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The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights

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ABSTRACT

Indonesia has agreed to the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers. However, many cases have proved the vulnerability of the legal protection for Indonesian migrant workers in Malaysia. In other words, the consensus has not protected the workers. Therefore, this research was conducted to analyze considerations for the regulations designed to protect post-consensus migrant workers. The objective comprised three aspects: analysis of the legislation after consensus, the draft policy that realizes the consensus, and the enforcement based on the draft formulated to safeguard the rights of migrant workers—a normative juridical method used in this research. The results showed that the consensus is a soft law that does not have a binding effect and sanction, causing it vulnerable to a violation, especially among undocumented migrant workers. Therefore, the research recommends bureaucracy reform to reduce the administrative costs for the migrant workers, allowing them to have better legal protection.



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1. Introduction

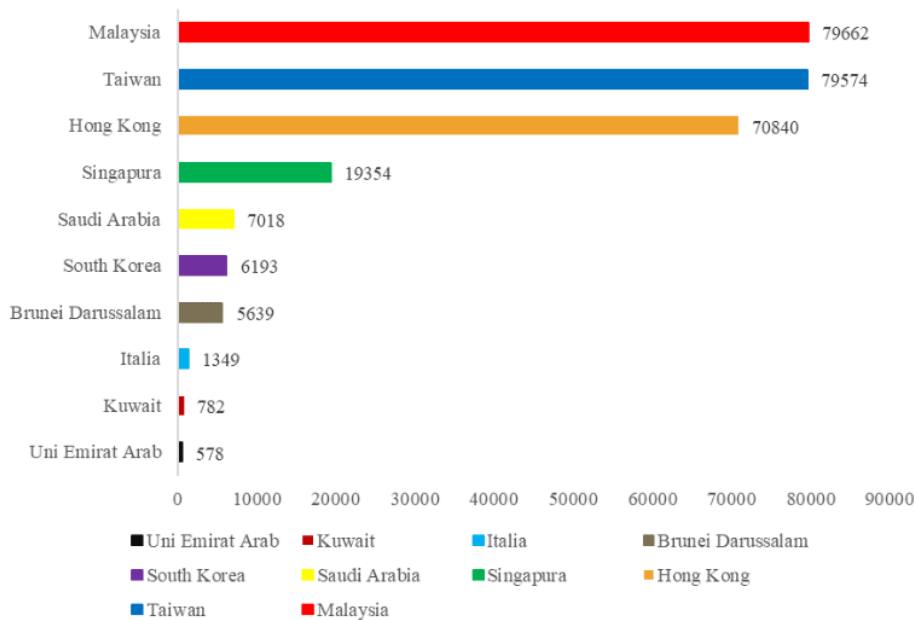
Legal issues in Indonesia, especially the adoption of new laws not in line with handling the COVID-19 pandemic, continue to take place. In contrast, many laws should be revised to align with health protocols (Sondakh et al., 2022). These cases can be seen, such as adopting the Mining and Coal Law and the Job Creation Law. Many laws should be revised to deal with the COVID-19 pandemic, especially the Health Quarantine Law. However, of the many legal issues during the COVID-19 period, the enforcement of the ASEAN Consensus is the most interesting. Policies for handling cross-border workers (Derek et al., 2021), Indonesian workers in Malaysia do not get access to health care because the COVID-19 mitigation is based on a resident card number. At the same time, they are unable to return to Indonesia due to social constraints, including flight cancellations. At the same time, Indonesia has agreed to the ASEAN Consensus on the promotion and protection of the rights of migrant workers. However, the consensus has not protected Indonesian migrant workers in Malaysia.

Countries have implemented economic recovery initiatives in response to the coronavirus pandemic (Kulkarni & Anantharama, 2020). The key interventions against COVID-19 in the majority of nations appeared to be focused on preventing community infection, with little attention paid to developing strategies to reduce infection in the workplace or by occupation (Derek et al., 2021; Suyadi, et al., 2020). Migrants are more likely to experience social, psychological, and emotional stress in these situations, as a result of fear of neglect by the local society and worry about their families' well-being and security in their home countries (Kumar & Choudhury, 2021). Migrants are among society's most marginalized groups, reliant on daily income for survival, and require the community's sympathy and understanding during times of difficulty (Wahab, 2020).

