of migrant workers' rights at home, and Indonesian migrant workers abroad, despite being a state party to ICRMW. This is because the institutional set-up for the governance of migrant workers in Indonesia does not make provisions for the human rights protection of migrant workers. Instead, it focuses on the legality of workers to determine whether they are entitled to their rights. This article further shows that Indonesia's stance regarding migrant workers in the Association of Southeast Asian Nations' (ASEAN) regional platforms, such as the ASEAN Economic Community (AEC) and ASEAN Intergovernmental Commission on Human Rights (AICHR), reflects its tendency to exclusively promote the rights of Indonesian migrant workers abroad. As a result, both platforms pay less

attention to the human rights conditions of skilled migrant workers, who make up the majority of foreign workers in Indonesia.

This article also aims to enhance the discussion regarding the governance of migrant workers in traditionally migrant-sending countries, as little mainstream scholarly debate on labor migration to migrant-sending countries exists, especially in the context of Indonesia. Document analysis will be employed to investigate the Indonesian government's treatment of foreign migrant workers in Indonesia. Document analysis is a systematic procedure for reviewing or evaluating documents, which gives a voice and meaning to an assessment topic (Bowen, 2009). Government and court documents, as well as legislation, regarding the issue of migrant workers are analyzed and interpreted. These can corroborate or expand on findings from other data sources regarding Indonesia's ambiguous policies regarding migrant workers. This document analysis is supplemented by interviews with officials from the Department of Manpower of DKI Jakarta Province, who are in charge of labor dispute mediation processes, as well as officials from the Ministry of Foreign Affairs, who are charged with the protection of Indonesian migrant workers. Also interviewed is a migrant worker from the Philippines who has been involved in a labor dispute while working in Indonesia.

The structure of this article is as follows. Section 2 discusses the current conditions of migrant workers in Indonesia, while the Section 3 demonstrates the theoretical framework utilized to explain our argument. In Section 4, the institutional set-up for enforcing migrant workers' rights in Indonesia is discussed to better consider the state's role regarding migrant workers in Indonesia and to understand the Indonesian government's motives when ratifying ICRMW. In Section 5, there is a discussion regarding Indonesia's standpoint in ASEAN regarding migrant workers. Despite appearing to support migrant workers in ASEAN, the Indonesian government does not have an active stance in voicing the rights of migrant workers in its own country; this section further illustrates its seemingly ambiguous treatment of migrant workers.

2 Understanding Migrant Workers in Indonesia

As already mentioned, there has been very little discourse about migrant workers in Indonesia. However, as a state party to ICRMW, Indonesia must enforce the rights of migrant workers who work within its borders. These obligations are: permitting migrant workers to form associations or trade unions; providing minimum social welfare; ensuring equality of treatment in terms

of remuneration and conditions of work and employment; allowing regular migrant workers to temporarily be absent without affecting the authorization of stay or work; allowing liberty of movement; permitting the selection of residence and alternative employment for legal migrants; permitting the seeking of alternative employment in case of termination; and working toward family reunification and the extension of education rights to the children of migrant workers (Cholewinski et al., 2009).

Indonesia's ratification of ICRMW does not extend to the ratification of ILO Conventions No. 97 and No. 143. These conventions are important because they would require the Indonesian government to enshrine a national law that guarantees the equal treatment of migrant workers with regard to employment and occupation in Indonesia, which is a technical aspect of the protection of labor rights (Guild et al., 2018).

Rights-related cases of irregular migrant workers — mainly asylum seekers and refugees — in Indonesia suggest that the country has a questionable commitment to enforcing the rights of migrant workers (Palmer and Missbach, 2019). The government has a history of focusing more on the legal status of migrant workers rather than upholding their rights. These irregular migrant workers are escaping their countries due to war and persecution. Many who plan to seek asylum in Australia are stuck in transit in Indonesia. They use informal channels in both their home countries and Indonesia in an attempt to migrate to Australia through unofficial and precarious means (Missbach, 2015; McAuliffe and Koser, 2017).

Indonesia has fallen short of extending legal protection to migrant workers by failing to ratify additional conventions and national laws. Previous scholarly literature has primarily focused on Indonesia as a migrant-receiving country for asylum seekers and refugees stranded in Indonesia while awaiting their admission to Australia (Missbach, 2015). This study, however, focuses on migrant workers who are formally employed in Indonesia.

There has been little discussion on migrant workers in Indonesia, of whom there were 96 570 as of 2020. When viewed by sector, most foreign workers (53 323) are employed in the service sector. The next largest area is the industrial sector (38 087), followed by the agricultural and maritime sectors (2351) (see Figure 1). In terms of professional status, 46% of foreign migrant workers in Indonesia can be considered professionals below the level of managers and advisors (see Figure 2).

It is often assumed that foreigners formally employed in Indonesia are predominantly managerial-level professionals in high-paying jobs and would therefore have their rights protected. However, despite such preconceptions,

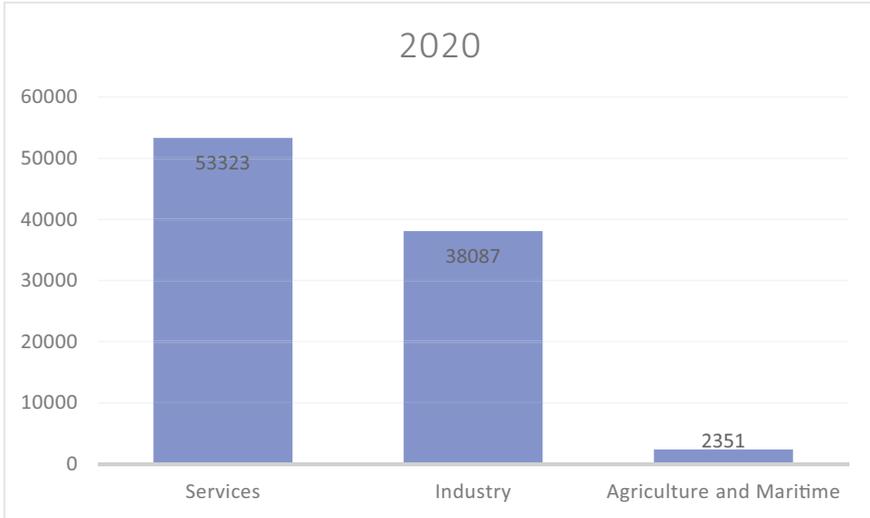


FIGURE 1 Foreign migrant workers in Indonesia by sector
SOURCE: JAYANI (2021)

