

Executive Summary

Quick Research on the Urgent Issue of ASEAN Community : The Unskilled Migrant Labor

The research report of quick research on the urgent issue of ASEAN Community with respect to the unskilled migrant labor has the objective to study and analyze on overall situation and problems relating to unskilled migrant labor both in general on a regional basis and certain uniqueness for the case of Thailand, Singapore and Myanmar, as well as other countries that can provide decent contexts as case studies. The study also covers policies and agreements within the ASEAN member countries pertaining to unskilled migrant labor in order to study and recommend on solutions to the problem of unskilled migrant labor under legal operating framework of ASEAN countries so that there will be ultimate goal achievements in proposing the directions, practices and ruling guidelines. This also includes any possibilities in development and integration of relevant laws, rules and regulations regarding the issue of unskilled migrant labor in Thailand according to agreements that the nation has with the ASEAN Community under the conditions and constraints of the national economy and society.

The regional integration of ASEAN has objective of building the region with peace that would bring about political stability, economic prosperity along with social and cultural cooperation. The other main objective of such integration is to drive economic growth and create social and cultural cooperation within the region into unity. Besides, the integration also aims at promoting peace and stability on matters linked to laws and regulations, judicial process and international relations. Therefore, the issue on unskilled migrant labor has a very important role in achieving the goal of regional integration of ASEAN.

The situation of migrant labor mobility in ASEAN reflects on a continual increase of migrant labor from 1.5 million workers in 1990 to 6.5 million workers in 2014. Two major factors cause such phenomenon. First, refers to the disparity of levels of economic and social developments coupled with political stability of the member nations. Second, is the connection between labor and economic growth as well as demographic structure of member countries. The ASEAN member nations that have been destinations of the migrant labor mobility include Malaysia, Singapore and Thailand. These trio of countries serve as high as 90 percent of the total number of migrant labor mobility in the region. On the other hand, the countries that act as

originating sources of unskilled migrant labor mobility that are located in the mainland of ASEAN include Myanmar, Lao PDR and Cambodia whereas those being located in the sea and becoming the originating sources of such mobility are Indonesia and Philippines.

For case study of Singapore, the nation has complex and stringent policy of importing migrant labor with target of organizing labor to support economic growth. It is carried out by using instruments that make costs of hiring migrant labor higher, e.g. fees of hiring migrant labor and insurance fees that are collected in equivalence to payments made in traveling back to originating nations or stipulations on the employers to provide or pay for accommodations of migrant labor in order to reduce social cost burden. In addition, the measure also includes the attempt to obstruct unskilled migrant labor via imposition of limits on labor freedom by disallowing any dependent followers from co-habitation and promoting rotation of unskilled migrant labor through regulating on working durations, races and genders of workers entering into workforce of certain industries. Singapore succeeds greatly in reducing number of illegal migrant labor. Currently, it accounts for merely 2 percent of total migrant labor. It is partly due to the geography and country size of Singapore that appears to be a small island, which helps ease protection of illegal migration into the country and the law enforcements relating to unskilled migrant labor.

Coming to case of Myanmar, which is one of the countries that is least developed in the world given the 150th out of 180 countries in the ranking of Human Development Index (HDI) and the lowest income per population head in ASEAN. This prompts unskilled labor to choose to migrate illegally in trying to find jobs with better income. Consequently, this causes problems of migrating illegally through borders of Thailand and Malaysia with the use of tourist visas. The total figures of illegal migrant labor from Myanmar is around 3 - 4 million workers migrating to Thailand, Malaysia and other nations. The policy of Myanmar directed at managing unskilled migrant labor lacks coverage and clarity. The political party under leadership of Aung San Suu Kyi used to proclaim that it would bring back its migrant labor to the country, leading to perceived unpredictability of labor exporting policy by the government of Myanmar. The governments of the destination countries that import migrant workers from this country so that there exists a lack of confidence in employing them. Furthermore, the operation by government of Myanmar on protection and suppression of illegal migration of migrant labor also remains inefficient. This paves the way for workers of Myanmar to migrate illegally, which is the fundamental problem that further leads to

human rights violation and human trafficking. The majority of Myanmar's migrant labor is unskilled workers without knowledge and understanding on laws and cultures of the countries they are going into for doing jobs. As the development of skills and knowledge of Myanmar's migrant labor has not yielded any tangible outcome along with ongoing problem of minority ethnic group of Rohingya not being accepted as people of Myanmar, this also causes the problem of difficulties in verifying nationality of Myanmar's labor in Thailand.