Despite Malaysia restricting the access of foreign labor during the COVID-19 pandemic, many undocumented migrant workers, particularly Indonesians, continue traveling illegally into the country, resulting in the practice of human trafficking. Data from the Indonesian Embassy in Malaysia reported a high percentage of Indonesian workers in the country (Figure 1). Malaysia is a level 3 country, meaning it does not satisfy the minimum standards of worker protection nor commit to implementing regulations that safeguard foreign workers. Furthermore, over 80% of the migrant workers in Malaysia are uneducated, with the majority failing to complete junior high school. This low education prevents these migrants from sufficiently understanding their rights and obligations as workers based on the legislation. As a result, Malaysia has the highest number of violations of Indonesian workers' rights compared to other countries, making the protection of these individuals during the COVID-19 pandemic an emergency equivalent to combating human trafficking.

Although the worker protection law in Indonesia is the most comprehensive among the ASEAN countries, the cases of violations are the highest, denoting the weakness of the law enforcement and sanctions (A. W. A. Suyadi, Zalik Nuryana, 2021; Suyadi, et al., 2022). This results in Indonesian workers becoming easy targets for worker law violations in ASEAN countries as evidenced by cases of abuse against Adelina from East Nusa Tenggara (Perspektif et al., 2019). Similar cases have also occurred, such as rape, exploitation, inhumane treatment (Maksum, 2017), as well as smuggling and illegal conveyance of migrant workers (Sugandi & Heryadi, 2018). However, because Law Number 18 of 2017 is limited by state jurisdiction, this regulation cannot guarantee the protection of Indonesian migrant workers in other countries, including Malaysia, so, an agreement or consensus is needed among these nations to protect its citizen (Bal & Gerard, 2018; Whelan et al., 2016). One of the efforts to combat human trafficking fostered by poor documentation in ASEAN countries, including Malaysia, is a consensus on the promotion and protection of the rights of migrant workers in the respective nations (Al, 2016; Whelan et al., 2016). However, this consensus has been denied by ASEAN countries, including Indonesia, as indicated by the absence or weakness of regulations as a binding implementation (M.Nur, 2021). This results in the need for examining regulations to realize this consensus, thereby enabling Indonesia to possess an adequate legal basis for worker protection.

Figure 1.10 Countries with the Largest Placements of Indonesian Workers in 2019



Source: <https://www.bps.go.id>

Presently, only three investigations have been conducted regarding this consensus. This includes the 2018 research by the Human Rights Working Group (HRWG) entitled "Migrant Workers' Rights in ASEAN Region: A Baseline Study." The similarity with this present evaluation is their discussion on the protection of migrant workers. The difference is that the 2018 investigation focused more on examining legal arrangements to protect migrant workers from the perspective of the positive legal system in each ASEAN country. Conversely, this present research attempted to describe the realization of the ASEAN Consensus on the Promotion and Protection of the Migrant Workers' Rights by the Governments of Malaysia and Indonesia through various policies. The second is research by Arisman and Ratnawati Kusuma Jaya entitled "Protection of Human Rights and Labor Migration for Employment Purpose across ASEAN". Third, this research is also different from Sopyan's research which examines the rights of children of stateless migrant workers in Malaysia (Sopyan, 2021). These three existing investigations are indicative of the Indonesian government's lack of initiative in formulating regulations to protect migrant labor. Consequently, this research differs from the two above by addressing this consensus.

The aim was to analyze consideration for regulations designed to protect post-consensus migrant workers. It comprised three aspects, namely the analysis of the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers, the regulation on the protection of Indonesian migrant workers, and the realization of the consensus. These three objectives represent the realization and enforcement of the consensus to guarantee the rights of migrant workers. This research was based on three arguments, first, the consensus has been unable to guarantee the rights of Indonesian migrant workers in Malaysia. Second, the existing regulations are inadequate, with the lack of concrete law enforcement efforts. Third, a draft policy is a solution for protecting these individuals. Therefore, formulating a regulation to realize the consensus will strengthen related regulations to reduce violations, considering Malaysia is the largest recipient of legal and illegal migrant workers among other countries (Tan, 2016).