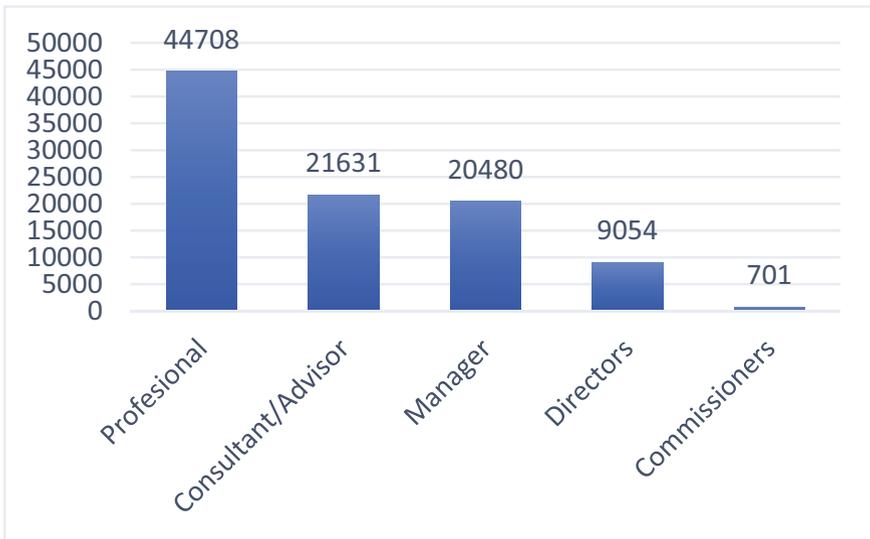


FIGURE 2 Level of position of foreign migrant workers in Indonesia
SOURCE: KUSNANDAR (2022)

there are considerable numbers of foreign migrant workers (from countries like the Philippines and China) employed formally in Indonesia who are not in these high-level positions.

In 2022 so far, around 4600 migrant workers from the Philippines are working professionally in Indonesia. Despite their minuscule contribution to the Indonesian economy, the cases of these migrant workers demonstrate their lack of employment rights and protections. A study from Tsang and Lowe (2018) shows the precarious working experience of Filipino migrant teachers in Indonesia, who are treated less favorably than their fellow migrant teachers from Western countries in Indonesian international schools. Many of these teachers are working on business visas, which puts them at a disadvantage in a precarious position as their lack of working visas strips them of their rights as workers (Lowe et al., 2016).

The largest group of foreigners working in Indonesia, however, are from China, with a total of 42 822 Chinese migrant workers in Indonesia as of 2022, which accounts for 42% of the total migrant worker population in the country (Yanwardhana, 2022) (see Table 1). Despite laws specifically enacted to regulate the flow of migrant workers, a significant number of Chinese migrant workers who were initially formally employed became unauthorized migrants as their Chinese employers refused to renew their visas. This is exacerbated because Chinese citizens can enter Indonesia for short stays without a visa. There are more than one thousand Chinese-owned companies in Indonesia, including state-linked and individually-owned companies (Suryadinata, 2020). According

TABLE 1 Top 10 countries of origin for foreign workers in Indonesia

Rank	Country of origin	Number
1	China	42 822
2	Japan	10 610
3	South Korea	9264
4	India	6201
5	The Philippines	4672
6	Malaysia	3801
7	United States	2118
8	Taiwan	2025
9	UK	1854
10	Australia	1707

SOURCE: KUSNANDAR (2022)

to Yue (2017), based on a survey of thirty-nine Indonesian-based Chinese-owned companies, the majority of these companies refrain from hiring Indonesians because of the perceived inefficiency of Indonesian workers compared to Chinese ones. The vast majority (98%) of these companies cited unfair labor laws, which favor local workers, for not procuring proper legal documentation for their migrant workers. This resulted in 53% of these companies allowing employees to use incorrect visas to work in Indonesia. As with the workers from the Philippines, these employees are vulnerable by not only having no rights as workers in Indonesia but also facing growing negative sentiment from sections of Indonesian society (Yue, 2017).

According to ICRMW, Indonesia should ensure the legal protection of Chinese migrant workers in Indonesia by monitoring the companies employing Chinese migrant workers to ensure they provide the proper documents such as residential and works permits.¹ However, based on data from the Confederation of Indonesian Trade Unions, more than nine thousand illegal Chinese workers are in Indonesia. The majority are working illegally because they are using tourist visas to work in Indonesia (CNN Indonesia, 2018). According to the Ombudsman Commissioner, Laode Ida, his agency's investigation found a case where a Chinese company operating in Indonesia used tourist visas for its 500 workers from China (Sugiharto, 2020).

In light of the discussion above, migrant worker abuses in Indonesia require further investigation. Furthermore, this situation demonstrates the Indonesian government's lack of foresight in its approach towards migrant rights as a migrant-receiving country, thus raising serious questions about its commitment to migrant rights.

3 The Political Economy of Migrant Workers

This article utilizes a political economy approach to position the Indonesian state within the relationship between labor and capital, which will provide an alternative explanation in the discussion of migrant rights. This approach departs from the common institutional practice in human rights, which often undermines the ruling class's vested interests in human rights enforcement, particularly in the relationship between labour and capital (Gartman, 1983; Jessop, 2011).

According to this approach, state policies and institutions governing these aspects are understood as the system to maintain capitalist functions within

1 Ministerial Regulation No. 8 of 2021 on the Utilisation of Foreign Migrant Workers.

society (Barrow, 1993). This function is integrated to perpetuate the capitalist class's production and reproduction, meaning the state functions as the regulating factor of social formations between capitalists and workers. Furthermore, the state can institutionalize policies encouraging an unequal relationship between capitalists and workers (Poulantzas and O'Hagan, 1973). Thus, state policies are crucial to sustaining comfortable business confidence, which supports economic growth and investment for the capitalist class.

