

Encouraging Access to Justice for Indonesian Migrant Workers in Malaysia: The Need of Engaging Legal Aid Organizations in ASEAN

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Abstract

The aim of this study is to analyse the problems of Indonesian migrant workers and how legal aid organizations overcome that issue. The most of Indonesian migrant workers in Malaysia experience a range of human insecurity, living under threatening circumstances such as being victims of violence or physical abused and encounter severe deprivation of basic needs. Otherwise, some difficulties arise in the law enforcement to tackle those problems, because of the lack of access to justice in the legal framework. Therefore, the need of instruments to acknowledge, to provide and to implement the access to justice through legal aid assistance are important to secure social protection of migrant workers. This study elaborates the development and the role of legal aid organizations network concerning on access to justice for Indonesian migrant workers. The research method is using purposive sampling for qualitative data collection with content of analysis technique. The result study exposures that legal aid organizations have been handling several cases of Indonesian migrant workers in Malaysia by using pro-bono lawyer. However, there are problems of conducting advocacy; the lack of information in migrant workers about legal aid assistance because of the hindrance by their user, and the lack of good advocacy mechanism in legal institutions to empowerment function of access to justice. Thus, the need to strengthening network of migrant workers trade union, civil society and community; particularly in ASEAN countries is an important thing to start enforcing access to justice and ensuring human security for Indonesian migrant workers in Malaysia.

Keywords: Indonesian migrant workers, human security, access to justice, legal aid organizations networking, Malaysia, ASEAN

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1. Introduction

ASEAN countries have prevailed of ASEAN Economic Community (AEC) 2015. The purpose of AEC outlined in the AEC Blueprints follows; realizing the economic competitiveness in the region, equitable economic development and to encourage full integration with the global economy [1]. AEC has 5 pillars to boost economic regional integration to become a single market and high competitiveness production base. The five pillars as follows; free flow of goods, free flow of services, free flow of capital, free flow of investment, free flow of entrepreneurs and skilled labour.

Nevertheless, the labour issue has become a constraint affair amongst them. Even, in every ASEAN high level meetings like to be two confrontational fractions. One side has been the receiving countries and another side has been the sending countries of ASEAN [2]. It can be said that the protection for migrant workers in receiving countries is asymmetry in social politic relation of ASEAN region. Indonesia in this term also could not run away from the confrontation, because Indonesia has been the most sending country in the region. Based on National Board for

Placement and Protection of Indonesian Overseas Workers (BNP2TKI), it has been about 6 million migrant workers in abroad. Then Malaysia is still the most favourite destination for Indonesian migrant workers.

For recent decades, feminization of migration has become an attractive phenomenon in ASEAN region. The proportional between female migrant workers from sending countries such as Indonesia, Philippines and Vietnam have been more than male migrant workers [3,4]. According of gender inequality, class relation and nationality status, there have been seriously obstacle in enforcing justice for migrant workers. The consequence of this practice, female encounter double discriminations, one side is her status as female and the other side is as migrant workers [5].

As much as Indonesian female migrant workers have encountered a range of human insecurity such as physical abuse and violence in Malaysia. Nirmala Bonat was one of the victim that blow up in 2004. The latest information, Yim Pek Ha, her employer sentenced as more 12 years into jail and fined as many RM 139,197.20 for compensation to Nirmala Bonat by Malaysia Federal Court [6]. Her former employer sentence lifted along with people movements who berated and wanted to be sentenced heavier. Many

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NGOs assumed that Nirmala Bonat's case was often happened in Malaysia, yet it did not emerge to surface. Difficulty of legal aid access made migrant workers to be not report and claim over their problems. It is disavowal on behalf of humanity. Inferior perception for migrant workers has been always adhering to receiving country, and then it has been a challenge for the government [7]. If there is of situation, thus actually of migrant workers access to justice is still hard to be achieved it.

It is easy to find of Indonesian citizen in Malaysia. They are usually at public place and industrial area in Malaysia. It be knowledgeable that amount is about 2.5 million or it could be said of almost 10 % of Malaysian population at all. Indonesian embassy of Kuala Lumpur has categorized of them as documented and undocumented citizen. Students, marriage relation and migrant workers have been elaborated as documented Indonesian citizen as much as 1.3 million people. In other hand, 1.25 million people have been undocumented which are Indonesian migrant workers at all. Ironically, they have been for almost of undocumented migrant workers employ to difficult, dirty and dangerous. Saying is falling down then falling of ladder. It is bad off that of perception the problem root of social politic constraint between Indonesia and Malaysia is undocumented migrant workers.