All forms of agreement play very significant roles in international law, as they exist as a formal legal source and include the rights and obligations of each subject involved (Blutman, 2010). Hence, countries strive to strengthen commitments in a relationship by formulating agreements, including during decisions to cooperate in a particular organization, association, or regime. There are two forms of agreement in international law, namely hard and soft law, though arguments elucidating their differences are incomplete. However, soft law is recognized by some academics as a legal metaphor and it is considered more appropriate in separation from the law itself (Steinberg, 2002). Hard law is defined as an agreement with a legally binding force, while soft law is only morally binding. They are identified by the name of the agreement, where hard law generally uses the terms "convention, covenant, protocol, and treaty." Conversely, soft law is recognized by the words "declaration, recommendation, resolution, action plan, or consensus." The effectiveness of an international agreement is largely determined by the form of law legalization or international rules.

Meanwhile, a consensus is a form of soft law mostly utilized by international organizations, such as the United Nations, ASEAN, IMF, and GATT/WTO (Pascual Vives, 2019). A distinction between the formal and substantive dimensions of a consensus in public international law is necessary. From a formal perspective (Fonteyne & Greig, 1990), a consensus is a decision-making mechanism within an institutional framework characterized by the adoption of a decision without objections from the involved parties, precluding the need for a formal vote (Pascual Vives, 2019). Substantively, consensus implies a general agreement of the subjects in the international system. It represents the interests and beliefs of the involved parties and allows the identification of international rules that apply to their relationship as well as claim the binding nature of the agreements made. As a result of the decentralized and highly voluntary nature of public international law, the formation, amendment, and termination of agreements are reverted to collective deals reached by the affected parties. These two contrasts between hard and soft law have distinctive implications. Under legally binding hard law treaties, such as the Vienna Convention, states can declare claims (based on the *pacta sunt servanda* principle, the principle of state responsibility, and other international legal doctrines), request procedures, and resort to remedies. These actions are impossible under non-binding soft law instruments, such as the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers, though the state can make normative claims, engage in discourse, and proffer solutions using political approaches. Research has shown that the distinctions in binding strength between the two lead to substantial practical differences and compliance of the parties in the field.

Theoretically, this consensus promotes the formation of several laws and regulations, thereby determining the success of the government in protecting the rights of migrant workers in Malaysia, including aspects of legislation, the regulated substance, and the enforcement of rules (Rother, 2018). Its existence builds a framework for the cooperation of migrant workers in the region and contributes to the process of strengthening the ASEAN Community. Also, the consensus presented a compromise of instruments and mechanisms, which confronts the positions of sending and receiving countries. This is important because migrant workers are mutually beneficial and profitable to both nations. In fact, these individuals are the main drivers of various ASEAN economies, such as the Philippines, Vietnam, and Indonesia, the three large recipients of the world's remittances (Iskandar, 2018). After signing the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers, Indonesia continued with the ratification of the Indonesian Migrant Workers Law Number 18 of 2017. Prior, the country had formulated Law Number 6 of 2012 concerning the ratification of the 1990 United Nations Convention and participated in negotiations to prepare further documents from the Declaration. Until 2017, the leaders of ASEAN members had jointly agreed on a document entitled "ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers" during the 31st ASEAN Summit in Manila, Philippines. Indonesia played a role in initiating the consensus because of its strong interest to protect its migrants. However, this protection requires efforts and cooperation from various countries through a consensus and legally binding conventions (Sudagung & Olifiani, 2020). There are many cases of abuse or violence against Indonesian migrant workers because receiving countries have not yet implemented the protection. The country's expertise in initiating this consensus demands appreciation regardless, as it indicates its contributive steps in protecting migrant workers at the national and regional levels.

However, implementing a legally binding consensus has proven difficult because of the many challenges from ASEAN countries, such as Malaysia and Singapore.