The political economy approach in migration studies is situated within the theoretical transformation of labor migration from a neo-classical approach to a systemic one by focusing on the nexus between the causes of migration and development. The push and pull approach perceives migration between migrant-sending and migrant-receiving countries as a positive factor that can contribute to the development of both parties of the migratory relationship. This perspective presents a list of reasons why workers are pushed from their home countries and pulled towards destination countries where there is a demand for migrant workers. These factors include economic opportunities, wage disparities, and population growth (Passaris, 1989). Similarly, neo-classical migration theory implies that labour migration occurs as a rational decision by migrant workers. The theory uses economic equilibrium to argue that labour migration benefits both migrant-sending and migrant-receiving countries (Borjas, 1989). These two economic theories of migration explain the development of capitalist societies, which tend to disregard the different experiences of migrants as well as the disequilibrium of labour migration.

What is missing from these two approaches to understanding labour migration is that they both undermine non-voluntary migration. They view labour migration as a linear process and perceive state actors as complementary, using their competitive advantages to promote development.

While the previous approaches view migrants as rational actors bringing about economic development in both their home and host countries, critical political economy perceives labour migration as an unequal and predatory relationship that maintains the capitalist agenda in the global political and economic system. This approach examines the unequal economic and power relationships between migrant workers and host countries, as migrant workers predominantly come from the Global South and migrate to the Global North, thus, perpetuating the unequal relationship between developed and developing countries.

Political economy asserts that migration management in both migrant-receiving and migrant-sending countries focuses on neoliberal-oriented solutions of economic equity. Migrant workers are disciplined through measures

that force them to limit their expenditure and encourage them to save and invest at home instead (Weekley, 2004). In the host country, migrant workers also become victims of the neoliberal economic order through socio-spatial and labour control, for example, as has been found in Dubai, where the state is retreating and being replaced by speculative property construction developers to maintain the health and safety of migrant workers in order for them to contribute to the urbanization efforts (Buckley, 2013). Through unfair visa policies, states maintain the number of incoming temporary migrant workers but fail to address wage theft and underpayment problems. The situation worsens when there is a lack of enforcement mechanisms to address the migratory and labour issues of migrant workers (Clibborn and Wright, 2018).

In applying a critical political economy approach toward the study of migrant workers, migration scholars use a concept of precarity based on four categories: the degree of continuing employment, control over the labour process, the degree of regulatory protection, and income level (Rodgers, 1989; Paret and Gleeson, 2016; Parreñas et al., 2019). The state's role in regulating migrant workers is crucial because it can produce and legitimize the status of a migrant, which would then dictate the employer-employee relationship (Anderson, 2010). Scholars associate precarity with illegality and deportability, promoted by the state to keep migrants away from their borders (Menjivar and Kanstroom, 2013; Hari and Liew, 2018). Precarity then becomes the main topic of discussion regarding labor migration, especially incoming labour migration in high-income countries where temporary, seasonal, and informal migrants form the majority of the workforce that maintains a reasonable market rate for produce (Preibisch and Grez, 2010). This study enhances the application of critical political economy literature in the study of migrant workers by examining the treatment of foreign migrant workers in Indonesia, a country generally known as a migrant-sending one.

In the case of migrant workers in Indonesia, the Indonesian state uses regulatory measures to establish an unequal relationship between migrant workers and local employers to encourage the transfer of new skills from skilled migrant workers to their local counterparts. Arguably, it is in the interests of every state to limit the flow of incoming migrant workers who would compete with the local workforce while simultaneously fulfilling the need to improve the quality of its workforce (Greer et al., 2013; Jones and Hameiri, 2020). However, this barrier must not overlook the need for state parties of ICRMW to adhere to human rights standards as migrant-receiving countries. Therefore, the regulation of the inflow of migrant workers must also uphold the same human rights standards as provided for outgoing migrant workers. This simply means that

the state party is obligated to implement ICRMW's provisions in every aspect of overseeing and managing migrant workers beyond just legal immigration standards.

This article will argue that a critical political economy approach provides an alternative view of migrants' rights beyond a liberal institutionalist approach which focuses on individual freedom and the role of human rights institutions (Moravcsik, 2000; Hafner-Burton et al., 2008). In the case of migrant workers, this approach is helpful for discussing the role of a migrant-receiving state in mediating disputes between capital and labour (Bal, 2015). Such an approach expands the discussion of human rights in state-mediated dispute settlements. In discussions on domestic labour movement and labour migration programs in Indonesia, it is crucial to take into account that migrant workers in Indonesia generally find it more difficult to challenge unfair labour dispute practices due to restrictive immigratory regulations (Palmer, 2016; Caraway and Ford, 2020).

With this approach, this article demonstrates how migrant workers face impasses in Indonesia by looking at the institutional set-up created by the Indonesian state to manage migrant workers. First, it further contrasts the regulations of Indonesia's commitment to regulating outgoing Indonesian migrant workers and incoming migrant workers to identify the disparity of human rights protection between the two groups. Secondly, it brings attention to the stance of Indonesian state institutions toward migrant workers in Indonesia by highlighting the lack of regulation for migrant workers and emphasizing the need to include human rights provisions in labour disputes for migrant workers. Finally, it also discusses the role of ASEAN regional human rights mechanisms and the ASEAN Economic Community in relation to how they implement the need to enforce and protect migrant workers' rights in Indonesia.

4 State's Policies towards Migrant Workers in Indonesia

In Indonesia, the adoption of ICRMW is stipulated in Indonesian Law No. 6 of 2012, which became the primary law for the Indonesian government and its state apparatuses to introduce specific laws that enforce the rights of migrant workers in Indonesia. However, despite the Indonesian government's awareness of the obligation to enforce the rights of migrant workers from both flows of migratory patterns (incoming and outgoing), the Indonesian Manpower Law (Law No. 3 of 2003) discounts ICRMW standards on rights enforcement of migrant workers (Piper and Iredale, 2003).