The case study of Thailand proves that fast economic growth of Thai economy under mobilization of international economy sector through development of industries that utilize capital as well as those that are labor-intensive becomes pull factor that attract continually rising inflows of migrant labor into the country. In parallel, Thailand is also presently facing with the change in population structures that forces the nation to enter into an aging society coupled with the other problem in terms of both quantity and quality of citizens of all ages. The circumstance thus generates a high level of demand for unskilled labor. During the past 20 years, Thailand has developed policies and measures to manage unskilled migrant labor on a continual basis. The country takes on a transition from a defensive approach on inflows of unskilled migrant labor that accommodate and work in the Kingdom of Thailand to a proactive policy implementation by determining policy directions and management of unskilled migrant labor that are congruent with national development policies. Other policies include selection of unskilled migrant labor with quality by training and participation of employers in selecting unskilled migrant labor from originating nations, reduction of dependence on unskilled migrant labor by imposing tax ceilings and collecting taxes on unskilled migrant labor, establishment of funds for sending unskilled migrant employees back to their homeland after the expiration of their work permits, and enactment of severe punishments for employers and unskilled migrant labor who fail to abide by the laws as stipulated in the Alien working act B.E. 2551.

Nonetheless, the management of unskilled migrant labor in Thailand has not really been successful because it has not reflected real attempt to reduce dependence of unskilled migrant labor. This causes employers to be unwilling to invest in improving working environment and developing production technology that would upgrade its efficiency, which in turn creates damage to sustainability of national economic growth into the future. The registration and extension fees for unskilled migrant labor are relatively high with requirements of numerous documents and procedures. Blockages of migrating unskilled migrant labor along borders, suppression

and arrests of those who smuggle to bring in and use unskilled migrant labor for employment and repatriation of labor to originating countries have also been inefficient. Apart from those problematic measures, policies also have no clarity on the management of protection of rights and welfare of unskilled migrant labor.

For the other group of countries that also represent some contexts as case studies, including Cambodia, Lao PDR and Vietnam, all face similar problems. Most workers are still unskilled labor even through their governments already put in place policies to upgrade their skills. This is because the success of such policies is not yet found due to a lack of funding. Governments of Cambodia and Lao PDR both have policies of foreign investment promotion, but majority of such investments has been concentrated in particular areas. Their wage rates are even lower than the one in Thailand, thus triggering the outflows of unskilled workers from these countries into foreign soils. The case of Vietnam reflects fact as the country with a huge workforce, but its government otherwise has no policy to export labor. In contrary, it has policy of promoting the investment from within the country by emphasizing on investment distribution to distant rural areas in order to promote employment. To summarize, although all three nations have already signed in the Memorandum of Understanding on the cooperation of unskilled migrant labor employment with Thailand so that they can jointly implement some measures to manage unskilled migrant labor to a certain extent, they still have to confront with problem of high fees being collected by private companies that are agencies to provide jobs. On top of that, some corporate job-providing agencies have not been permitted to deliver services or have committed fraud against labor. Many workers have not had their skills developed and lacked of knowledge and understanding about rights and duties of migrating labor in Thailand.

With respect to the general operations of the ASEAN region, all ASEAN leaders have already together signed and acknowledged the Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, which identifies relevant working plans of ASEAN Political and Security Community for year 2025 regarding unskilled migrant labor. The plans indicate that implementation must be carried out under cooperation on human rights protection, which covers all groups of ASEAN population. The operation relating to problem of the unskilled migrant labor covers some problem solving measures on human trafficking, labor smuggling and border management as these are all linked to illegal mobility of migrant labor in both ASEAN and Thailand. According to working plans of ASEAN Socio-Cultural Community for year 2025, it addresses migrant labor in various dimensions, including promotion of equal access to opportunities by people

of ASEAN, promotion and protection of human rights of migrant labor on the basis of underlying principles of such rights, provision and operation on practices of quality monitoring over migrant labor, social protection, health insurance, food safety, poverty eradication and human trafficking, and employment and valuable job creation. Within working plans of ASEAN Economic Community for year 2025, there has been no specific reference to unskilled migrant labor.

