

## **“THE MARGINALIZEN” IN MALAYSIA: HUMAN RIGHTS PREDICAMENT AND THE FUTURE CHALLENGE OF ASEAN INTEGRATION**

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The social life of undocumented migrant workers from Southeast Asian countries who have been living in Malaysia for more than 10 years is a serious phenomenon that needs close examination. Based on observation, documentary studies and ethnographic approach, this paper discusses the context of the industrialization of their home countries which do not give advantage for the people living in rural areas. The attraction to come to the high income country like Malaysia has become their solution for better future. However, in Malaysia they have become the “marginalizen” in term of human rights perspective. They do not have any substantial rights from their country of origin or in Malaysia. Within this situation they constructed a horizontal network beyond the state for their own survival strategy in facing the vertical power of the state. Meanwhile, ASEAN integration remains cloudy and hazy politically. It is because they remain involute within the simulacra of the past that has become entangled with the post-colonial nationalist discourses in the present. Southeast Asian regime and society seem unable to go beyond the dialectical oppositions of nationalist idea (as a sense of selfness) which has to be contrasted to a negative other (as a sense of non-selfness). The nationalist discourse that functions vertically based on the state-centric perspective has become the vertical power against the “marginalizens.” This discourse operates through the vertical line of state control: referred to the divisive colonial rule that brought modern discourses of sovereignty of the states and its equally exclusive territories. This power supported the state interest such as ASEAN free trade. Meanwhile, the marginalizen fabricates post-nationalist discourse works beyond the state horizontally. This horizontal power actually promotes free mobility which is oppositional to the state interest. This situation reflects that the regime of ASEAN countries and its society are still in a political predicament that has made them hesitate to move beyond nationalist discourse despite the agreement of the ASEAN Economic Community agreed among the members. This analysis enables us to have a better perspective in understanding the growth of precarious undocumented migrant workers who have become the marginalizen in Malaysia. By approaching the horizontal network we are able to understand on how human rights power actually rely more on the state vertical line which is not effective to touch the issue at the horizontal network of the marginalizen. Moreover, the horizontal network is inspiring because it shows a better model of free mobility at the regional level, for example, by rewinding back the past of the of Nusantara region for a better inclusive future.

## 1. Introduction

Southeast Asian people are now more mobile than ever before, and this has intensified people-to-people connections. The ASEAN Community 2015 Program is one of the agreements among the Southeast Asian leaders for regional integration in the future which will facilitate a new cosmopolitanism. However, social discrimination over migrants from the same region or other Asian countries continues to happen in the everyday life and discursive practices. The history of people mobility in the Southeast Asian region can be traced back historically from our ancient time of Nusantara. From the historical background we can find some regional trading networks. The mobility of people followed the principle of labor market supply and demand as well as political reasons. Before the colonial period or Nusantara, the market operation was actually already global, involving global South regions such as East Africa, South Asia, China, and the Middle East (Wolters, 1967; Reid, 1988; Ricklefs, 2001; Andaya, 2008; Hall, 2001; Miksic, 2014). It was the first phase of globalization that influenced the condition of politics, culture and economy of the Nusantara at that time. The concept of the modern state did not exist and the territorial boundary was not yet implemented, but rather tributary systems after conquests over the people of the subjugated land. The tributary system functioned as political economy which expressed the mutual political collaboration and loyalty. People involved in trading and political expansion were mobile from one place to another and made the Nusantara region their roaming place, by which the material and non-material culture are disseminated throughout this region. This is the reason why people in the Nusantara region are practicing a similar kind of culture.

Global-South trading in the Nusantara region finally attracted the European colonial powers to move into this region. The coming of Portuguese, Spaniards, then followed by Dutch, British, and France had made this region experience a modern era of state formation since the late 14th century. The colonial government introduced mapping of the islands and territory for journey purposes as well as political economy interest (Reid, 1988; Suarez, 1999; Ricklefs, 2001; Andaya, 2008). This kind of territorialism was even used by the local kingdoms to claim their territory. Due to the functioning of a territorial system which needed documents to enter the colonial territory, inter-island mobility of the people and trade in the region indeed became restricted. However, the borders remained porous as noted by Tagliacozzo (2005).

The idea of territorialism during the colonial era was a modern governmentality through which the meaning of “people” living in the Nusantara region was changed by the colonial governments into the concept of “population” of colonial territory. Population meant they were bound within the territory. In this situation, colonial territory had become the boundary of the population within the colonial states. Nowadays this territorialism becomes the post-colonial states idea implemented in Southeast Asian countries consisting of Indonesia, Malaysia, Thailand, The Philippines, Myanmar, Laos, Vietnam, Cambodia, Brunei, and Singapore. Colonialism at that time was the second phase of

the globalization where the territory was very important due to the monopoly of the commodities by each colonial government in the Nusantara region.

The third phase of globalization was related to the economic development in the post-colonial period. The colonial territory had become the colonial legacy that remained functioning to define the territory of post-colonial states in Southeast Asia. During this phase of globalization the mobility of goods was based on agreements between the nation states in Southeast Asia which finally has culminated into a free trade agreement.

This agreement facilitated free trade of goods and free capital flows through global investment. However, labor mobility was not freed yet, while the economic development of Singapore and Malaysia had attracted people from the less developed areas to move into these countries.

ASEAN country members have agreed upon the three pillars for regional integration: the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC). The blueprint of these pillars has been formulated to detail strategic objectives and actions for the benefit of the people. The pillar of ASEAN political security community has begun in working together to solve the security problems in the region. The pillar of economic community has been established for the regional integration plan which is deeply integrated with the global economy. Furthermore, ASEAN country members have already signed the agreement regarding Human Rights issues as manifested in the ASEAN Declaration on Human Rights.