The Indonesian Law on the Protection of Indonesian Migrant Workers (Law No. 39 of 2004) and the Indonesian Manpower Law (Law No. 3 of 2003) focus on protecting Indonesian migrant workers. The latter stipulates that the Indonesian government has an obligation to protect and enforce Indonesian migrant workers' rights overseas. Furthermore, it also explicitly outlines Indonesian migrant workers' rights, using language similar to provisions in ICRMW, such as the rights to equal treatment, wages, and protection from degrading treatment. On the contrary, it does not make any human rights provisions for migrant workers in Indonesia.² The creation of the National Body for Placement and Protection of Indonesian Migrant Workers (BNP2TKI)³ further reinforces Indonesia's focus on protecting the rights of outgoing labour migrants and its commitment to streamlining its labour export program.

As mentioned, the law does not contain provisions regarding the Indonesian Government's obligation to migrant workers in Indonesia; instead, it focuses only on aspects of immigration management and control.⁴ In addition, the Manpower Law falls short of ICRMW standards because it does not explicitly mention any human rights provisions which the Indonesian Government is obliged to guarantee. For example, Indonesia has a National Human Rights Law and a Law against Ethnic and Racial Discrimination.⁵ Still, these human rights provisions are not included in the Indonesian Manpower Law, meaning migrant workers in Indonesia are not guaranteed equal treatment or protection from racial and ethnic discrimination.

The administrative requirements imposed on employers of migrant workers in Indonesia focus primarily on knowledge and skill transfer from foreign workers to Indonesian workers. For instance, the law requires employers to identify an Indonesian companion for the migrant worker and to state that the skills and knowledge possessed by that worker would benefit their Indonesian counterpart. The corresponding legal requirement, on the other hand, does not impose any obligations for employers to protect the rights of their migrant workers.

The Indonesian Government has been making good progress in protecting Indonesian migrant workers overseas, primarily through attempts to streamline its labor migration program through BP2MI. Such protection can be seen

2 Indonesian Manpower law section 8 regulates the employment of foreign migrant workers.

3 BNP2TKI, currently known as BP2MI, is the national agency whose task is to organise the Indonesian labour migration program.

4 Compare section 8 of Law No. 13 of 2003 to section 3 of Law No. 39 of 2004.

5 Law No. 39 of 1999 and Law No. 40 of 2008 respectively.

in implementing early warning and immediate response systems, increased advocacy to foreign governments, and mediation channels for Indonesian migrant workers abroad. Furthermore, in 2015, then-President Susilo Bambang Yudhoyono passed a Presidential Decree to establish an Integrated Team on the Protection of Indonesian Overseas Workers. Their tasks are to solve any potential problems faced by Indonesian migrant workers in receiving countries (President of the Republic of Indonesia, 2015). Additionally, the Indonesian Ministry of Foreign Affairs has a specific mandate to assist Indonesian migrant workers overseas with consular services, legal aid, and repatriation to Indonesia (Organisasi Dan Tata Kerja Kementerian Luar Negeri, 2016). With these safeguards in place, the Indonesian Government is committed to guaranteeing protections for Indonesian migrant workers and has thus fulfilled its obligations to ICRMW.

However, such provisions are notably absent from Indonesia's commitments towards migrant workers within Indonesia itself, even though it has been politically expedient for the Indonesian Government to emphasize the protection of its migrant workers abroad. However, this absence of a rights-related provision in the Indonesian Manpower Law affects how the Indonesian Labor Dispute Settlement Law is implemented concerning foreign migrant workers.⁶ Despite migrant workers having access to this system, the dispute settlement system needs to go beyond delivering justice based on consensus between employers and workers; it must also take into account the human rights of migrant workers. Unfortunately, the only government-sponsored institution available for migrant workers is the Directorate of Control and Use of Foreign Workers,⁷ located in the Ministry of Manpower. This directorate's tasks are limited to issuing employment permits for migrant workers, which does nothing to ensure the enforcement and protection of their rights while in Indonesia.⁸ This situation highlights the lack of instruments available for agencies to monitor and enforce the rights of migrant workers in Indonesia.

As a state party to ICRMW, Indonesia has indeed made progress in protecting migrant workers' rights, especially for outgoing Indonesian migrant workers. State parties are required to submit reports and respond to questions from the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families regarding the implementation of the Convention. The Indonesian state frames itself as a migrant-sending country while overlooking its role in protecting incoming migrant workers. The Indonesian government's reports

6 Law No. 2 of 2004.

7 Indonesia's nomenclature on migrant workers working in Indonesia is foreign workers.

8 Manpower Ministerial Regulation No. 13 of 2015 Section 357.

to the Committee stipulate its strong focus on addressing the issue of Indonesian migrant workers abroad.

For instance, as a migrant-sending country, Indonesia actively creates bilateral agreements that ensure standardized placement, minimum labor standards, and protection for Indonesian migrant workers in Kuwait, Malaysia, Saudi Arabia, and Singapore. In addition, Indonesia also focuses on regulating and enforcing the responsibilities of local private recruitment agencies that send Indonesian workers abroad (Karim, 2017).

Indonesia's framing of itself as a migrant-sending country can be seen in its report to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, 2017). Most concerns stated by Indonesia in the report are on the rights of Indonesian migrant workers. This can be seen in Indonesia's comments to ICRMW regarding racism, xenophobia, discrimination, ill-treatment, and violence directed at migrant workers; however, they do not address issues surrounding migrant workers in Indonesia. The influx of Chinese migrant workers to Indonesia is briefly mentioned, but only to clarify misleading information, which claimed that millions of Chinese migrant workers were working in Indonesia when, in fact, there were only eighty-six thousand from 2012 to 2016. The report raises far more concerns regarding the treatment of Indonesian migrant workers abroad.