Generally, both of documented and undocumented migrant workers are faced to the obstacle over enforcing of protection for them in Malaysia. There are push factors namely economic aspects (poverty, unemployment, wage differentiation), less of interior regulation in Indonesia, lack of law enforcement and to be easy of manipulation the citizen identity as well as worsening coordination among ministries or government bodies in Indonesia. The pull factors are too easy of arrival immigration gate, bureaucracy chain, closely of culture and religion, transportation facilitation, large of opportunity the labour market for semi and unskilled and lack of agency monitoring [8,9,10]. Accordingly, information constraint is more and more complete between factors in reaping to migration problem in the area [11].

In receiving country, Indonesian embassy have significant role. Besides it has to build of bridge in diplomatic relation to economic, politic, social, culture, defence and security on macro dimension. Indonesian embassy have role to serve, regard, protect and promote of Indonesian migrant workers rights on micro dimension. The role is encompassed such as consular affair, both of civil law/labour or criminal law.

Indonesian embassy as spear tip of Indonesian protection in abroad, internally is faced on the challenging in resource effectiveness, both of infrastructure and human resource. Insufficiency of infrastructure has been assumed to be serious block in services term. It has been always filled by Indonesian citizen to gain of services from government. The consequence has been the disturbance of public facilities in receiving country [12]. Additionally, the amount of Indonesian and foreign citizen have been coming and requesting of services about 500-700 people per day. While proportionally between Indonesian embassy of

Kuala Lumpur staff and Indonesian citizen have been 1:8000 people more.

Actually, the rights of migrant workers is be regulated under Malaysian law, there are Wages Workmen's Compensation Act 1952, Employment Act 1955, Immigration Act 1959, Trade Unions Act 1959, Industrial Relations Act 1967, Workers Minimum Standard of Housing and Amenities Act 1990, Occupational Safety and Health Act 1994 etc. However in practice, there are some lacks of law enforcement to protect the rights of migrant workers. Many migrant workers suffer from non-payment of wages, long working hours, less standard living conditions, travel documents withheld by employers or unfair dismissal.

In filling of gap, engaging of legal aid organization for enforcing to Indonesian migrant workers protection is must. Yet, it is also needed to be migrant workers actively their self in accessing it. There are much more legal aid organizations in Malaysia that provide legal assistance for migrant workers, both of directly and indirectly keeping in touch with migrant workers. There are ASETUC, BWI AP, Caram Asia, North South Initiative, IKMA, Permay, PPIM, Malaysian Bar Council, MTUC, Suaram, Tenaganita, Women Aid Organization; beside that International organization like International Labour Organization and International Organization for Migration are exist in Malaysia. This study aims to analysis the Indonesian migrant workers problems and legal aid role as the effort to enforce of the justice for Indonesian migrant workers in Malaysia. The scope of study focus on the kinds of migrant workers problems and the policy as well as legal aid organizations which provide on legal assistance directly to Indonesian migrant workers. The significance of study is to map and to describe of labour situation and prospectively legal aid organization network concerning on the protection for Indonesian migrant workers.

2. Methodology

This study reliant on primary and secondary data collection by purposive sampling technique, hence there have been not many of legal aid organizations that provided of legal assistance to Indonesian migrant workers directly and migrant workers who getting involved in organization context. Content analysis is conducted to this study by hermeneutic and extensive interpretation method through observation, meaning and description on the transcription of interviewing to primary sources. Migrant workers as primary source reliant on them that active in organization either have legality or not. Secondary source derived from articles, journals, books, discussions, proceedings, conferences and internet sources both offline and online materials.

3. Policy Sphere and Problem of Migrant Workers in Malaysia

Malaysia is one of importing migrant workers for any industrial sectors in Asia Pacific, beside Singapore, Japan, Taiwan and Hong Kong Special Administrative Region. Economic growth of these countries are signed by women participation in involving and leading for top management that previously they had less chance to undertake of employment [13]. However, on the other hand, these countries are faced toward of labour shortage for occupying to semi and unskilled. There have been of sectors loaded by migrant workers in Malaysia namely plantation, manufacture, construction and domestic workers [14].