Among these, free labor mobility is the most challenging one in Southeast Asia regionalization due to culture, social class, and territorialism issues. The socio-cultural community pillar has already been there historically. However, the problem of nationalist sentiment that is based on post-colonial territorialism remains sensitive, especially regarding policies on migrant workers. This nationalism issue is a somewhat sensitive one because it also stimulates nationalist sentiment against migrant workers. Social and cultural issue regarding domestic workers from Indonesia and Southern Thailand do not really matter because they are Moslems who speak the Malay language and have a similar culture with the local Malaysians. Bangladeshis, although they are Moslems, are somewhat facing some difficulties culturally that they usually mingle within their own groups of people. Meanwhile, the domestic workers from Myanmar and the Philippines are usually working for the Chinese, Indians or other ethnic groups who are not Moslem. If they face social discrimination it is usually associated with social class as they are not well-educated and socio-economically poor from low income economies. In this situation, they are associated in stereotypes with crime or viewed as taking job opportunities from the host citizens.

Trans-ASEAN job seekers are ranged from less skilled to skilled workers. The less skilled workers tend to work as blue collar workers and the skilled worker as professionals. Professional workers are equipped with legal documents so they do not have significant problems. This paper will not discuss the professionals but rather focus on the less skilled undocumented migrant workers who do not know legal matters; very often they have become stateless and thus experience many kinds of discrimination even though ASEAN already agreed upon general principles of human rights as declared on the ASEAN Human Rights Declaration and manifested in human right body called the AICHR (ASEAN Intergovernmental Commission on Human Rights).

Transnational mobility of workers has become a major issue for the 21st century especially when there is a trend of regionalization. Migration for work has become a central issue within the context of ASEAN integration because it will raise the issues of nationalism from the nation-states. The character of nationalism can be described as a “vertical power”. It is vertical because it very often involves or uses state power vertically rather than orchestrated as nationalist discourse involving people which spread at the horizontal level. Meanwhile the character of transnational movement of workers is horizontal and showing a post-nationalist discourse. It is horizontal because the movement is spread among the workers through the transnational networks. The idea of post-nationalist discourse follows the horizontal movement of the networks and is not bound emotionally to the nation state where they belong. This is the thesis that I will discuss to understand the predicament of migration and human rights within the context of ASEAN integration.

## **2. The Emerging Wave of Migrant Workers**

The industrial transformation of Malaysia and Singapore has made them two major destinations of transnational migrant workers from the surrounding countries. The development of urban areas in Singapore and Malaysia has created various job opportunities that absorb local people and foreigners. Meanwhile, the rural areas of Malaysia also experienced the intensification of the agricultural sector and modern plantation system which had also attracted migrant workers from surrounding countries (Wong, 2007).

The globally-oriented plantations in Malaysia have attracted low skilled labor from Indonesia, Myanmar and Thailand to migrate into Malaysia for better life opportunities. This industrialization has produced a new middle class and novel occupational structures followed by changes in labor relation. The local residents experience vertical social class mobility through the improvement of education. This has allowed them to avoid the same jobs as those of the migrant workers who are usually involved in the small-scale tertiary economic sector (food stalls, distributors, sundry shops, and transportation).

The economic growths in Malaysia and Singapore have also changed the occupational structures that offer better employment alternatives for the people living in less developed areas in the region. Malaysia (as well as Singapore) has become the destination of job for opportunities. Some observers have noticed that builders from Indonesia and Bangladesh were absorbed to work in building the business districts of Malaysia as well as in agribusiness. Then this was followed by the growth of malls, banks, office buildings, and housing areas that absorb security workers from Nepal and from Myanmar. Moreover, due to the vertical social mobility of the citizens, the need of domestic workers also increases. Female workers from Indonesia are commonly taking this opportunity. Some of them work in cleaning services and restaurants as waitresses. Workers from the Philippines usually work as shopkeepers and waitresses in restaurants in Malls. From here we can see that Malaysia as well as Singapore is experiencing the “ASEANisation” of workers.

Migrant workers in Southeast Asia are generally coming from less developed areas of their home countries to move to wealthier countries in the region. The roles of intermediaries are connecting between one country and another. The number of migrant workers has grown rapidly since the mid-1980s following the short recessions in 1985-1986. The Philippines experienced a debt crisis in the early 1980s, and Indonesia also experienced economic adjustment through currency devaluation, budgetary and monetary constraint, as well as regulatory relaxation due to the falling prices of oil in the mid-1980s. During these years Malaysia boosted their industrialization process through export-oriented products and government’s encouragement of the manufacturing industry as a response to the economic crisis (Lamberte et al., 1992; Haggard, 2000).

The new investment incentives and deregulation strategy attracted foreign direct investment and new labor into Malaysia. From these years to the early 1990s, the number of migrant workers from neighboring countries around Malaysia increased significantly. By 1993, the total foreign workers in this country were estimated at 1.2 million, creating about 15 percent of the total labor force in Malaysia (World Migration, 2005). During the economic crisis in 1997-1998, Malaysian government returned thousands of illegal workers from Indonesia. However, Malaysia remained attractive to many Indonesian workers due to the similar cultural environment with that of Indonesia. By the year 2000 the number of foreign workers increased again to 1.4 million, then 1,777 million in 2005 and decreased to 1,542 in 2010 (World Bank, 2013).