Such an inconsistent approach to migrant workers is reflected in Indonesia's domestic laws and regulations. Figure 3 shows a legal imbalance in the Indonesian regulatory landscape of managing Indonesian migrant workers and migrant workers in Indonesia. The former has a more comprehensive and clear set of rights and obligations, while the latter lacks clear labor rights standards. Instead, the regulatory standards for migrant workers in Indonesia are minimal as it focuses more on administrative monitoring of workers and their employers to acquire the proper documents and permits. This can be seen in Indonesia's half-hearted commitment to the enforcement of the rights of migrant workers. This shortfall is shown by not extending its commitment to the technical ILO Conventions on migrant workers, which would oblige the Indonesian government to draft a bill that would not only regulate but ensure the protection of its foreign migrant workers. While every country is entitled to prioritize its citizens' safety and security, ICRMW expanded its state parties' obligations to ensure that migrant workers are also treated fairly. Protecting Indonesian migrant workers is thus only enforcing ICRMW on one end of the migration scale. Therefore, Indonesia must also enforce ICRMW on another end — the incoming labour migration.

The laws regulating migrant workers in Indonesia are the Indonesian Manpower Law as well as several detailed governmental and ministerial

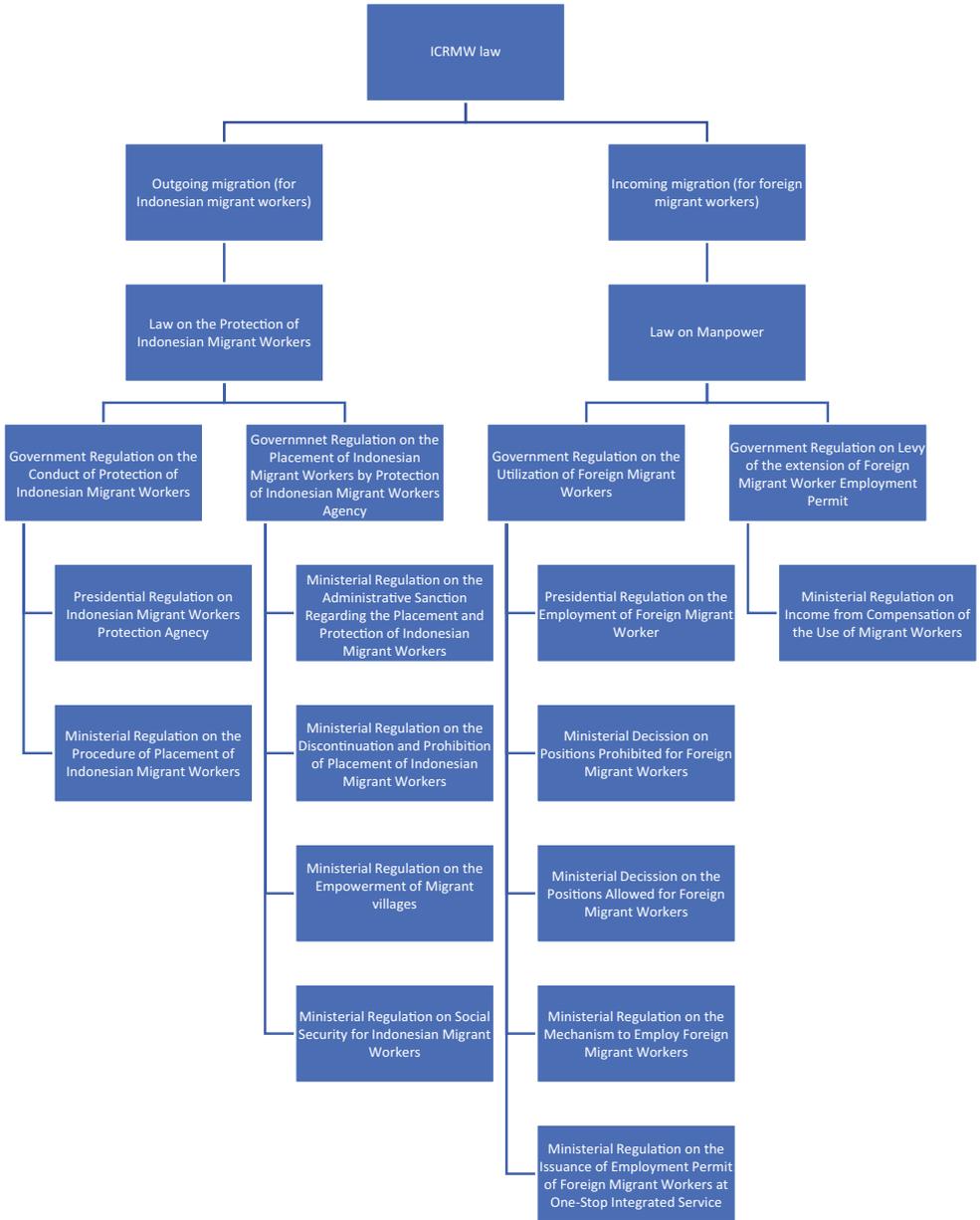


FIGURE 3 Indonesia's regulation concerning migrant workers
COMPILED BY AUTHORS

regulations. However, the Manpower Law and related regulations on the employment of migrant workers lack human rights provisions as stipulated in the Law on the Protection of Indonesian Migrant Workers. For example, the Government Regulation on the Utilisation of Foreign Workers states obligations and prohibitions for employers of migrant workers but does not mention workers' rights. In contrast, the Law on the Protection of Indonesian Migrant Workers stipulates both rights and obligations of Indonesian migrant workers.

A further case in point for such a lack of protection is the issues of dispute settlements and employment. Indonesia has a law regulating labour dispute settlements for both local and foreign workers,⁹ which states that the disputed parties must follow three phases during a dispute settlement. The first phase requires the two parties to mediate internally with the hope of reaching a mutual agreement. If the first phase fails to settle the dispute, both parties must go to the manpower office to ask a state mediator to resolve their dispute. Alternatively, both parties can appoint an independent arbiter who is nationally certified. This third-party dispute settler needs to issue a document stating the suggestions they made regarding the dispute to determine the settlement's outcome.¹⁰ The last phase in the settlement process is a legal process whereby one of the parties appeals to an industrial relations court under the district court.