Another effective rule after the issuance of Law no. 18 of 2017 is the Ministry of Manpower Regulation 18/2018, which revoked the Ministry of Manpower Regulation Number 7 of 2017 concerning the Social Security Program for Indonesian Workers. According to Regulation No. 18 of 2018, stipulating a Regulation concerning Social Security of Indonesian Migrant Workers is required to implement the provisions of Article 29 paragraph (5) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (Jogloabang, 2018). Regulation 18/2018 was stipulated in Jakarta by the Minister of Manpower, M. Hanif Dhakiri, and promulgated in the State Gazette of Indonesia of 2018 Number 1624 by the Director-General of Legislation, Widodo Ekatjahjana, on December 10, 2018, to ensure extensive transmission. Furthermore, Indonesia agreed to an Action Plan (2018 – 2025) to implement the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (Jogloabang, 2018). This Action Plan has resulted in the country's involvement as a coordinator of several activities. As part of the ACMW Work Plan 2016-2020, it organized the public campaign on safe migration and promoted capacity building and the sharing of best practices in the worker market in 2018-2019. The country also held a workshop on the protection of migrant workers through an ASEAN networking forum on worker inspection, and a reintegration program for returning migrant workers was formulated in 2018. Furthermore, it coordinated a Workshop as a New Project proposed by ACMW Indonesia to improve the quality of Pre-Departure Training and researched migrant worker rights based on standard employment contracts in 2018. Through the ACWC Work Plan 2016-2020 in 2018, it organized the program "Children's rights: strengthening the survivors for preventing TIPs in ASEAN," and finally, the nation developed policies to accommodate the access of migrant workers' children to education, according to the New Project Proposed by ACMW Indonesia (Jogloabang, 2018).

However, these regulations have had little impact on the protection of Indonesian migrant workers (Sudagung & Olifiani, 2020), evidenced by the death of three migrant workers from Indonesia overseas. According to Daniel Awigra, the Project Manager for ASEAN and Human Rights at HRWG, the death of Milka Bumiao was odd. The deceased was strongly suspected of being a victim of human trafficking because her age and date of birth were falsified to ensure she fulfilled the requirements to work abroad. Daniel emphasized that the Indonesian government's commitment to implement the 1990 UN Convention and the Protection of Indonesian Migrant Workers Law is still insufficient to obviate the criminal act of human trafficking (TPPO) that ensnares migrant workers (Sudagung & Olifiani, 2020). The chairman of the Parliament, Bambang Soesatyo, expressed a similar view, stating the need for the central and regional governments to identify areas susceptible to human trafficking. Consequently, the reality of the vulnerabilities of migrant workers should motivate ASEAN countries to establish protection for migrating citizens as well as promote cooperation among the members. The presence of the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers should be interpreted as a progressive effort to realize a legal instrument for inclusive, non-discriminatory protection guided by international human rights standards. This is a step towards a binding legal basis to limit acts of violence against migrant workers. In addition, the consensus should be demonstrated through the signing of regional and international agreements as well as national and local implementation efforts through policies/regulations, work programs, and action plans.

Law enforcement is the last step in realizing the protection of migrant workers' rights that ensures the adequacy of legislation in preventing violations. Indicators of law enforcement are sanctions applied to violators, highlighting the significance of including punishments to follow up on the consensus. The 2018 Human Rights Working Group (HRWG) research entitled "Migrant Workers' Rights in ASEAN Region: A Baseline Study" (Bal & Gerard, 2018) bears some similarities with this present investigation, as both discussed the protection of migrant workers. However, the HRWG discussion focused more on examining legal arrangements from the perspective of the positive legal system applicable in each ASEAN country. This research, in contrast, attempted to describe the realization of the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers by the Malaysian and Indonesian governments through various policies. Also, it examined the policies formulated by the two countries and utilized the development of the digital revolution to ease the migrant worker protection system. This highlights its distinctive but complementary

relationship with previous research, leading to its anticipated use as an addition to past investigations.