The share of foreigners in Malaysia’s labor force increased from 3.5 percent in 1990 to 9.5 percent in 2010, and the significant increase in the share of foreigners is among the population above 15 years old which is considered the productive ages (World Bank, 2013). Interestingly, foreign workers who were participating in the labor force are at a higher level than the proportions of the Malaysians. From 1990 to 2010 the employment rates of male migrant workers rose from 93 to 95 percent (the increase is from 41 to over 60 percent for female migrant workers). On the other hand, the employment rate of

Malaysian males declined from 81 percent in 1990 to 73 percent in 2010. Consequently, employment levels of both male and female migrant workers from neighboring countries are higher than their Malaysian counterparts. Malaysian females' participation in the labor force is approximately around 41 to 46 percent although they are highly educated comparatively to the level of other neighboring countries in Southeast Asia (World Bank, 2013). A possible reason for this situation is the less skilled foreign workers have taken over the job sectors abandoned by the Malaysian females. This situation very often stimulates the nationalist sentiment among the Malaysians.

World Bank (2013) data show that the feminization of migrant workers in Malaysia increases from time to time following the economic progress. The skilled labors are working for the industrial sector and the less skilled ones are working as household assistants. The industrialization of Malaysia and Singapore has created a new social class that needs household assistants since husbands and wives are busy in the work force. Household assistant is the new job sector attracting mostly female workers from Indonesia, Myanmar, Vietnam, and the Philippines to get new opportunities in the urban areas of Malaysia and Singapore. It is the most ambiguous job sector because this sector follows the contract system like the industrial labor system although in reality household assistants are treated as domestic workers in the traditional sense (working for more than 8 hours a day and unprotected by labor unions). This observation shows that domestic work in Malaysia is the hidden place which is relatively difficult to be reached by vertical type of organization such as State or even NGOs. However, their rights are blurry covered by the existing mechanisms, and when some of them managed to escape harsh conditions they became illegal immigrants because their employers withheld their passports.

Foreign investments in industry have made Malaysia one of the more developed countries in the region. Economic progress in Malaysia is achieved through strategies that require a deepening integration into the global economy and the fluid regional labor market. It cannot be denied that this growth takes place at the expense of migrant workers including the undocumented ones from the region. While their roles are valuable to the economic progress, protection of their rights remains insufficient and the undocumented migrant workers in the worst situation have become deeply marginalized to barely stay survive.

### **3. “The Marginalizen” and the Human Rights Problem**

Statistical data regarding documented migrant workers in Malaysia can be easily accessed, but the number of the undocumented migrant workers in Malaysia is difficult to find. However, the number of undocumented migrant workers has probably reached 2.1 million in 2010. Meanwhile, the total number of documented migrant workers for all sectors reached 2,518,000 in the same year (World Bank, 2013). In February 2014, the Home Ministry of Malaysia managed to legalize only 379,000 immigrants,

including 94,856 who chose to return home. This legalization is an attempt to reach the immigration program of zero illegal workers. The existence of undocumented migrant workers in large numbers has significant consequences on local wage rates and terms of employment for documented migrants. This is because the undocumented migrant workers are paid lower and enjoying fewer facilities than those for the documented one. Due to this situation, the Malaysian government carried out a nationwide large operation in the mid of February 2015 to identify approximately 1.3 million illegal immigrants who did not registered during the 6P Amnesty Programme (6 P is the abbreviation for *Pendaftaran, Pemutihan, Pengampunan, Pemantauan, Penguatkuasaan, and Pengusiran* or registration, legalization, amnesty, monitoring, enforcement, and deportation). The large number of undocumented workers is attracted by the huge job opportunities and rapid development of the industrial sector that cannot be fulfilled by the locals despite their willingness to take the jobs. The companies make use the undocumented migrant workers to work more for lower wages and often without basic facilities such as housing, medical care, overtime payment and so forth. To solve this situation, the Malaysian government has implemented the 6P Amnesty Programme to reduce the number of undocumented migrant workers, but the problem is still there. Why have undocumented migrant workers been able to manage living in Malaysia for years?

Malaysian Employers Federation (MEF) Executive Director Datuk Shamsuddin Bardan reported there are currently 2.8 to 2.9 million migrant workers in Malaysia. Blue-collar foreign workers were predicted to contribute quite significantly to the Malaysian economy (about 10 to 11 percent). However, this federation also found that the migrant workers were facing negative sentiments from the locals who were competing for the same jobs (Malaysian Digest, 2015). Moreover, some migrant workers had been unfairly dismissed or abused or their salaries have not been paid by their employers.

Those who face unfair treatment are usually forced to leave their work place. Since their passports were usually withheld by the employers, these unfortunate migrant workers became undocumented. In this situation, they might become indebted to friends within their circles or did not have enough money to go back to their country. Since they could not return to their home country, they are offered to new employers as cheap labor. Typically, they accepted this offer because they had to survive in Malaysia and to repay their debts. The less skilled undocumented migrant workers living in this country for more than two years usually found the social capital needed to support their continued living in Malaysia.

Their social capital forms a horizontal social network, and this network is expanded across the nations by which each group of different nationals will create their own primary grouping and to some extent get connected to each other. Within the groups they will protect each other in social solidarity and very often they also create community activities just like those who are documented migrant workers. They form a kind of “horizontal”

society, but it is not like society of citizens with secured rights under the vertical line of order stemming from the State. This horizontal society is rather developed via a set of social networks. It is horizontal because they do not have leaders, and each individual is bounded into the community through solidarity without any rights and legal protection from the state where they are living as well as from their countries of origin.