However, the law does not provide a rights-oriented enforcement mechanism (for migrant workers in Indonesia). Instead, it focuses on (their) migrant workers' legality to determine whether they are entitled to their rights. Another provision discussed with the interviewees is the limited duration of employment for migrant workers in Indonesia, as the law only allows migrant workers in Indonesia to work in the country for a specific length of time. Thus, every migrant worker can only be employed on a contractual basis and cannot be employed permanently.

One government officer from the Ministry of Manpower stated that migrant workers in Indonesia will always be required to leave Indonesia "sooner or later." He explained that migrant workers must secure a permit to work in Indonesia, valid for a maximum of five years but must still be renewed yearly. This measure ensures that migrant workers are working in accordance with the employment agreement that they signed with their employer. However,

9 In the Law No. 2 of 2004, migrant workers in Indonesia follow the same dispute settlement procedure as local workers.

10 In Article 13 of law No. 2 of 2004, it is stated that if both parties come into an agreement, the mediator or arbiter would issue a mutual agreement that both parties must adhere. However, if the settlement process fails, the mediator or arbiter would issue a statement that allow both parties to submit an appeal to the industrial relation court.

this requirement puts migrant workers at risk of being deemed illegal if their permit is not renewed regularly and on time. Failure to do this could result in losing any entitlement to workers' rights and even being considered guilty of a criminal act by working illegally in Indonesia.

Arguably, with the application of human rights provision, justice in terms of employer-worker relations is not only achieved through negotiated outcomes where both workers and employers reach an agreement but also through addressing the underlying human rights aspects needed to achieve a fair result in comprehensive dispute settlements. However, migrant workers often face language problems during mediation when communicating with the mediators, forcing them to rely heavily on their lawyers to convey their experiences. This situation prevents migrant workers from significantly contributing to the dispute settlement and reaching an agreement with their employers because their lawyers may not understand the migrant's situation well and may not make any compromises during the mediation, which defeats the purpose of mediation.

The same hurdles are also present during hearings at industrial relations courts. If mediations between migrant workers and their employers fail, mediators advise both parties to file a lawsuit to the Industrial Relations Court. Migrant workers themselves are usually not present in the court during hearings because they authorize their lawyers to attend in place of them. These hearings also lack the human rights aspect stipulated in the Convention by focusing on the workers' legal status rather than on any alleged labor violations. One migrant worker from the Philippines, who took part in this process, confirmed that there was a lack of attention to the human rights aspects of their case and an over-emphasis on their legality in Indonesia based on their documents.

Indonesian manpower and labor dispute regulations reinforce the state's role as an extension of the employer's interests. Furthermore, these laws undermine the need to enforce migrant workers' rights because the lack of human rights provisions in the Indonesian Manpower Law prioritizes employers' rights over those of migrant workers. As a result, mediators or courts have no legal obligation to investigate possible violations of a worker's rights and protect them against intimidation or unfair treatment from employers. Moreover, the labour dispute law fails to extend human rights provisions during the mediation process as it does not require mediators to investigate any human rights concerns. Furthermore, immigration law benefits employers because it does not explicitly allow for special conditions of stay for migrant workers who are experiencing labor disputes.

The Indonesian government generally sees migrant workers through the lens of transferring skills. Therefore, hiring foreign workers should enable the

skills transfer process from migrant workers to Indonesian workers. This is why the government requires employers to appoint Indonesian workers as partners to the migrant workers and to return the migrant workers once the skills transfer is completed. These provisions demonstrate that the law which regulates migrant workers in Indonesia is focused on enhancing the skills of Indonesian workers with minimal state obligation to protect the rights of migrant workers in Indonesia. Although it is rational for a country to seek a pragmatic approach, Indonesia must not overlook its responsibilities towards these workers, even if they are small in number and predominantly middle-to-high earners.

In the case of Chinese companies that have invested in Indonesia, the legal requirements to hire workers from China are seen as a burden due to the demanding requirements to employ migrant workers in Indonesia. Hence, these workers may lose their rights as migrant workers should they be hired illegally to work in Indonesia. The Chinese companies exercise full control of these workers rendering them helpless in cases of mistreatment. In contrast, laws for Indonesian migrant workers oblige the Indonesian government to intervene in the case of rights violations of Indonesian workers abroad. Indeed, there must be equal treatment for these two groups of workers. In the case of Chinese migrant workers, Indonesia must ensure that they can still receive their rights as migrant workers.

The growing number of legal migrant workers from China that later become illegal due to financial motivation from their hiring companies was, in fact, prompted by the issuance of Presidential Decree 20/2018 concerning the Use of Foreign Workers (*Tenaga Kerja Asing* — TKA), which aimed to accommodate Chinese companies wishing to invest in Indonesia. From the government's point of view, the issuance of the Presidential Decree is one of its efforts to improve the investment climate by simplifying the procedure for obtaining foreign workers' permits in Indonesia. However, such regulation does not provide any additional protection for those migrant workers, which shows that the Indonesian government still sees foreign workers as a commodity associated with their efforts to encourage greater investment in Indonesia. Therefore, it does not make protecting foreign workers one of its priorities in the recruitment process for foreign workers.

This analysis above shows that Indonesia's regulations regarding migrant workers create an environment that maintains precarity for foreign workers. However, it can also be seen that regulations in Indonesia, from the recruitment process to dispute settlements, create a one-sided relationship between workers and companies, both local and international. As a result, workers do not have protection for their rights if there is a conflict with their employer. Here, precarity becomes essential for understanding the relationship between workers and companies in the context of Indonesian regulations.

Furthermore, it can be seen that the institutionalization of precarity in the regulation of migrant workers in Indonesia is not caused by, as institutionalists would argue, the lack of an institutionalization of human rights in labor governance in Indonesia. Instead, the institutionalization of precarity reflects the government's desire to prioritize local and foreign companies that hire migrant workers for economic development. In the context of local companies, labour is only considered as a process to transfer technology. In the context of international investment companies, foreign migrant workers are considered as part of efforts to facilitate the flow of capital and domestic production. As a result, human rights provisions are not internalized in recruitment rules, nor are labour conflicts involving foreign workers.