2. Research Method

This is qualitative normative juridical research to examine regulations concerning the realization of the consensus on the protection of migrant workers. It utilized primary data, comprising related legislation, and secondary data obtained from research on the realization of consensus published in national and international journals (Nugroho, 2019). The data collection techniques employed were library research, which were analyzed via normative law (Kharisma, 2020). This normative legal study gathered data from documents examined qualitatively (Kusumaningtyas, 2022). The normative juridical approach was chosen with the argument that this study wanted to examine regulations related to the realization of the consensus on the protection of migrant workers. The data sources in this study are divided into two, namely primary data sources and secondary data sources. The primary data sources in this study were interviews with the head of Indonesian Migrant Workers Protection Agency/Badan Pelindungan Pekerja Migran Indonesia (BP2MI), the Director of Migrant Care, and the Ministry of Manpower. The secondary data sources include legislation on migrant workers and research results on consensus realization published by national and international journals. Data collection techniques are carried out manually and digitally, tracing related legal materials. The data analysis technique in this study used descriptive analysis (Kusuma et al., 2021).

3. Results and Discussion

3.1. Consensus on Migrant Worker Protection

The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers is an agreement that contains general principles and several important points, covering the political-security, economic, and socio-cultural aspects of the involved countries. It is aimed at 1) achieving the full potential and dignity of migrant workers in a climate of freedom, equality, and stability based on the laws, regulations, and policies of each ASEAN Member State. 2) Recognizing the fundamental rights of migrant workers as regulated in applicable international and regional agreements in accordance with the applicable national laws, regulations, and policies. 3) Upholding the basic rights and dignity of migrant workers without compromising the application of the laws, regulations, and policies of the receiving State. 4) Promoting fair treatment of gender and nationality, alongside preserving the rights of migrant workers, particularly women, based on the obligations of each country under the appropriate international instruments to which they belong. 5) Pursuing a constructive, non-confrontational, and cooperative approach to enhance the achievement of its goals.

The consensus is divided into 8 chapters, which regulate the general principles, definitions, basic rights of migrant workers and their family members, special rights of migrant workers, obligations of sending and receiving countries, commitments of member countries to ASEAN, and proposed amendments. Although the consensus was formulated to strengthen the laws for protecting migrant workers, it does not include any sanctions in case of violation. This signifies the need for legal instruments to prevent violations of the rights of migrant workers. Each country is expected to protect migrant workers based on effective laws and regulations. Hence, migrant workers in Malaysia are subject to applicable laws of the country but should still be protected by the Indonesian government and vice versa.

Table 1. The ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers

No	Regulation	Material Coverage
1	Article 2 of Law Number 18 of 2017 concerning the Protection of Migrant Workers	Integrity, equality of rights, recognition of human dignity and rights, democracy, social justice, gender equality and justice, non-discrimination, anti-trafficking, transparency, accountability, and sustainability.
2	Article 3 of BPPMI Regulation No. 9 of 2020, Concerning Exemption of	(1) Indonesian Migrant Workers cannot be charged with Placement fees.

<p>Migrant Worker Fees</p>	<p>(2) Placement Fee as referred to in paragraph (1) means:</p> <ol style="list-style-type: none"> a. Departure ticket; b. Return ticket; c. Work visa; d. Work agreement legalization; e. Work training; f. Work competency certificate; g. Company services; h. Passport replacement; i. Police certificate; j. Indonesian Migrant Workers Social Security; k. Domestic health and psychological examinations; l. Additional health checks if certain countries require; m. Local transportation from the area of origin to the place of departure in Indonesia; and n. Accommodation.
<p>3 Law No.6 of 2012 on International Certification of The Protection Of The Rights Of All Migrant Workers And Members Of Their Families (Articles 8, 9, 10, and 11)</p>	<ol style="list-style-type: none"> 1. Migrant workers and their family members should be free to leave any country, including their nation of origin. This right shall not be restricted except as provided by law, necessary to protect national security, public order, public health, and morals, or the rights and freedoms of others, and which are consistent with the other rights recognized in this Convention. 2. Migrant workers and their family members should have the right to enter and stay in their original country at any time. 3. The right to life of migrant workers and their family members should be protected by law. 4. No migrant worker or their family members shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. 5. No migrant worker or their family members may be enslaved. 6. No migrant worker or their family members shall be required to perform forced or compulsory work. 7. In a country where imprisonment with hard labor is imposed as a punishment for a crime, paragraph 2 of this Article shall not exclude the performance of such manual work following a sentencing decision by a competent court.