Sociologically the undocumented migrants within the network are not the same as the denizens in Europe. The denizen is the migrant who has become resident non-citizens, despite the fact that they have lived in a country of destination for long period without becoming naturalized citizen but who nevertheless have a substantial set of rights except political rights (Hammar, 1990: 16; Sørensen, 1996: 63). Denizen in European context means that the immigrants already had applied to get citizenship but have not got any approval from the government. However, they still have a substantial set of rights outside of political rights or only in limited sense of political right. For example, in some countries they are allowed to vote at the local level of politics but not at the national level. They are not allowed to participate in the political process and to be elected (Sørensen, 1996: 63).

This paper is based of a research involving five key informants who are undocumented migrant workers from Indonesia and Myanmar and three informants from Malaysian citizens. The key informants have been living in Malaysia for more than 10 years. They rent a low price unit in a slum like flat in Selangor area. This flat is close to the industrial areas, housing complexes, and shop houses. They introduced me to the Indian intermediary (*orang tengah*) who connected them with the people who need the undocumented workers as cheap labor and to find the affordable accommodation. I also interviewed a person who sold medicine in the night market as well as vegetable trader who sometimes gave the undocumented workers extra free vegetable and allowed them to pay after they had accepted monthly salaries. The key informants also informed me about the existing horizontal network that functioned as social capital as well as social security that had kept them surviving after losing their jobs. From this horizontal network, they got information regarding job opportunities as a security guard of the gated housing complex, a trader assistant in small shops, sundry, cleaning service, and other casual jobs. Beside interviewing the informants, the researcher also gathered the qualitative data through observation of the area, migrants' daily life activity, the function of the network, and their experience on traveling to Malaysia using fake name, as well as surviving in Malaysia as undocumented migrant workers.

This research shows that the situation of undocumented migrant workers is worse than denizen because these undocumented workers do not have any substantial rights at all. For example, they have been living in Malaysia for more than 10 years without any documents and working for the local citizens illegally. According to Malaysian Employers Federation, these migrant workers contribute to the economic growth but enjoy no social protection from their countries of origin and Malaysia (Malaysian Digest, 2015). Legally they have no economic rights, but the informants of this research report that the local



small business sectors need them and the gated housing complexes also need them for security job. Due to this need, they have a chance to earn money for their subsistence. Since they do not possess proper documentation, they are uprooted from their countries of origin and cannot go back there. However, they maintain their connection with their relatives in their home countries. They also still transfer their remittance to their home country.

They choose to remain in Malaysia for good within the existing horizontal network because they have no anchor back in their home country like land possession. They also know that it will be difficult to get job in their home countries, while in Malaysia they have better jobs than those in their home countries. In this situation the undocumented workers are marginalized socially because they are not a part of the social life of the citizens but rather as outsiders, albeit their contribution to the economic growth from the informal sector. They are marginalized because they do not have the right to access to the bank services for saving or transferring the remittance. Neither do they have the rights to utilize public health facilities. If they have children, their children have no rights to access education. They contribute to the small-scale economic activities, domestic work, security and some other informal economic sectors without benefits or minimum wages. They work illegally within the horizontal networks. Even though they are marginalized in terms of human and other rights but they are surviving without state protection because they have their own social mechanism beyond the state.

Based on this information, this paper defines them as “marginalized” because they have been living in a country of destination for a long period and contributing economic benefits for the country (and themselves) like a normal “citizen” but without substantial set of rights from their country of origin or in the country they live in; thus they are “marginalized”. They do not want to exit from this situation, and some of them try to buy the faked permanent resident IDs or fake passports with fake stamp and so on but they are afraid to show it to the authority.

Historically, the marginalized in Malaysia have created a community for their own social mechanism beyond the state for their survival strategy. It is a form of horizontal society network without any vertical bureaucratic backbone and without any leader. The character of social relation of this society is relatively egalitarian in nature as they are coming from the same social economic status. This society is a self-sustaining society beyond the state’s watch. It is a horizontal society in contrast to the state that is operating vertically. The state is organized through bureaucracy and has a set of organizational leadership.

Marginalized are able to manage themselves through the horizontal network they have created. Within this social capital network they develop strategies to protect themselves from any untoward possibilities, especially from the vertical power that might harass them. Interestingly, this strategy has some points of connection with the citizens and state apparatus. The connection is facilitated by the intermediaries whose function is to

provide casual jobs for the members of the marginalizen. The jobs the marginalizens get usually service to the citizens who cannot afford the normal market price offered by the contractors or cannot afford the government fees to hire documented foreign workers. Meanwhile, local citizens do not want to work in the informal sectors in urban areas. Consequently, some employers choose the marginalizen to work in their businesses and other casual activities such as cleaning services, repairing, painting the house, gardening, or massaging. They are paid on a daily basis with the cheaper wages than the normal market price for the same jobs. The local citizens who need their services are just around the flat where the undocumented migrant workers are living.

The intermediaries in this horizontal network play the role as job providers through words of mouth. Their roles are very crucial within the network of the marginalizens, especially for the newcomers because the intermediaries are connecting them with the citizens. The intermediary is a legal citizen who connects the marginalizens and the contractors who want to get cheap labor for their construction projects. He is not only active in providing jobs but also in providing flats to be rented to the marginalizens. The strategy is by renting the flat from the land lord first, and then re-rent it to the marginalizens to get the profits of a higher rent. The landlord only deals with the intermediary who possesses an identity card as a citizen. The landlord ignores any further dealings. The intermediary is basically a petty rent-seeker who also comes from a low income family that earns below or up to MYR3,000 per month. The extra money from the marginalizens will be very significant for the intermediary's family needs. This has become the strategy of the intermediaries because the undocumented immigrants are not allowed to rent a place to stay without any legal documents. All bills like electricity, water, or sanitation will go to the intermediary but the payment is still made by the undocumented migrant workers who rent the flat.