By depending situation to migrant workers, Malaysia has endeavoured to control migrant workers influx by providing on restriction and constraint of policy. They are apparently shown to Malaysian Law, such as Employment Restriction Act (1968), the Immigration Law 1959/63 (Amendment 2002), Employment Act 1955, Passport Act 1966, Workmen Compensation Act 1952, Anti Trafficking in Person Act, Sabah Labour Ordinance (State of Sabah), Sarawak Labour Ordinance (State of Sarawak), Workers' Minimum Standard of Housing and Amenities Act 1990, Children and Young Persons Act 1966, Industrial Relations Act 1967, Trade Unions Act 1959, Occupational Safety and Health Act 1994, Wages Council Act 1947 [15]. Implementation of policy to reduce of migrant workers has been arranged for certainly period of planning development in Malaysia. The policy purpose is to select foreign citizen influx in immigration gate, to increase of working visa charge, to implement of restricting and operating to undocumented migrant, to promote of local workers for employing on industrial sector that loaded by migrant workers, to encourage of employer to recruit the local workers and to utilize of technology in term on less workers oriented [16,17,18,19]. Hence, policy package have been still perceived that yet do not significantly reducing of migrant workers influx to Malaysia because of worsening the technical implementation as well as many employer have reliant on migrant workers for unskilled sector [20].

One of controlling policy to migrant workers influx has apparently implemented to be poured into Program of Registration, Amnesty, Sterilization, Endorsement and Deportation (*Program Pendataan, Pengampunan, Pemutihan, Penguatkuasaan dan Pengusiran/6P*). This program initiated by Malaysian Home Affair Ministry and Indonesian Embassy of Kuala Lumpur [21]. In essentially, Malaysia government would have liked to straighten back undocumented migrant workers from Indonesia that large of numerous one. The most NGO refused of this program that was caused by privatization mechanism then had of overcharging consequence that be load to Indonesian undocumented migrant workers. Both of government agreed to appoint International Marketing and Net Resources, Sdn. Bhd. (Iman Company) for program implementation. However, on the other hand, this mechanism has been easier to control of agency. But on

another side, Indonesian undocumented migrant workers have been confronted with high charge than immigration rules. It actually engaged of private sector that implied to legitimate extortion for Indonesian undocumented migrant workers. Accordingly, private sector has monopolized also of ticket fare. Before 6P, Indonesian migrant workers had just paid of compound to Malaysian immigration as many RM 300 and exit permit fee RM 100. Yet, in 6P, they had to pay more. In the beginning or middle of 2014, Iman Company staked as many RM 1,250 for Indonesian undocumented migrant workers who wanted to return back at home, the charge was not yet included of ticket fare. They had to buy for ticket at Iman Company as granted to next process. Along with the time, services and compound charge had been down to RM 822 on July 2015. It seemed that of 6P was just a camouflage strategy to extort Indonesian undocumented migrant workers by another way. It apparently seen that they had returned to Indonesian and would have gone to Malaysia, they had been blacklisted by Malaysian immigration. Evidently, the page of Indonesian passport is stamped by Malaysian immigration, torn by broker who assisted Indonesian influx to Malaysia [22].

The consequence of restriction policy, migrant workers encountered to discrimination, stigma and stereotype in Malaysia. As Evelyn and Chang Wai [23] elaborated on below:

1. Lack of contract employment agreement before departure and after placement
2. Collective benefit by using outsourcing mechanism, particularly for recruitment process
3. Employer prohibit ti migrant workers in joining at trade union (violation toward Trade Union Act 1959)
4. Dismissal rights to get retirement. It has been regulated Employees Provident Fund 1991
5. Inferior benefit under Workmen's Compensation Act 1952
6. Non-payment of wages and unfair dismissal
7. Heavy of salary deduction to cover document cost
8. Substandard of living condition and lack of workplace protection against accident
9. Mostly migrant workers are not insured (violation of the Workmen's Compensation Act 1952) and the insurance policy did not declare to holder.
10. Employers that do not renew their permits, leaving migrants to lose their legal status
11. Passport withheld by employer and recruiting agency that cause to be extortion victim by police (violation Passport Act 1964)
12. When migrant workers redress their rights by reporting their employer or agency to Labour Department or Industrial relation department, their employer or agency withdraw of the permit. It causes to migrant workers loss their legal status and it is very difficult to access of justice to authority. At present, a 3-month special pass is issued by the Immigration Department at RM100 per month which forbids them to work.