5 Regional Single Labour Market and Rights Enforcement in ASEAN

At the regional level, migrant workers in Southeast Asia are a crucial topic of discussion, considering their importance for the economies of ASEAN's member states both for traditional migrant-sending countries such as Indonesia and the Philippines and migrant-receiving countries such as Singapore, Malaysia, and Thailand. In this section, we examine Indonesia's reticence in voicing the rights of migrant workers through its representative in AICHR. In ASEAN, Indonesia has championed the rights of migrant workers working in other ASEAN countries (Karim, 2021). However, despite such a stance, Indonesia seems to depict migrant workers mainly as Indonesian migrant workers. When the discussion of migrant workers is not related to Indonesian migrant workers, the Indonesian government seems to stay silent.

This section will discuss two areas that govern migrant workers in ASEAN, namely trade instruments through the Mutual Recognition Agreement (MRA), which regulates the free movement of professional migrant workers in the region, and human rights instruments such as the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. Additionally, it will examine the self-perception of Indonesia's representative to the ASEAN Inter-governmental Committee of Human Rights regarding migrants' rights protection in Indonesia.

Regarding liberalization, regional integration among ASEAN member states widely varies due to the struggles among groups within each member state who are either in favor or against economic liberalization policies (Jones, 2016). While at the national level, Indonesia has no specific legal provision in ensuring the protection of migrant workers in the country, there has also been limited progress at the regional level. The ASEAN Economic Community (AEC) has aimed to bring a dynamic and streamlined standard of labour migration

among ASEAN member states since it was established in 2015 (Permatasari, 2020). However, it remains ineffective in creating robust governance in managing the free flow of labour. Such ineffectiveness stems from its weak institutional capacity. Even though the AEC has a provision for states to receive financial sanctions for their non-compliance with integration efforts, these sanctions have been ineffective because the dispute settlement mechanism lacks meaningful enforcement due to the complaints being issued as non-binding recommendations. Furthermore, the AEC blueprint allows considerable flexibility for member states to create reasons for non-compliance if they miss the blueprint targets (Nesadurai, 2013).

The free flow of skilled labour among ASEAN member states mainly depends on MRA, an agreement made by ASEAN member states to standardize the employment of skilled workers in particular sectors. However, MRA's effectiveness is questionable because it allows member states to set demanding standards restricting fair competition for migrant workers (Severino and Menon, 2013). The contest between wealth and power within individual member states amplifies the struggles between different economic actors over the benefits of increased labor mobilization in the region. State-business relations in most Southeast Asian countries bring about weak enforcement of the free movement of skilled labor in the region (Jones, 2016).

On the other hand, the agreement limits the influx of migrant workers from the Philippines to Indonesia because the AEC leaves out the movement of skilled workers in almost all sectors. As a result, the Indonesian Ministry of Manpower data shows little change in the number of Filipino workers in Indonesia after the AEC took into force, with numbers remaining relatively steady at between 2800 and 4600 workers from 2015 to 2022 (Kusnandar, 2022).

The ASEAN Economic Community has failed to improve labour rights standards and accessible employment of migrant workers from ASEAN countries in Indonesia because it relies on each member state's willingness to adhere to market liberalization. Moreover, MRA has failed to create a meaningful difference for the affected skilled migrant workers in the region since they must still abide by the immigration and manpower policies in their respective receiving countries (Intal Jr. and Pangestu, 2019). This implies that the AEC relies heavily on individual states to liberalize their labour markets and provide special access for foreign nationals of ASEAN member states (Menon and Melendez, 2016).

For instance, the MRA aims to streamline and standardize the movement of skilled labor among ASEAN member states. In fact, the free movement of professionals in the ASEAN region has been negatively impacted by the domestic rules and regulations imposed by migrant labor receiving countries, which require skilled migrant workers from other ASEAN member states to secure national certification in the host country (Chia, 2011; Jurje and Lavenex, 2015).

Thus, migrant workers from ASEAN countries in Indonesia are less likely to be affected by the implementation of the AEC in Indonesia because the Indonesian government has the ability to adjust the flow of foreign skilled migrant workers by protecting Indonesian labor markets and implementing migrants' rights regimes that accommodate the desires of domestic stakeholders, who are generally reluctant to agree to increased employment of foreigners. In other words, the MRA has little impact on reducing the requirements for skilled migrant workers in Indonesia because it adheres to the policies of individual ASEAN member states, which tend to slow down labour liberalization (Menon and Melendez, 2015; Harkins and Lindgren, 2018).

While the MRA regulates sector-specific mutual recognition of professional skills between ASEAN member states, the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers provides a human rights standard for migrant workers in the region (the ASEAN Secretariat, 2018). Therefore, many Indonesian policymakers believe that the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers is essential to providing more binding instruments to protect migrant workers in ASEAN countries. However, ASEAN's Consensus on the Protection and Promotion of the Rights of Migrant Workers is clearly insufficient to replace ICRMW and address the uneven extent of ratification among ASEAN member states, especially given the need to further ratify conventions such as ILO Convention 143 on Migrant Workers and ILO Convention 189 on Domestic Workers. As of now, only the Philippines has ratified all of the aforementioned instruments (Rother, 2018).

The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers neglects to cover some important aspects of labor standards for migrant workers in the region. Its lack of attention to low and unskilled migrants as well as irregular and undocumented migrants are shortfalls of regional migrant rights standards. As defined by article 26 of ICRMW, state parties must allow migrant workers and members of their families to join trade unions and seek assistance from them. Even though the Consensus defines the right for migrant workers to join a trade union, they are highly dependent on each receiving country's laws and regulations. Thus, a country has no obligation to amend its labor laws to allow migrant workers to easily join such unions. For instance, there has never been a migrant worker union in Indonesia, even though Indonesian Law No. 21 of 2000 does not explicitly prohibit the formation of migrant worker-organized trade unions. Additionally, migrant workers are generally not supported by Indonesian unions (Michelle, 2021).

Moreover, institutional and societal constraints within ASEAN member states prevent ASEAN as a regional organization from coming up with an effective

implementation of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. During the drafting of the document, we can see a struggle between migrant-sending countries such as Indonesia and migrant-receiving member states such as Malaysia, in which the former would favor legally-binding regional agreements while the latter opts for the morally binding instrument (Bal and Gerard, 2018).