Management of unskilled migrant labor at levels of government policies and international cooperation with ASEAN has an important issue as a problem. It is evident that ASEAN still has no direct agreement on unskilled migrant labor mobility. This makes the region incapable of jointly defining ways and measures to manage unskilled migrant labor given that each member country has its own unique policies, measures and guidelines. Such differences cause inabilities to identify definite ways to successfully manage regional unskilled migrant labor. Even though leaders of ASEAN have already signed the Declaration on the Protection and Promotion of the Rights of Migrant Workers B.E. 2550 that cover issues like wage determination, protection of basic rights of labor, facilitation of information, job provision, and education and training to enhance labor skills. However, the agreement does not have any enforceable legal status so that it cannot create any law amendments and enforcements on unskilled migrant labor in ASEAN.

Economic problems pertaining to the use of unskilled migrant labor in ASEAN are also noteworthy. For the case of Singapore, employers must be responsible with bearing real costs that arise as a result of such use. Consequently, this leads to firm dissolutions or movements of production base to other foreign countries. The country has also experienced unequal treatment toward migrant labor, depending on which nationalities are concerned. Such inequality is reflected via tax rates, occupation and duration of jobs. For instance, greater privileges are offered to workers from Malaysia and nations of North Asia than those from China. For the case of Thailand, the use of unskilled migrant labor compels entrepreneurs to rely on these employees, become unenthusiastic to improve production via using capital factors, and upgrade technologies to make them more advanced. These will altogether positively affect long-term national economic development. The unskilled migrant labor, whether it is legal or not, causes some fiscal burden, especially in terms of medical treatments and healthcare as well as education, which are public services that states are responsible for all expenses. Speaking of the cases of Myanmar, Cambodia, Lao PDR and Vietnam, they also confront with some significant troubles. This includes deficiency of budgets

in providing education and training to develop potentiality of the migrant labor, making these workers from such nations to remain unskilled without knowledge and understanding about works they are involved with. This then leads to problems of wage pressing and labor exploitation. Inability to solve another problem of high service fees collection from unskilled migrant labor by agencies that export labor to foreign countries also eventually prompts another problem of illegal smuggling of unskilled migrant labor.

For solving the unskilled migrant labor problem, the government's policy have to be obvious whether unskilled migrant labor is still necessary for Thailand. There are four possible policies. First, they are not necessary for Thailand anymore. Second, they are still necessary with lawful immigration. Third, they are still necessary with lawful immigration and registration system for present migrant labor. Fourth, they are still necessary without immigration system. Regarding document studies and focus groups prove that not only the unskilled migrant labor but also immigration system for labor is still needed for Thailand, so the second and the third policy are the most appropriate policies for Thai government.

Owing to the importance of unskilled migrant labor and immigration system, the immigration law is considered to solve the problem. This law focuses on immigration conditions to Thailand which are immigration objective, financial status and working intent. However, the punishment for unlawful immigration is imprisonment not exceeding one year or fined not exceeding ten thousand Baht or both and may fined of two hundred Baht per day during staying in Thailand while the punishment in Singapore and Malaysia is much more severe. Besides, the punishment for the accomplice is more drastic than the punishment for migrant labor. This improper punishment may be the cause of violence of immigration law in Thailand, so the punishment in immigration law shall be amended

According to Alien working act of Thailand and International labor MOU between Thailand and other countries (Cambodia, Laos, Myanmar and Vietnam), some unskilled works are preserved for Thai labor. Notwithstanding, those works are not desired for Thai labor, so those works should be permitted for alien by MOU. This would be the solution for unskilled migrant labor problem.

Furthermore, Labor Relation Act should be considered on migrant rights especially rights regarding labor union because the labor union could protect migrant rights on negotiate with their employer and this also follows ILO's conventions.

Nonetheless, this amendment should be consider on Thailand capability for ensure those right too.

Increasing fees on migrant labor may be useful economic measure for reducing unskilled migrant labor demand, on the other hand this measure may incur more grievous on unskilled migrant labor problem in Thailand.