13. Some outsourcing companies recruit, transport and receive workers through fraud and deception (violation of the Anti-Trafficking in Persons Act 2007).

From detail above, actually the problems of migrant workers are more than those. Based on compilation from any sources, additional problems comprise are:

1. Over workload time, on average 12 till 14 work hours per day.
2. Take furlough by salary deduction, it means that there is no day off rights.
3. When take furlough or being illness, the salary will deduct that based on work day leaving.
4. Low wage if being compared with Singapore, in case is same of workload e.g. domestic workers.
5. Discrimination of wage, between Indonesian and Filipino migrant workers than local workers.
6. Multiplier agent role, as employer and as agency so that they always moved from one workplace to another workplace.
7. Abolition of reunification rights; forbidden to bring along their family members, marriage and pregnancy.
8. There is double charge for migrant workers when they are sick or injury, insurance mechanism and own fee.
9. There is an overcharging that guaranteed by migrant workers (the placement charge excess than government provision)
10. High deposit amount if access to public care of health
11. Information rights and labour market are restricted, controlled by government and agency, and then they are vulnerable to be extortion victim.

Trend as much more of population have an inclination of complexity by increasing of the problems. As long as 2014, 1025 cases reported and 195 cases accomplished by Indonesian embassy of Kuala Lumpur. Meanwhile, on January till April 2015, 598 cases reported and accomplished as many 105 cases. Some NGOs' assumed that the numbers of case certainly more than of it. It is caused by lack of legal aid information relating on how to complain and to redress of their case. Compliance upon justice rights in labour sphere is enforced in forming of case accomplishing, such as withholding wage, work accident, illness, fatality accident and work contract dispute. Meanwhile in criminal sphere is comprised sexual harassment, physical and psychological abuse and trafficking in person. Mostly of cases have encountered by migrant workers that could be said as trafficking in person case at all. The reason is underpinned to elements and exploitation indicators upon migrant workers case that perceived having acquired; these are process, way and aim to exploit of migrant workers. Additionally, Malaysia was to be tier 2 *watch list* in enforcing to eradication the trafficking in person on July 2015. It means that Malaysian government does not fully obey on protection to victims/witnesses of trafficking; nevertheless they made the

significant effort in compliance upon procedures and standard to eradicate of trafficking in person [24].

An effort that implemented by Indonesian embassy of Kuala Lumpur besides suing to actor whom be reported, they redressed to insurance scheme. In 2014, they succeeded of insurance redress as more RM 1.113 billion where in January till April 2014 claimed as more RM 626 thousands. The redress had been belonged by 91 and 26 insures. Insurance scheme assumed as the accomplishment indicator of case, while the relation between insurance redress and case accomplishment need to deeply discover in compliance upon the justice for migrant workers. Meanwhile, criminal aspect has been confronted to Indonesian citizen list of death penalty in Malaysia as many 164 cases and sentenced into jail as many 222 cases [8].

Indonesia government has endeavoured to protect Indonesian migrant workers through memorandum of understanding which binding for both countries in 2011. This agreement constituted of mandate the Indonesian Law number 39 of 2004 concerning on Placement and Protection for Indonesian Overseas Workers in Abroad, in exactly on article 27 mentioned that placement of the Indonesian migrant workers is only able to be implemented if the government of destination country made a codification agreement with Indonesia government or foreign workers. However, the consequence of agreement between Indonesia and Malaysia, instead it has been happened to be legitimating on discrimination practice for Indonesian migrant workers. The impact of worsening to analyse upon differentiation of wage on the region, workload, placement cost structure and segmentation of labour market had been conducted by previous Indonesia regime, made the Indonesian migrant workers wage less competitively if was compared with migrant workers from other country in Malaysia e.g. Filipino migrant workers. But actually the case has been same as work of sector, namely domestic workers. The latest debate, Indonesia proposes to Malaysia in order to domestic workers wage increased to be RM 1,200 from previously RM 800. This proposal is responded by Malaysian citizen noisily. Yet, it is still not agreed by both of countries, because Malaysia need consult to parliamentary firstly.