The social function of the intermediary is almost like a patron in a patron-client relationship, but he is not responsible for political protection. He just tries to do his best for the marginalizen during intermittent raids by the police and immigration officers without sacrificing himself legally or politically. He usually asks the marginalizens to hide far outside the flats during police raids. Sometimes, when the marginalizen are caught by the police on the streets for riding a motor bike without a driving license, they will phone the intermediaries to deal with the police to release them. This help will be considered as social debts. Socio-economically, the marginalizen may borrow money from the intermediary and will pay it back after they get their salary. To a great extent this transaction binds them to the intermediary, and the intermediary also needs them because he has to pay the rent for the flat which is under the intermediary's name. This also means that both sides will be deeply involved in the network because they depend on each other for different reasons.

This evidence shows that the horizontal society has connection or social capital with the vertical society indirectly. The intermediaries here are the connecting points between those two societies, through whom the space for negotiation between two sides occurs.

The involvement of the state apparatuses in this network is not for the purposes of law reinforcement but rather as petty rent-seeker as well (through payment of bribes) just like the intermediary. This triangular pattern of relationships creates the political, economic or social relations for the continuation of daily life.

Among the marginalizens from ASEAN countries, Indonesians are culturally benefited more than others because they can speak Malay language and share the same religion. They can easily socialize with Malays from the similar social classes, even they sometimes get casual jobs from the locals. Although some of the marginalizens have the ability to earn money above MYR3,000 they do not have rights to access health facilities, education, banks, and other social services. However, the horizontal network provides illegally most of the facilities they need. “Health facilities” for the marginalizen is the house of a person who is an expert in massage and herbal medicines, or *dukun pijat* (bone healer) who is usually a woman who are already above 45 years. Work-related accidents like *keseleo* (twisted muscle), back pain, neck pain, and other muscular problems can be fixed by the bone healer. For simple health problems like flu, headache or allergy, they can buy self-administered medicines from drug stores. Very often they get medicines like antibiotics from unregistered drug stores or they can buy medicines from the *pasar malam* (night bazar). The healer usually has customers up to eight persons per day if she works since 8.00 in the morning and finishes at 23.00 at night. The tariff per person is between MYR30 and 40 for 1 to 2 hours of massage. If she works for 30 days a month then her income will be between MYR7,200 and 9,600. Her income is above the poverty line in urban Malaysia, which is below MYR3,000 per month/family. Due to the fact that the bone healers are undocumented migrants, they do not pay government taxes. They usually keep their cash at home because they do not have bank account. If they want to transfer their money to their home country, some helpers among the local citizens would help them with internet banking services. So the undocumented migrant workers need not to show any document when they want to transfer their money through informal legal banking services.

Marriage is also an important issue. The Muslims already have a religious ceremony by calling some witnesses and *ustadz* (Islamic clerks) to hold the Islamic rites to settle a legal marriage under “Islamic laws” but not under the state law because the marriage is not legally registered. If there is no *ustadz* available around, they ask a person among the marginalizens who are well-versed in Islamic teachings to be persons who are in charge with “authority” to legalize marriages under the Islamic laws. For delivering babies, the marginalizens give birth at home helped by a traditional midwife who is also coming from within the horizontal community. Of course the babies will not be registered in local offices. Consequently, the baby will become a new born stateless or marginalizen baby, who will not have access to education and other rights in the future. This situation might lead to the possibility of baby selling and trafficking when the marginalizens face economic problems.

The social life of the marginalizen society is just like the everyday life of the other citizens. They create their own social system to support their own needs as the subalterns beyond the state's surveillance. Simple self-reliance, subsistence economy and horizontal cooperation through social networks are their main social foundations to live without the state's services. They are outside the state hierarchical system because there are some spaces where the state is absent. This absence shows the myopia of the state that it does not realize its inability to fully control the spaces using its vertical power. The state is not everywhere that the horizontal forces find their fields for social reproduction at everyday life level. In this level they develop a post-nationalist discourse where the boundaries of the state are deconstructed into a less meaningful set of borders for the marginalizens. Their countries or origin also become less meaningful because the migrant workers are already relatively uprooted from their origins. Nationalism here is not significant; more significant for them is that the world belongs to God who endows them a temporary place to live on earth as they believe.

#### **4. Citizen Nationalist Discourse and the Predicament of ASEAN Integration**

Citizens live in a set of hierarchical orders following the logics of the modern nation-state. They have to obey the law as citizens and they develop the idea of we-ness as a nation within the boundary of the state. The state is entailed to develop a nationalist discourse by which the citizens are subordinated to a standardized national identity mostly through education and language with the dominant dialect used by the dominant ethnic groups. Meanwhile, the marginalizens in a country of destination are not following the same standards, but they look and act like normal "citizens" of a state as their mimicry strategy. They disguise themselves within the existing cultures. They are not subordinated by the nationalist discourse but most of marginalizens originating from Indonesia have an ability to adjust themselves in Malaysian culture as they are coming from the same roots of the Nusantara cultural complex.

In this situation, they develop the existing norm of "di mana bumi dipijak, di situ lah langit dijunjung" (literary means "wherever the earth is stepped wherever the sky is held up" or "When in Rome, do what the Romans do"), which means they have to adjust and immerse themselves into the existing culture. The Indonesians imitate the dominant dialects when they are around the citizens but within their own group they speak their own local language. For example, among themselves, the Madurese will speak Madurese; the Javanese will speak Javanese and so on. When the Indonesians are in a mixed of ethnic groups, they will speak Malaysian Malay instead of Indonesian Malay. They try to identify themselves as Malays in terms of socio-linguistic. This is difficult to perform for the marginalizens from countries other than Indonesia except people from Southern Thailand who speak Malay language with the Northern dialects.