In reality, some regulations in Table 1 are not enforced by the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers. During the COVID-19 pandemic, the Indonesian government made no special rules regarding the presence of workers in other countries, including Malaysia. The existing limitations only concern the entry of foreign workers, with no formal regulations governing Indonesian workers abroad. This leads to double difficulties, where the individuals cannot return to Indonesia or lose their jobs. This is in stark contrast to the ratification of the Job Creation Law and the Mineral and Coal Law. If a law that has nothing to do with the handling of COVID-19 can be implemented, why can't it be possible to formulate regulations for Consensus enforcement.

3.2. Soft Law Consensus and Undocumented Migrant Workers

As previously mentioned, the ASEAN Consensus discussed is a non-binding agreement that carries no legal sanctions. According to the AH (Director of Migrant Care Indonesia) "The ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers has been denied by member countries, resulting in enforcement determined by each nation's laws. It is only sunnah (may be applied or rejected), and there are no binding legal sanctions".

AH's statement shows that the enforcement of the consensus lacks a formal juridical binding force and is only a moral appeal, rendering it inapplicable to the current situation and conditions of migrant workers. However, these individuals need moral appeals as well as regulations with formal juridical binding power. The existence of the consensus is increasingly fading in this COVID-19 era. Malaysia closed access to foreign workers, though Indonesian labor continues to enter the country through illegal channels, resulting in a greater risk. In other words, the absence of regulations to enforce the Migrant Workers Consensus is tantamount to allowing illegal Indonesian workers in Malaysia, and even neglecting human trafficking (Maksum & Surwandono, 2017; Wahyudi, 2018) Also, there is limited access to health and high levels of COVID-19 transmission, alongside the uncertainty of wages while working during this period. This shows that the consensus is increasingly being ignored during this pandemic.

3.3. Undocumented Migrant Workers

The high volume of violations against Indonesian migrant labor working abroad have shown no significant signs of improvement, including the inability of the consensus to improve the situation. Hence, the consensus is only part of legislative efforts to increase the protection of migrant workers' rights in the legislation. AH stated the weak protection is caused by the high cost required by prospective Indonesian workers abroad, though many are unable to pay according to the applicable regulations.

AH's statement shows that the current regulations tend to burden prospective migrant workers, leading to their choice of other alternatives with larger risks and unclear guarantees. This is emphasized in Law No. 18 of 2017 concerning the Protection of Migrant Workers that foreign labor dispatched by unofficial dealer services will not receive protection guarantees. Hence, prospective migrant workers themselves prefer being undocumented but are unable to defend their rights and help themselves in case of a law violation. The Head of BPPMI Regulation No. 9 of 2020 concerning Exemption of Indonesian Migrant Worker Placement Fees (PMI) attested to the exemption of fees, which greatly reduces the number of documented migrants due to the expenses involved (Hamzah, 2022). Article 3 of the Regulation stated that "Indonesian Migrant Workers cannot be charged with placement fees."

Based on Articles 3 and 5 of BP2MI, Indonesian migrant workers are exempt from placement fees, though the term "agreement" in Article 5 still requires follow-up from both parties. As a result, it is a source of disagreements, which have implications for the non-enforceability of the BP2MI regulation (BPMI, 2021). A further implication is Indonesia's denial of the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers. Therefore, the zero-fee bureaucratic reform has not fully been implemented as a solution in overcoming the problem of violations of the rights of Indonesian migrant workers abroad. Thus, the enforcement of the ASEAN Consensus must have implications for bureaucratic reform of exempting migrant worker document fees.

The consensus, which was expected to be a solution for protecting migrant workers, has been denied by ASEAN countries. During the Covid-19 era, this consensus was determined to be a soft law that has no binding legal force to protect Indonesian workers in Malaysia and other ASEAN countries. This low quality of life diminishes the ability to legally defend their rights, exacerbated by the undocumented migrants taken as workers, thereby leading to challenges in handling the legal violations against Indonesian workers. Hence, the consensus, as the first step, still requires binding regulations, especially between Indonesia and Malaysia. The high violations of the law reflect the lack of political will to improve the protection of workers' rights. Although the regulations are adequate, the enforcement is stagnating progress, as there is no priority for implementation. Foreign workers bring a division to the state, which creates a paradox where the country benefits from the foreign exchange but ignores the safety of the migrants.