Indonesian undocumented migrant workers have been the great problems for Indonesia and Malaysia government. Relation between undocumented migrant workers and immigration transgressor have implied toward legal consequence for them. As stipulated by article 36 of Immigration Act 1959/63 amendment in 2006 mentioned that any person who, having been lawfully removed or otherwise sent out of Malaysia, unlawfully enters Malaysia or unlawfully resides in Malaysia shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both and shall also be liable to whipping of not more than six strokes, and shall, in addition to any penalty for the offence, be removed or again removed, as the case may be, from Malaysia. Based on threat of punishment have been perceived so heavy for immigration transgressor and claim over large loss would

be received by Malaysia, hence the process has been through criminal system. We should see entirely for this situation. In fact, undocumented migrant workers have contributed for macro-economic growth in Malaysia. In addition, undocumented migrant workers should not merely be suspect for this case. Sometimes, they have been victim from the worst of governing and managing of the migration between Indonesia and Malaysia. Furthermore, this relation should not be ignored and entirely seen over undocumented migrant workers phenomenon in billing to fair policy of both.

Abuse and violation against human security in Malaysia have been showed a worse level than previous regime [25]. Some NGOs highlighted it that happened by restriction to unity in organization so that compliance of rights to be more obscure. This has been more complete when employer association has supported Malaysia government to restrict migrant workers to being unity in organization. Native perception has assumed that migrant workers have acted of the criminal attribute and influenced to degrade in social relation have been actually relative. Based on the Malaysian Police was launched by mynews.net, foreign workers were involved 9,496 cases or 11.2 percent for entirely criminal case as much 85,029 in 2014 [26]. The number was very small if it compared with amount of foreign workers about 6.7 million people. Meanwhile, documented migrant workers in Malaysia are as much 2.2 million people. Furthermore, there is no pretence for Malaysia to restrict migrant workers sphere by conducting to justice principle through international behaviour for all.

4. Legal Aid Organizations and Migrant Workers Protection

Migrant workers consciously would like to unity in organization. It has been signed by primordial existence of migrant workers organization in Malaysia or they usually do through to deal activity. Meanwhile migrant workers organizations which have legalization to concentrate on protection and campaign over rights of migrant workers could only be accounted by fingers. Then some organizations being aware on humanitarian consent remain to protect of migrant workers without caring from where they are. Besides it sees to legitimate and obviously role to enforce of protection for migrant workers, this study would endeavour to elaborate of blocks to be faced by legal aid organization through distinguishing sphere.

Therefore, encouraging access to justice is one important thing to do to protect the security of migrant workers as the legal subjects that have rights according to the law. The access of justice in a traditional view, defined as access of an individual to get legal assistance provided by a lawyer in a dispute or grievance by legal means [27]. Regarding to this view, access to justice is concerned, regardless of whether a person is a local or a migrant worker, the existing employment laws afford similar protection to them. However, in the reality, some Indonesian migrant workers encounter problems in

exercising his or her legal rights. Therefore the maintenance of the rule of law, the protection of human rights, and the support of legal aid or legal counselling from lawyers need to go hand in hand.

Generally, legal aid organization role have been identified to their influence for stakeholder. The some have braveness in struggling and influencing toward policy makers in Malaysia e.g. Malaysian Bar Council, Caram Asia, Malaysian Trade Union Confederation, Tenaganita and International Labour Organization and International Organization for Migration. It does not drive that the other organizations have less of significant influence to migrant workers issues, but it only based on analysing of the legal aid organization role. Not only have those organizations understood to migrant workers problems, but also they have been capability to be raising awareness, to build and to reach of community networking. As we have explained at above that the biggest challenge for migrant workers in Malaysia is recognition and respect to them. Then they would be absurd to be achieved if there were not of people movement in Malaysia which had to network with legal aid organization. As we know that in contemporary era of migration currently have expanded and built to their network amongst migrant workers their self in migration, sought to opportunity and competed in labour market [3].

