

INTERACT – RESEARCHING THIRD COUNTRY NATIONALS' INTEGRATION AS A THREE-WAY PROCESS - IMMIGRANTS, COUNTRIES OF EMIGRATION AND COUNTRIES OF IMMIGRATION AS ACTORS OF INTEGRATION

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Policy and institutional framework of Indonesia

Stéphanie Barral

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Immigrants, Countries of Emigration and Countries of Immigration as Actors of
Integration

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Policy and institutional framework of Indonesia

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INTERACT - Researching Third Country Nationals' Integration as a Three-way Process - Immigrants, Countries of Emigration and Countries of Immigration as Actors of Integration

Around 25 million persons born in a third country (TCNs) are currently living in the European Union (EU), representing 5% of its total population. Integrating immigrants, i.e. allowing them to participate in the host society at the same level as natives, is an active, not a passive, process that involves two parties, the host society and the immigrants, working together to build a cohesive society.

Policy-making on integration is commonly regarded as primarily a matter of concern for the receiving state, with general disregard for the role of the sending state. However, migrants belong to two places: first, where they come and second, where they now live. While integration takes place in the latter, migrants maintain a variety of links with the former. New means of communication facilitating contact between migrants and their homes, globalisation bringing greater cultural diversity to host countries, and nation-building in source countries seeing expatriate nationals as a strategic resource have all transformed the way migrants interact with their home country.

INTERACT project looks at the ways governments and non-governmental institutions in origin countries, including the media, make transnational bonds a reality, and have developed tools that operate economically (to boost financial transfers and investments); culturally (to maintain or revive cultural heritage); politically (to expand the constituency); legally (to support their rights).

INTERACT project explores several important questions: To what extent do policies pursued by EU member states to integrate immigrants, and policies pursued by governments and non-state actors in origin countries regarding expatriates, complement or contradict each other? What effective contribution do they make to the successful integration of migrants and what obstacles do they put in their way?

A considerable amount of high-quality research on the integration of migrants has been produced in the EU. Building on existing research to investigate the impact of origin countries on the integration of migrants in the host country remains to be done.

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Abstract

In Indonesia, migrations are mainly oriented towards middle-term low-skilled labour flows to the Middle East and the neighbouring countries such as Singapore or Malaysia. Historically, the Indonesian government was late in addressing policies in regards to the specific issues that migrants face. Nowadays, specific national institutions have been created in order to do so, but their lack of means and of coordination lead to a relative inefficiency of migrant support. In spite of this, the Indonesian government is also invested in the definition and implementation of various cooperation networks with the main destination countries in order to cope with exploitation and mistreatment problems that migrants face.

Key words: Indonesian, low-skilled migrations, middle-term migrations, State agencies, private agencies, low cooperation

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Introduction

Migrations from Indonesia are predominantly temporary migrations (of one to five years) of low-skilled or semi-skilled workers that go to work abroad in order to sustain their family needs, children education and debts. Emigration policy has been developed since the 1970, even though it is not implemented, at least that is a general opinion. There is no real effective diaspora policy. The Ministry of Manpower and Transmigration, the Ministry of Foreign Affairs and the Ministry of Social Affairs are the main public authorities in charge of migration issues. They have been involved in facilitating labour migrations for the last two decades as a way to cope with high levels of unemployment and underemployment. This has been done through the creation of private labour agencies.

Regarding the recruitment, placement and protection of migrant workers, the main piece of legislation is Law No. 39/2004 *Concerning the Placement and Protection of Indonesian Overseas Workers*.¹ It does not fully involve the State as a main stakeholder in the implementation of their protection. It legitimizes the role of private recruitment agencies to provide the majority of services proposed to migrants. These agencies are responsible for recruiting candidates for migration, for providing them with the information and skills required for departure and for their job abroad (including language training), for finding a job abroad and for providing them with the proper documentation in order to migrate. All agencies are located in Jakarta which increases by a significant degree the costs of departure for the non-Jakartanese migrants.

The law's formulation does not clearly stipulate the leaving and working conditions of migrants. Large space exists for interpretation; a significant number of ministerial regulations, presidential decrees, and presidential instructions have been enacted in order to give explanations about how the law should be implemented, but they do not provide effective protection for Indonesian labour migrants. There is a real lack of cooperation among the different legal structures for the implementation of the law because nowhere is the role of each of them in the protection of migrant labourers clearly stated.