Marginalized have created their own milieus which are different from those of the other citizens. The citizens construct the idea of “we-ness” as their political identity using the concept of modern state territory. The state nationalist discourse has been disseminated and internalized by the citizens through the nation-building process historically. To some extent this nationalist discourse has diametrical consequences amongst the marginalized who have been uprooted from their previous nationalist discourses. The marginalized have constructed a set of post-nationalist ideas in the new country they are living. For example, the Indonesian marginalized who are mostly Muslims use the concept of “rahmatan lil alamin” from Islamic teaching as the value of the post-nationalist idea. Based on this concept, they consider that the earth is created by Allah as a blessing for all creatures. This idea deconstructs the concept of territorialism of the post-colonial nation state which becomes less meaningful politically for the marginalized. For them the meaning of boundaries between Indonesia and Malaysia has become meaningless, although the remittance to the families back home remains important. In Malaysia they follow a principle that “When in Malaysia, do what the Malays do” to moderate cultural differences.

Since those two discourses are contested, there are some political predicaments. The cases of the Filipinos living in Singapore who experience negative sentiment from Singaporeans are examples of this kind of predicament. The Filipino migrant workers in Singapore are politically united in strong labor unions and their solidarity is also very strong, but this is not the case in Malaysia. The Filipinos in Singapore dominate the street every weekend, and this make the nationalist Singaporean feel that their public spaces are occupied. Migrant workers in Malaysia do not have that kind of solidarity as their public appearance is not that strong. However, they also experience subtle discrimination from some nationalist sentiments. Since the migrant workers contribute a significant role in the infrastructural development process of Malaysia such as lowly cleaning services in which Malaysian citizens do not take, then the locals tolerate the migrants’ existence. But in the service sectors like restaurants and shops, the citizens from rural areas who have moved to urban areas are in competition with people from Bangladesh, Indonesia, Myanmar and the Philippines. This situation very often produces irritation to the Malaysia citizens from the same social classes into stereotyping the migrant workers as taking citizens’ niches in the job market competition; the migrant workers accept lower payments than what the citizens can tolerate for similar works.

According to Datuk Shamsuddin Bardan (Executif Director of Malaysian Employers Federation or MEF), who was interviewed by Malaysian Digest (on 10 February 2015), “... the perception of Malaysians toward migrant workers has been quite negative”. Moreover, he also said that:

*“Some even believe that the influx of foreign workers is the main culprit of the increasing of crime rates in the country. I must say this is an untrue fact ... crime*

*involving migrant workers is only less than 10 percent of the total crime cases nationwide” (Teh Wei Soon, Malaysia Digest, 10. February 2015).*

The negative perception as reported by Datuk Shamsudin Bardan shows a sign of nationalist sentiments among the citizens against the migrant workers.

On 7 January 2014, Malaysian Cabinet Committee of Foreign Workers and Illegal Immigrants decided to ban foreigners from working at the fast food restaurants. It is to give the opportunity for the citizens to work in these outlets. However, this regulation is set without a deadline that the owners of the restaurants do not really follow the regulation because they still want to have foreign workers to operate their business (The Malay Mail Online, 9 January 2014). Even the undocumented migrant workers remain closely involved in this service sector. This kind of politically-related policies is very often indecisive because in reality the businesses still need foreign workers (both legal and illegal) to work. Business owners prefer more foreign workers to operate their businesses because they find it easy to negotiate with the foreigners in terms of salary and other benefits rather than with the locals. It is a matter of power relation in which the foreign workers are less confident to press for socio-political rights than the locals who are more aware about their rights. Thus, the business owners take this opportunity to get more economic benefits from the foreign workers rather than to employing locals.

This policy can be interpreted as an attempt of nationalistic vertical power to protect the citizens from labor market competition, but it does not work within the horizontal network of power. The horizontal power, involving businesses, migrant workers (legal and illegal), intermediaries, and other agencies disobey the vertical power's rules of the government. This shows the inability of vertical power to operate within the horizontal network, and the marginalizen has the opportunity to take the advantage of this. The ambivalence of the vertical line of power and the self-sustaining horizontal network has become the milieu for the marginalizen to survive even under scorching exploitation, such as through bribery for the state apparatus. This situation has turned the intermediary's function as both helper and exploiters of the marginalizen as expressed from the quotation below:

*“I came to Malaysia with the help of Pak Haji. He lives in Johor. His man was helping me and others to get new passport in Riau Province of Indonesia. I was not allowed to use my original name as in my previous passport and ID card. So I also have to make a new ID card with new name. After all documents were ready, then I took boat from Batam to Johor; but at that time I was refused to enter Malaysia by the immigration office, so I return back to Batam. A week later Pak Haji's man helped me to make a new ID card and Passport, with a new name again, and then the next day I took boat heading to Johor. I finally passed the immigration check point, and then took a bus with other migrant workers from Indonesia to Malaysia. Pak Haji's people were very nice to all migrant workers who wanted to go to Malaysia. They provided us accommodation and foods three times a day for two*

*weeks in his house. Of course we had to share our accommodation with others. All costs for transportation, accommodation, food, and documents were already paid as one package to go to Malaysia.”*

Narratives from migrant workers who finally become undocumented migrants reveal the horizontal network by which the state apparatuses from Indonesia and Malaysia are involved. It is the syndicate of illegal migrant workers. Based on the information I gathered, most of their passports have one missing page after the holders entered Malaysia. The immigration stamp in this missing page will not be found in their passport.