It could be said that the protection movement over migrant workers in the world have been underpinned by global consensus. In International Labour Conference 104th Session held by International Labour Organization in Geneva at 1 - 12 June 2015, recommended the transition from informal economy to the formal economy or it could be called by report V (2B) to ILO members. Recommendation would drive to facilitate of workers and economy unit transition that categorized as informal sector, endeavour to formal sector by regarding upon fundamental rights of workers and ensure to opportunity for income security, livelihood and entrepreneurship [28]. One kind of informal sector immediately have been importunate to be formalized which is domestic workers. Given to be taken domestic workers have constituted to vulnerably employment toward modern slavery. In addition, domestic workers sphere have been not only interior state dimension, but also it have been in abroad, namely migrant domestic workers. Furthermore, as many legal aid organization have focused on migrant domestic workers to promote and to campaign globally, concerning on decent work for domestic workers.

In Malaysia, for almost of legal aid organization have granted of fund from donor, have implemented decent work for domestic workers program. The aim is to ratify of ILO Convention of 189 concerning on decent work of domestic workers. If country would not ratify, then optionally the country would have been a clearly structural regulation to domestic workers. North South Initiative, Malaysian Bar Council, Caram Asia, Tenaganita and Women Aid Organization have been sighted to implement of similar program. They have been a project coalition, yet it has differed to its role. Malaysian Bar Council (MBC) have advocated through national legalization way as well as

providing their members to handle of each migrant workers case. Meanwhile, North South Initiative, Caram Asia, Tenaganita and Woman Aid Organization have implemented the program to grass root, through organizing for raising awareness, capacity building for migrant domestic workers and analysing over their cases. The different have been located to beneficiaries, where Caram Asia has been sighted of consent to Bangladeshi workers, while the others have focused on migrant domestic workers in Malaysia at all.

On the process, all of legal aid organizations have to meet and to join national consultation for making up the strategy and recommendation upon migrant domestic workers in Malaysia. Besides the advocacy of domestic workers has been globally agenda, undocumented migrant workers have not missed from advocacy movement, yet it has been not significantly. Indeed, out of program context, all of legal aid organizations have been sighted to handle of migrant workers case in Malaysia. Tenaganita, in this term, despite they do not have lawyer staff itself, yet pro bono lawyer has reciprocally come to Tenaganita every day to assist their service for migrant workers in redressing to suspect. Furthermore, shelter facilities for victims and witnesses are additional value that had by Tenaganita, Caram Asia and Women Aid Organization, considering to complexity of provision and long process in accomplishing of migrant workers case.

It is not fair if accomplishing of case will be not attached to referral mechanism where migrant workers origin. As we know that migrant workers problems constitute a downstream chain from sending country to receiving country. Networking between legal aid organizations from receiving country have been glimpse connected to legal aid organization from sending country. It has being done by Caram Asia and Tenganita. Although this relation has been not poured agreement, but this step has walked effectively. Follow up of this relation would prosecute to actor who recruited and departed migrant workers to Malaysia. Additionally, they also recommended seeking reintegration access for witness and victim in sending country.

On criminal aspect, MBC has been significant role. As solicitors and lawyer profession organization, MBC established and was obedient to Solicitor and Lawyer Act 1979. They have had more 12,000 members and growth 12% annually that had certification profession. Like profession organization provisioned by law, then they have social responsibility in term on plea to marginal community, including migrant workers. From this case, as many legal aid organization have requested to MBC for delegating their members by pro bono mechanism.

There have been obstacles that are faced by Caram Asia, North South Initiative, MBC, Tenaganita and Women Aid Organization within organizing to migrant workers at grass root which is migrant workers community perception. They have assumed that legal aid organization would like to be worse condition to migrant workers. This situation is no queer, when migrant workers have been constructed by their circumstance at receiving country. Apparatus role in receiving country have been success in creating an acute

psychosocial fear. Additionally, it repressed by their employer. Hence, migrant workers have assumed that all of local people do not distinguish with others. Whereas for almost of migrant rights structurally are recognized by Malaysian Law [29]. Therefore, besides organizing to migrant workers, social cohesion through social assimilation with local people to be home work has to be employed by legal aid organization. It is a challenge to ASEAN government [7]. Another block is hard to collect of migrant workers to learn together. Geographic location and their undocumented status constitute an obvious reason in organizing amongst them.