This neglect is due to the complexity of the problems experienced caused by migration arrangements (M. Nur, 2018). The protection requires coordination and understanding between the sending and receiving countries. However, the challenges faced at the pre-deployment stage are still unresolved by the domestic government, such as the lack of documentation, messy data, the number of brokers, difficult bureaucracy, and various practices of illegal levies. The existence of Covid-19 has made the implementation of the ASEAN consensus very difficult. Hence, the pandemic and the

accompanying problems can be categorized as a stressful life event due to the significant impacts on both psychosocial and health aspects (Sondakh et al., 2022)(Gandasari & Dwidienawati, 2020), (Hantoko et al., 2021), (Derek et al., 2021), (Khan et al., 2020). Labor rights violations and exploitation were apparently increasing during the pandemic (Sandanasamy et al., 2020). The loss of income and employment (Zeinedini et al., 2022), feelings of insecurity, uncertainty about the policies of the recipient country's government, and increased social isolation are very likely to worsen the physical and mental health of migrant workers. However, various countries, including Malaysia, are occupied with handling the pandemic and prioritize protection for their citizens (Sandanasamy et al., 2020). The COVID-19 pandemic in Malaysia has had a detrimental effect on migrant labor. The sequence of events and actions by the government after the first Movement Control Order (MCO) was implemented demonstrated a lack of coordination and consistency across various government entities in their management of migrant worker issues. Malaysian Trade Union Congress (MTUC) alleged frequent abuses of migrant workers' labor rights, including wrongful termination of employment, unpaid salaries, and substandard living conditions (Landry et al., 2021).

The ASEAN Forum on Migrant Labor (AFML) aims to discuss and strengthen new spaces for the political participation of migrant civil societies in member countries. AFML was established by the International Labor Organization and reflects its tripartite format, essentially uniting governments, employers, and workers' organizations. Most importantly, migrant support and independent organizations have limited access to the deliberations held regularly (Bal & Gerard, 2018). In the ASEAN Consensus discourse, Malaysia is included in the group of recipient countries and is required to perform several obligations as contained in Articles 30 to 43. However, there is no strong binding force to obey and implement the consensus because it is only a moral obligation. Indonesia, in contrast, is included in the group of sending countries and is obligated by the regulations in Articles 21 to 29.

Some of the rights of migrant workers have been regulated in Malaysian law (Al, 2016), such as 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 Facilities Act 1990, Occupational Safety and Health Act 1994, and others. However, there are weaknesses in enforcing the law for fulfilling the rights of migrant workers (F. S. and M. Nur, 2021)(Spaan & van Naerssen, 2018). Many suffer from unpaid wages, long working hours, substandard living conditions, travel documents withheld by employers, or unfair dismissal (Wahyudi & Jusoh, 2016).

3.4. The impact of COVID-19 on the Legal Protection for Migrant Workers

There is a gap between the regimes for managing migrant workers at the international and regional levels. International regulations tend to be very progressive, compared to regional regulations, which tend to be discriminatory (Noor & Shaker, 2017). This is because migrant workers are considered a group that disrupts the social and economic security and stability of a country, thereby diminishing respect for migrant workers as part of society or as human beings whose rights should be fulfilled (Loganathan et al., 2019). The reality is that recipient countries consider several employment risks from legal, political, social, and economic aspects when accepting migrant workers. As a result, they have not ratified some conventions on the rights of foreign workers to enable users of labor, such as the government, private sector, and companies can avoid lawsuits in cases of violations. This highlights the urgent need for the political commitment of both countries to uphold the rights of migrant workers.