Extensive and effective engagement with international organizations such as the International Labor Organization (ILO) and the International Organization for Migration (IOM) is constrained by ASEAN's non-binding and non-interference standards. As a result, ILO and IOM cannot contribute much to the governance of migrant workers in Southeast Asia to respect a consensus-based decision-making process. Instead, they can only encourage bilateral channels between migrant-sending and migrant-receiving countries and support the regional consultative process. Moreover, even though both organizations bring different stakeholders to the table to discuss migrant workers, human rights perspectives are lacking in the discussions (Kneebone, 2010).

ASEAN has its own human rights body, the ASEAN Intergovernmental Commission on Human Rights (AICHR). Its role, however, is limited because it lacks an investigative, legislative, and supervisory mandate (Karim, 2020). AICHR's function is limited to providing consultative suggestions to ASEAN member states, advisory, and promoting human rights instruments (Munro, 2011; ASEAN, 2015). Positioning AICHR under the ASEAN Political-Social Community means directing AICHR reports to each country's respective foreign ministers, which could allow representatives to propose agendas based on state interest. Looking at the Indonesian Ministry of Foreign Affairs Strategic Agenda 2020–2024, the focus of protection remains on Indonesian migrant workers, including the repatriation of Indonesian migrant workers and legal aid for Indonesians abroad. In the report, AICHR is briefly mentioned as an 'overarching body' on human rights promotion and protection at ASEAN Sectoral Bodies (ASB) (Minister of Foreign Affairs of the Republic of Indonesia, 2020). The focus on protecting Indonesian migrant workers in the report would indirectly become the main point of the agenda to raise for the Indonesian AICHR Representative.

Concerning the issue of migrant workers in ASEAN, AICHR's intervention is limited to creating a thematic discussion about migration where it has a consultative engagement with representatives from the member states on a particular topic (AICHR, 2013). The focus on rights promotion through awareness-raising and broadening intra-regional partnership implies that AICHR is less assertive towards migrant workers' rights enforcement in Indonesia. Such an approach might be translated into overly intervening in Indonesia's internal affairs. As a

result, the issue of migrant workers is rarely discussed in AICHR and has minimal significance in its reports.¹¹

AICHR activities appear to emphasize the enforcement of low-skilled and irregular migrants' rights, suggesting that AICHR pays less attention to the human rights condition of skilled migrant workers, which is the category most migrant workers in Indonesia come under (AICHR, 2013, 2016, 2019). An example of such a careful approach was explicitly manifested in AICHR activities in 2016–2019. These activities were mainly involved in raising awareness and building an extra-regional relationship with the European Union on human rights. This showed that AICHR is exercising its role carefully to prevent any tension between ASEAN member states (AICHR, 2016, 2019).

While the Indonesian representative to AICHR seems to support the enforcement of the rights of migrant workers, the office overlooks concerns about enforcing the rights of migrant workers in Indonesia. Indonesia's ambivalent approach is clearly demonstrated to the extent to which its AICHR representative brought a limited agenda to the discussion — solely focusing on Indonesian migrant workers rather than the rights of incoming migrant workers to Indonesia. Moreover, as a labor liberalization tool in Indonesia, MRA is not accompanied by human rights mechanisms for professional migrant workers.

6 Conclusion

This article addresses the rights enforcement gap with regard to migrant workers in Indonesia, demonstrated by Indonesia's overall policy toward migrant workers in Indonesia. It has showed Indonesia only partially implements ICRMW, despite being party to the convention. Instead, Indonesia appears to use a cost-benefit analysis derived from the economic and political calculation of Indonesia as a migrant-sending country. It further demonstrated the attitude of the Indonesian Government towards the enforcement of migrant workers' rights based on a comparative analysis of the rights enforcement of Indonesian migrant workers compared with migrant workers in Indonesia. It has also analyzed the Indonesian Government's response and reports to show how Indonesia perceives migrant workers' rights enforcement in Indonesia, subsequently focusing on the need to extend rights enforcement for migrant workers in Indonesia. Furthermore, this approach is short-sighted toward migrant

11 See AICHR Annual Reports in 2016, 2017, 2018, 2019.

workers by identifying the institutional weakness of the ASEAN Economic Community, ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers Rights, and AICHR as a regional instrument for the human rights body in ASEAN.

These findings show that Indonesia needs to address the disparity between the rights enforcement of incoming and outgoing migrant workers. As a state party to ICRMW, Indonesia falls short of providing an institutional aspect of protection of rights for migrant workers. A critical political economy approach has successfully demonstrated the impetus for the Indonesian state's role in capital-labor relations that pushes Indonesia to pay more attention to migrant workers abroad and less to migrant workers in Indonesia. Moreover, another obstacle for the Indonesian government to equally promote the protection of the rights of Indonesian migrant workers and migrant workers in Indonesia stems from the nationalistic view of Indonesian society in general, which views foreign workers as a threat to local workers. This is certainly an obstacle for the government to implement ICRMW for migrant workers in Indonesia. Thus, there is no economic interest or political imperative as well as external pressure for the government to change the existing *status quo* regarding this issue.

Additionally, this article added a new topic of discussion on implementing ICRMW in migrant-sending countries. These countries make up the majority of state parties to the convention, in contrast with the scholarly debate, which focuses on the resistance of migrant-receiving countries against ratifying ICRMW. It could be claimed that this may undermine global efforts towards creating a universal human rights law for migrant workers. This shows that the commitment to protecting migrant workers' rights goes beyond protecting state parties' citizens and protecting their migrant workers. Therefore, as a state party to ICRMW, Indonesia falls short of its commitment to protecting the rights of migrant workers. It is understood that this article provided a limited case study of migrant workers in Indonesia and that the focus of discussions is limited only to labor relations and labor rights of migrant workers. However, it is acknowledged that the topic of human rights is considerably broader than only that.

Acknowledgements

We thank two reviewers for their comments which improve the article. This article is based on research conducted as part of a thesis written by the first author and supervised by the second author.

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