In other hand, Malaysian Trade Union Congress (MTUC) has cooperated with Building and Wood Workers International Asia Pacific (BWI AP) and ASEAN Services Employees Trade Union (ASETUC) has fight shoulder in organizing workers, including migrant workers in Malaysia. In 2014, MTUC has joined cooperation with trade union confederation of Nepal for organizing to Nepalese migrant workers in Malaysia. MTUC actually would join cooperation with Indonesian trade union, because Indonesian migrant workers had large numerous one. The characteristic of membership is not underpinned their origin country, but they have to affiliate with local trade union where migrant workers are. In this context, Nepalese migrant workers opportunely affiliated to Malaysian electronic trade union.

In regional policy sphere, legal aid organizations role in Malaysia has been apparently active to bill of protection instrument for migrant workers. Additionally, in commemorating ASEAN Economic Community (AEC) has prevailed in this year. They have actively arranged the strategy and recommendation for next bringing to high level dialogue of ASEAN. As follow up from Cebu Declaration in 2007, realization of protection instrument for migrant workers in ASEAN countries have still not progressed significantly. Some countries agreed to formulate of protection instrument for migrant workers in ASEAN, namely Indonesia, Malaysia, Philippines, Singapore and Thailand have not achieved agreement yet.

Actually in ASEAN countries, there are some forums to talk relating on migrant workers right in ASEAN, namely AFML (ASEAN Forum on Migrant Labour). AFML comprises of all migrant workers stakeholders, such as government, employer association, trade union and non-government organization. Forum would be to same perception to protect and to acknowledge of migrant workers rights in ASEAN. AFML was structured by Cebu Declaration 2007, and would like to tie the recommendation by specific theme. But, few of recommendations have made AFML such like merely annual event. A little recommendations of AFML were adopted by ASEAN countries.

Besides in national and regional level, legal aid organizations of migrant workers from origin country have been actually existing in Malaysia. Like United Indonesian Community in Malaysia (Permay) and Madurace Family Association (IKMA), both of them have been clear legality. However, in movement context is still blurring and not

structured. They have been actively handling of case, but it usually and mostly referred to other legal aid organization and to Indonesian embassy. Organization basis from origin country have been not obvious a standard operating procedures in employing their activities. General characteristic have been approaching of voluntary and donation from the same time solidarity activities. Main source of fund have derived from collecting of fund and contributed of case registration from migrant workers trouble. Meanwhile, proper organization intellectually like Indonesian Student Association in Malaysia (PPIM), have sighted less active in conducting to campaign and promote for Indonesian migrant workers rights. Indeed, their role is strategic in bridging of knowledge and action gap amongst migrant workers, government and legal aid organization of origin country basis.

5. Challenge and Opportunity for Indonesian Migrant Workers in Malaysia

Some assumptions of Malaysian regulation to restrict migrant workers have been not completely true. However, there is indeed of displacement law in interpreting of labour law from original adoption British Law. For example, worker definition on Employment Act 1955, domestic workers is not worker, whereas based on British Law domestic workers is worker. In term condition, it could be seen at section 12, 14, 16, 22, 61 and 64, subdivision IX, XII and XIII of Employment Act 1955. Interpretation displacement happened on derivative regulation [29]. Additionally, migrant workers have been out of workers context based on section 60L Employment Act 1955. But on another side, migrant workers have been fortune while referring to Employment Act 1968 mentioned that if there have been happened discrimination between local workers in term condition of labour. Thus, in this context, if we talk migrant workers and their rights, we prefer referring to Employment Act 1969.

Freedom to unity within trade union organization for migrant workers has been actually permitted by regulation. However, migrant workers have been not allowed to sit high level board and have a chance to be elected by members (see section 28(1) Employment Act). Rights to build capacity and construct of movement have been certainly allowed in trade union. It has prevailed, if there happened industrial relation dispute between migrant workers and employer, so migrant workers actually have obtained similar with local workers for redressing their rights. Generally, access to justice for migrant workers has been respected; both of local workers or migrant workers, then protection treatment have been achieved by this regulation. Basically, regulation existence has provided access to justice for migrant workers in labour context. However, in redressing of justice, migrant workers have to endure from precarious term condition while undergoing criminal court system in Malaysia [23,29].