My informant said: “I saw it was stamped by the immigration officer at the checkpoint, and I do not have any idea why it’s gone”. Interestingly, one informant said, “I will ask Pak Haji’s man tomorrow to get a stamp from the immigration office.” About two weeks later, this informant showed the passport I had seen before and I noticed that it was already stamped by the immigration. This kind of illegal activities shows the cooperation between the horizontal network and the citizens (including state apparatuses). There is no doubt that it is for the sake of the rent-seeking behavior that the marginalized are exploited. It looks like the intermediaries are helping the marginalized who do not know about the legal aspect whether in their home country or in the country of destination, but in fact the intermediaries are exploiting migrant workers systematically.

The collaboration between horizontal networks and state apparatuses who allow people mobility to a great extent has long history in the region of Southeast Asia during colonial and in post-colonial times. This can happen because Nusantara was already their “home” before the colonial rule defined the territory of their colonies, through which the “migrants” can come and go any time without any documents. But after the appearance of the post-colonial states in Southeast Asia, territory became important. However, people actually still manage to cross borders illegally and end up as marginalized in the post-colonial state destination. This kind of porous territorialism can be traced back historically before colonial and post-colonial states in Nusantara (Southeast Asia) where people in this region were moving from one place to another for trading purposes whether in the black market economy (Tagliacozzo, 2005) or the legal and traditional network trading that contributed to the process of ethnic formation in Southeast Asia, especially in Malaysia, Indonesia and Singapore within the context of the international and regional marketplace (Andaya, 2008).

Within the historical context of Nusantara, labor mobility within the region is considered as normal. To a great extent they were already integrated regionally. Post-colonial state territorialism has created the binary opposition between the selfness and non-selfness political awareness among the ASEAN country members. Despite the members’ agreeing upon ASEAN Community 2015 in political term, the sense of selfness is addressed to the country fellow as opposed to the non-selfness of the illegal migrant workers who have become the marginalized whose human rights is not protected by law.

## 5. The Urge of Horizontal Approach and Free Labor Mobility

ASEAN was established on 8 August 1967 comprising of five founding countries. In the following years the members of ASEAN finally reached 10 countries, which meant it covers all the countries in the region. However, as new post-colonial states each country had experienced political turmoil from the 1960s until the late 1990s. The NPE (Normative Power Europe) as coined by Manners (2002), for example, consist of principle of peace, liberty, democracy, rule of law, and human rights as five major norms that are remain contested in the political practice of ASEAN country members. However, all ASEAN country members have agreed upon the human rights norms that have been already mentioned in The ASEAN Charter. In addition, the four minor norms as what Manners (2002) notes from European Union's experience like social solidarity, anti-discrimination, sustainable development, and good governance remain a challenge in ASEAN.

ASEAN has agreed to free trade since 28 January 1992. But free labor mobility does not follow automatically. This mobility needs more time to be agreed upon since it is a sensitive issue politically especially in relation with nationalist sentiments among the member states. The flows of migrant workers have followed the demand from the more developed countries in the region, but the barriers remain in the form of nationalistic sentiment. The governments still restrict the flow of migrant workers to give more job opportunities for their own citizens. In fact, the citizens are willing to take the parts in the job sectors where lowly skilled migrant workers are limited in number. In this situation, the companies have to employ legal migrant workers. But it is still not enough that the citizens finally recruit illegal migrant workers from the intermediaries who have access to the horizontal network of the marginalizens. This situation only reproduces the existence of the marginalizens and keeps the territorial border porous.

The unstoppable recruitments of illegal immigrants have been operating since the colonial period. But after Malaysia became a post-colonial state and reached the status of more developed country in the region, the flow of illegal migrant workers into Malaysia has been an issue for more than three decades. Within this time, the marginalizens have already constructed their horizontal network strongly. The members of the network see the opportunities of living in Malaysia through the network they have created despite their neglected and ignored rights. It is the field for marginalizens' social reproduction to protect themselves because they do not enjoy any human rights protection.

ASEAN members have been absent in this field, and the marginalizens have already developed some tactics to duck the control of vertical power that stems from the state. They also manage to survive socially and economically within the network. They have created their own social solidarity beyond the state's surveillance. Despite the marginalizens' living in the informal sectors of the economy, they manage to send some parts of their income to their home countries. In the Indonesian context, the remittances



are used to support children education and renovation of houses in their home towns. The campaigning program of “Banteras Perdagangan Orang dan Penyeludupan Migran” (Eliminate Human Trafficking and Migrant Smuggling) through raiding into the illegal immigrant accommodation, spreading posters, and launching street operations are basically only a cure for the symptom that solves no problem. It is only a political exercise of vertical power, which is ineffective to reach the horizontal network. The existence of the marginalizens for more than 20 years is the evidence of the ineffectiveness of vertical power to reduce the number of marginalizens and illegal immigrants in Malaysia.

The anti human trafficking and illegal migrant worker posters that can be found in many places in Malaysia is an example of the vertical power’s efforts to reduce the number of illegal immigrants and human trafficking into Malaysia. Surveillance technologies like camera, electronic fingerprint scan, and retina scan already installed in the immigration posts in every port, but the syndicate networks still have the ability to penetrate the borders. The Malaysian overstretched border lines remain porous due to the fact that the modern economic system needs the cheap labor that the syndicates can access from the less developed economies in the surrounding countries in Southeast Asia and South Asia regions. The syndicates have their own regional networks. Since they are supplying the insatiable industrial sector, home assistant, and small-scale business, the fact shows that the demands are always high. The cheap laborers without needs to deal with high migrant worker fees and complicated process are the main reason why the syndicates keep supplying illegal workers. The migrant workers usually enter Malaysia using a tourist visa although they eventually work there. Due to the existing horizontal networks, the illegal migrant workers have a place to stay amongst their own people.