Therefore, long-term solutions are needed to strengthen the real commitment to protecting migrant workers in Malaysia. There should be an improvement in the regulations and governance in Indonesia first at the pre-placement stage before exerting efforts at the placement stage. Several plans and actions needed at the Pre-Deployment Stage include *First*, Improvement in Data Collection System. The first and most important step is to improve the data collection of migrant workers in Malaysia. This is a particular challenge for developing countries, where the ability to collect, manage, analyze and report data on mobility, migration, and other areas are often limited (Laczko, 2016). However, the government may be unable to successfully conduct surveillance in situations where the number and location of subjects

being monitored are unclear. There should be commitment and coordination between ministries and BP2MI to evaluate and improve data. The involvement of various parties is also very important, including village governments throughout Indonesia, which expanded their participation in protecting foreign labor, particularly the current PPMI (Protection of Indonesian Migrant Workers) Law. According to Article 42 of the PPMI Law, the Village Government ensures the validity of the data and records of prospective migrant workers. Some of the documents required to become migrant workers are also obtained from the village government, meaning they should be aware of the number of residents that are migrant workers. The Village Government can also collect data and report on unregistered residents who work and are suspected of taking illegal routes, allowing the local Manpower Office to take further action. Currently, the data from the current ministry or agency only contains officially registered citizens, while illegal workers are not documented, even though the country is obliged to protect both illegal and official migrants. This is because the people are forced to work abroad because of the state's failure to guarantee jobs and a decent living (M.Nur, 2021).

Second, Strengthened Management and Sanctions. Although the traffic lanes on the Indonesia-Malaysia border plied by illegal migrant workers are widely known by the authorities, there are allegations that some officials deliberately allow and exploit the users of such routes (Yuli Kusmanto, 2014). Indonesia is classified as a Tier 2 country with legal tools to combat human trafficking but limited capacity and a lack of serious law enforcement and judicial officers (Susanti et al., 2022). In addition, research by Migrant Care and other advocacy institutions found a lack of understanding and common commitment among law enforcers regarding cross-border law enforcement as well as a problem with judicial institutions. These facilities often give unfair decisions and preserve impunity for the perpetrators, thereby promoting illegal migration (Utami, 2019).

Third, Bureaucratic Reform. The document processing stage is a vulnerable point for the extortion of prospective migrant workers. Referring to Article 13 of the PPMI Law, some essential and special documents should be fulfilled by a migrant worker, particularly in certain sectors. However, many are poorly educated and do not understand document processing procedures, thereby misleading them to undergo processing through brokers/sponsors/P3MI that will eventually be more expensive. These brokers do not work alone in the field and are often assisted by unscrupulous officers at the document publishing agency. Hence, a bureaucratic reform (Suyadi et al., 2022) through the active involvement of the Village Government is needed to ensure the fulfillment of appropriate document assessment for prospective migrant workers. This authority should be formally regulated along with technical rules in the field. Furthermore, legal aid institutions should be consolidated and strengthened at the Placement Stage. These agencies should rethink their strategies for organizing migrant workers, as the conventional methods used in Malaysia have proven to be ineffective (Wahyudi & Jusoh, 2016). The geographical location, the status of migrant workers, repression from employers, and psychosocial fears are factors that prevent their consolidation in an organization. Therefore, Southeast Asian legal aid institutions should collaborate to approach parties that possess appropriate resources and can influence other migrants to form workers' organizations. This will enable the establishment of a movement to combat oppression and exploitation, thereby promoting the fulfillment of their rights through legal aid mechanisms. Migrant worker networks and communities in sending and receiving countries can also unite to fill knowledge gaps and contemporary issues. This consolidation can be accomplished through the ASEAN Forum on Migrant Labor (AFML), which is held regularly at associated member countries (Maharani et al., 2017).

4. Conclusion

This research obtained three findings, first, the migrant consensus as a soft law does not have binding legal force to protect Indonesian workers in Malaysia and other ASEAN countries. The low education quality of Indonesian workers and illegal migration also hinder their ability to legally defend their rights, resulting in difficulties handling violations against the victims. Hence, the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers is only the first step that still requires binding regulations between the involved countries, particularly Indonesia and Malaysia. Second, there is no regulation associated with the consensus, as the new law is unrelated to this agreement. Third, the realization of the consensus is non-existent because cases of human rights violations, such as harassment, exploitation, physical violence, and discrimination against migrant workers remain unresolved and are increasing. This is a major issue for undocumented migrant workers, whose conditions are increasingly worrying during the Covid-19 pandemic. Therefore, further steps are needed, namely recollecting the data of Indonesian workers in Malaysia, strengthening management and sanctions, bureaucratic reforms to promote ease for prospective migrants, and the consolidation of legal aid institutions.

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