Labour precarious regime has thrived in ASEAN region [30]. Precarious condition have made migrant workers to

be not recognized, to be contractual workers, outsourced piece-rate payment, without assurance and flexibility of labour regulation [31]. Forthcoming challenge for Indonesian migrant workers in Malaysia, without overriding political economy sphere on the regional has to recognize and respect upon migrant workers rights. As mentioned above that case accomplishment as one of accessing upon justice sense has entailed complexity term condition and required certainly period. Consequently, most migrant workers have resigned upon redressing effort to injustice suspicion actor for them. Hence, long process and forbidden to work during investigation have made migrant workers to decide spontaneous and pragmatic that harmed their self. Besides, other recognition form is freedom to organize. Actually there have been exist of legal aid organization by Indonesian basis; however there have been typically primordial. Sometimes, There have rarely talked about migrant workers rights and campaigned to promote over migrant workers rights. Besides that factor, the recognition has to be poured in ASEAN countries by legal binding to protect migrant workers [32].

Migration has been expanding between receiving and sending country. Both of them involving power, network and capital to be produced back become multiple yields from migration practice. Face of this practice seeing that there has been recruitment agency, document fees, accommodation, transportation, training fees, health fees, salary deduction and so on; applied by agency that charged to migrant workers. Thus, the countenance of contemporary migration is not more from exploitation and oppression [3]. In addition, precarious regime have indicated to the most developed in postmodernism epoch, where surplus value that produced by workers through oppression and exploitation conditionally to conscious unconsciousness [31]. Thus, the significance between sending and receiving country through regulation is reducing of charges and facilitating migration movement without risk as well as ensuring to security based on humanity principle [33].

Organizing has been done by legal aid organization that faced by geographic location block and migrant workers status in Malaysia. This situation has been gained by obvious psychosocial fear. Thus, how effective there has been attempted to apply of organizing way that been done by Madurace Family Association (IKMA). They have reached Madurace community to member and family aim. Structure composition based on network coordinator location, so that the board have to active in undergoing organization works. This phenomenon actually have been discussed by Nan Lin that mentioned to identify of individual branch by clear demarcation line through family approach, friendship and homogenous ethnic; enable to assess of advantage and effectively social relation through clearly strategy location. This is to bridge a diversity aim and more informed [34]. Meanwhile, three approaches of Putnam [35] statement, actually could be used in organizing effort to migrant workers in Malaysia, by three approaches which are binding, bridging and connecting where social community to unity and divide social capital within and amongst them are. This process supported by

resource that obtained through membership in an organization.

6. Conclusion

Access to justice for Indonesian migrant workers can be highline undergone through two factors approaches, namely recognition and respect over migrant rights. Recognition factor comprises freedom to unity in organization from employer and rights to redress their rights easily and achievable. Meanwhile, respect factor is released from discrimination, stereotype and stigma toward migrant workers. Besides that, stakeholder in Malaysia has to guarantee for migrant workers from psychosocial fear in social relation. Two factors above can be considered in billing to fair policy for migrant workers between Indonesia and Malaysia government.

Legal aid organizations have to rearrange of their strategy in organizing for migrant workers. Conventional way has been done by them apparently less effective in Malaysia. Geographic locations, migrant workers status, repression from their employer and fear psychosocial have constituted the factors that make migrant workers unwilling to unity in organization. Therefore, need to map of location where migrant workers are, hence they usually have stayed bunch up at near from their workplace. Thus, from this situation, legal aid organizations in Southeast Asia have to enforce to who have adhering resource and to be able to influence others migrant workers. The aim of organization would achieve a people movement to strive against actors who oppressive and exploit migrant workers in Malaysia, and thus, to promote human security among all migrant workers through legal aid mechanism.

Meanwhile, migrant workers network and community between sending and receiving country should be tied for completing of the gap knowledge and contemporary issues. This scheme would evaluate and monitor of AFML recommendation implementation. Beside, the recommendation is also to be guide for legal aid organization to advocacy of migrant workers in ASEAN country. Therefore, advocacy movement for improving of the protection to migrant workers should not accomplish on those forum. Precisely, AFML is trigger to be soul of migrant workers protection.

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