The power to monitor and to implement this law has been concentrated at the national level. The provincial and district levels have no control over the number of migrants or over the quality of recruitment by agencies. As a result migrants when they leave their homes, in order to register in an agency, are badly informed about migration conditions, working standards and administrative requirements.

Broad public interest in cases of mass migrations and worker mistreatment, exploitation, harassment or torture has raised the voice of civil society and NGOs. Migrations and illegal migrations are a major concern in Indonesian society and pressures on the Indonesian government have resulted in strengthening the migration policy.

The Indonesian government's action is a result of two antagonist pressures, one from the civil society that defends migrant rights for protection, and a second one linked with the will to preserve good relations with the countries of destination, which are also important economic partners (especially Malaysia).

¹ Before that, two laws were voted, in 1958 and in 1992 regarding migrations; these laws mainly concern immigration in Indonesia and focus on the administrative processes; see <http://www.imigrasi.go.id/index.php/produk-hukum/undang-undang> [Accessed 10 December 2013].

Description of state-level emigration or diaspora policies – national level

Since the 1970s, the Indonesian government has relied on private agencies for emigration management. Migration policies are to regulate the way migrations are managed by private agencies, as a lot of problems including labour exploitation, human trafficking and illegal systems appear to be related to these agencies.

Indonesian government policy attempts to regulate recruitment agencies by means of placement regulations consist of two components: (1) regulating the establishment of recruitment agencies; and (2) determining the duties and responsibilities of recruitment agencies in work placements for labour migrants.

Thirteen government institutions are involved in the protection of Indonesian labour migrants: the Ministry of Manpower and Transmigration; the Ministry of Foreign Affairs; the Ministry of Social Affairs; the Coordinating Ministry of Economic Affairs; the Coordinating Ministry of People's Welfare; the Ministry of Health; the Ministry of Communication; the Ministry of Home Affairs; the Directorate General of Immigration; the National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI); the Indonesian National Police; and the National Body for Professional Certification and the Professional Certification Institute. This has not always been the case, and the 2004 law has played an important role in the development of this configuration.

The coordination of policies and their implementation in terms of migration has been undertaken by the Coordinating Ministry of Economic Affairs since 2006. This decision was made by the creation of the BNP2TKI, which controls coordination.

Law No. 39/2004 stipulates the conditions of cooperation between government agencies in emergency situations (for instance, when a migrant worker needs assistance because he or she is being exploited) and the relationship between central, regional and local governments. The margin of interpretation of the law leads to the impossibility of clarifying the levels of responsibility of different government agencies. There is, indeed, a failure to understand jurisdiction and a lack of transparency regarding cooperation between all these State agencies, which explains their lack of efficiency in dealing with migration issues.

Because migration has become such a major issue, the central government, through BNP2TKI, has tried to deal with this problem by gathering regional governments and private sector representatives locally in order to build collective action regarding labour migration issues. Several initiatives have been carried out including: (1) local work exchange for overseas destinations; (2) development of training centers for labour migrants; and (3) implementation of crisis centers for labour migrants in trouble.

The Ministry of Manpower and Transmigration and BNP2TKI have also gathered their resources in order to improve the quality of the pre-departure period for migrants. However, the main criticism of these measures is that they keep on being implemented in Jakarta or in large cities only. Consequently, opportunities are still limited for local governments to be involved in informing migration candidates.

Moreover, pre-departure training is stipulated for migrants but it is barely implemented. The law mentions at least 200 hours of training, which are meant to be delivered by BNP2TKI and by the Ministry of Manpower and Transmigration. The fact that the education and training programmes for labour migrants are weak can also be explained as a result of the failure to develop a strong and standardized education programme for Indonesian labour migrants.

To improve the protection services for Indonesian labour migrants, the Ministry of Foreign Affairs defined Ministerial Regulation No. 4/2008. This regulation regards the management of Indonesian migrants on arrival in the destination country by the Indonesian diplomatic missions overseas. The

proposed services included registration, migrant protection, and temporary accommodation and counseling. The registration services have improved in the last years, but migrant protection still remains importantly the responsibility of the recruitment agencies.

In 2008 an integrated one-gate service system was launched by BNP2TKI in Mataram, West Nusa Tenggara, as a support for migrants coming from the Province of West Nusa Tenggara. This is a special office on the border, which is to help working migrants: it aims at providing a fast, safe, cheap and accessible document service. Hopefully public authorities will be able to replicate this one-gate service system in other provinces in the future. It has the potential to reduce the use of illegal passports, work contracts and it might also help combat the overload of prospective labour migrants.