Since the syndicates work through the horizontal network, the vertical power exercise will not work effectively to eliminate the horizontal forces unless the government works with the same strategy. In fact, the experience of NGOs on migrant worker’s rights that have followed the logics of vertical power and ignored the horizontal nature of the syndicates and the marginalized network faces failure to reach this community effectively. On the one hand, the NGOs only have managed to work with the documented migrant workers, and consequently they do not touch the issue of marginalized’s rights and do not solve the problem of the syndicate. On the other hand, the marginalized themselves will avoid the NGOs because they are considered as part of the vertical line of power that will place them in political and legal jeopardy. This situation has problematized the issue of the rights of marginalized who are trapped in the informal sectors of the economy. There is a need for a horizontal approach rather than a vertical one to improve their lives.

Besides using the horizontal approach, some lessons also appear from the free mobility of labor in Southeast Asia’s historical background to reach better protection of human rights in this region. Free mobility here demands an arrangement of a longer term staying permit than only an extendable one year term. In reality, most of the marginalized face expiration of work contracts after one year, and without a passport within hand’s reach,

they tend to be stranded in Malaysia without any legal documents. From here, the positive aspects of the regional historical background of free labor mobility during the Nusantara era offer a valuable lesson.

Rewinding our past experience eclectically will provide for a better future of human rights protection for the migrant workers at the regional level. Free labor mobility is the crucial key to open up the nationalistic barriers. It is important, because historically Southeast Asian countries have already integrated culturally long before the colonial time. Southeast Asian people have shared material cultures and cultural values as these had been carried by people who had been highly mobile in the region. But since each country had become a post-colonial state, nationalistic sentiment has become a politically sensitive issue that slows down the integration. ASEAN country members remain involutes within the simulacra of colonial legacies.

ASEAN, as a regional body, has agreed over human rights protection as declared in AHRD (ASEAN Human Rights Declaration). However, migration is not an integral element of the mandate of this body due to nationalist sentiment. People mobility within the region is very often considered as taking the citizens portion of the cake rather than seeing them as inclusive members of ASEAN. This situation will hinder the promote ASEAN Community integration because the social solidarity at the societal levels has not yet been formatted socio-culturally.

Based on the historical evidence that ASEAN country members had experienced during the Nusantara era, I believe that the mobility of labor is the main factor in this integration process. This is because they are the historical actors that have already been mobile within the region. Labor mobility has actually contributed to the economic growth, social solidarity, and socio-cultural integration although they are not calculated as parts of the economic growth at the regional level. The marginalizens need better treatment as they contribute for the people to people regional networking. Punishment against the undocumented migrant workers and their employers does not stop the increasing number of illegal migrant workers since the demands for them remain high. The vertical power has its own shortcomings; there is need for a human rights-based strategy that works more horizontally through the network in which the marginalizens have survived.

## 6. Conclusion

Historically, ASEAN people already have practiced the basic the foundation for community integration through the mobility of people long before the colonial period. During the colonial rule, the territorial borders were defined for political and economic purposes. The cross-border movements were somewhat restricted; however the borders remain porous due to the cultural contexts in which people in Southeast Asia region have been roaming around the region. In the post-colonial period, especially during the industrialization period in the region, the mobility of the people tends to

increase especially since mobility closes the socio-economic gaps among and within the countries. The people from low income countries are attracted to move out to get better opportunities in the more developed countries like Malaysia and Singapore. The mobility of the people here to a great extent introduces people to people integration. However, the socio-economic gaps among ASEAN country members remain unsolved, and to a great extent it is counterproductive to the ASEAN integration. These gaps can be seen from the increasing number of migrant workers from low income to high income country which remains dominated by low skill migrant workers. Their existence very often creates stereotypes and prejudices that stimulate naïve nationalistic sentiments based on class differences. The socio-economic gaps among the members of ASEAN country are one set of the contributing factors of the negative sentiments toward migrant workers.

ASEAN as an organization needs to be more active in solving the problem of undocumented migrant workers and lifting up the barriers to allow freer people mobility. People mobility to a great extent is one of the contributing factors of ASEAN integration that functions to eliminate the naïve nationalist sentiment which is counterproductive to ASEAN integration in the future. Moreover, ASEAN members need to be actively involved in cutting off the operation of migrant workers syndicates (who are actually the predatory class) and all nationalist regulations that complicate unnecessarily the immigration processes in the era of regional integration. These strategies are important because the demand of foreign labor to work in Malaysia and Singapore is predicted to be high until 2020 for the unsolved socio-economic gaps.

People mobility in the Southeast Asia region is a historical phenomenon that continues through the modern times. The post-colonial state formation has intensified the border security; however, it cannot totally close the porous and overstretched borders. The migrant syndicates operate within these porous borders, and this has created the horizontal networks among the undocumented migrants in Malaysia. They do not have any rights protection because they hold no legal document to enter or stay in Malaysia. This situation has turned them into the marginalized who construct their own horizontal system as an alternative to the state's aegis.

The number of the marginalizans remains high, and it is believed to be increasing because they are needed due to the limitation of local supply of labor working in the same sectors as those of the migrant workers. The migrant workers contribute to the economic growth in Malaysia and at the same time also improve the quality of life of the family in their home countries. From here, it is important to include their contribution to be calculated in a regional strategy to give them human rights protection as well as reduction of number by decreasing the socio-economic gaps between their home countries and the migration targets. Discussions on inclusive social welfare and economic growth must consider the contributions of the marginalizans. The inclusion of the migrant worker is also a door to guarantee their human rights as well as to free them from poverty in informal sectors of economy as they deserve a better quality of life away from social problems.

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