The *Batam One Gate System* is a similar system. It concentrated all the exit demands of domestic migrants going to Singapore in a single exit point. Several services were provided: checking health documents, employment contracts, travel documents the skills and suitability test. As Batam is close to Singapore this choice was relatively strategic as it participated in the reduction of irregular migration. With the implementation of the *Batam One Gate System*, the Indonesian Government, with the help of the Indonesian embassy in Singapore, hoped to participate in the work choices of migrants. Unfortunately the gate has been closed, because of a lack of cooperation between state agencies.

LBH Kompar, a sub-agency that derives from BNP2TKI provides legal support for labour migrants. Although Indonesian law stipulates the right to be given an Insurance Participant Card for migrants, it is barely implemented: few migrants hold this card. Insurance companies are seldom aware of their situation and do not complete their duties.

In addition to the national migration framework, the Indonesian Government also builds cooperation networks with several destination countries regarding the placement of Indonesian labour migrants abroad. Indonesia currently has Memoranda of Understanding (MoUs) with the following countries:

1. Republic of Korea, (government-to-government (G-to-G) via the Employment Permit System) in 2006;
2. Jordan (revised, signed March 2008);
3. Kuwait (in the process of being renewed, being separated into formal and informal sectors) in 2010;
4. Taiwan in 2004;
5. United Arab Emirates (dated 18 December 2007 for the formal sector);
6. Qatar in 2008;
7. Australia (Government-to-Private Sector);
8. Malaysia (2 MoUs, one covering formal sector workers and the other covering domestic workers) in 2004.

Indonesia is also in the process of MoU negotiations with the following countries:

1. Syria;
2. Brunei Darussalam (draft submitted to the Government of Brunei Darussalam);
3. Japan via Indonesia-Japan Economic Partnership Agreement IIJEPA (in the process of finalizing an MoU for the placement of nurses and caregivers).

The Indonesian Ministry of Foreign Affairs now made compulsory the registration of all labour migrants in the embassy or consulate of the destination country. The public authorities then hold a copy of the working contract and the legal address of the employer, which is supposed to protect of

workers in case of abuses or exploitation. However, many recruitment agencies fail to do this, which explains the high level of mistreatment experienced by labour migrants.

Indonesia is also part of the Ministerial Consultation for Asian Labour Sending Countries (now known as the Colombo process) that has existed since 2003. This gathers countries of origin and destination in order to improve labourers' conditions. It makes recommendations for the management of labourers overseas.

As concerns the diaspora policy, there are very few points to be mentioned here, as it is far less developed than the migration policy. Law 39/2004 does not cover the conditions of return and integration of the migrants in Indonesia. There is, thus, a lack of assistance for labour migrants in managing their earnings when returning, and in finding an appropriate work, in business entrepreneurship, for instance. There is a real lack of resources for this and very few cases are solved.

The rights of the family members of the migrants are not recognized by the 39/2004 law. They do not, for instance, receive important documents related to their family member abroad. Many migrants cease to communicate with their families while they are abroad.

Repatriation services have recently been reformed and the return of labour migrants has been improved. The Indonesian Government now considers that returning labour migrants have certain requirements and needs related to their return. For example, assistance needs to be provided for transportation, medical assistance, legal aid, and sometimes for financial or psychological assistance. These needs have been assessed and provided by special services personnel at Terminal IV upon arrival since 2008.

BNP2TKI is responsible for Terminal IV at the Soekarno-Hatta International Airport in Jakarta and provides several services to returning labour migrants. For instance, there is a 24-hour on-call doctor and a special area devoted to providing assistance with insurance claims.

This causes problems as it forces migrants to come through Jakarta even though they do not come from Jakarta. The transport services entail that they go back to the place they lived before departure, even though their family has moved. It also forces them to change their money into rupiah, and to send their belongings via cargo. Authorities acknowledge that there is room for improvement in this system.

A new program entitled "Business Empowerment for Former Indonesian Labour Migrants" (Binapenta, 2006) initiated by the Ministry of Manpower and Transmigration and the BNP2TKI, in accordance with other national and regional agencies, offers training and assistance for returned labour migrants in order to develop business activities at home. Because of limited funds, only a few projects have offered proper training conditions in business entrepreneurship. Inadequate resources have meant limited success.

At the local level, the government made various efforts in places where local officials responded to stimulation (for example, in Semarang, Central Java). These efforts allowed successful cooperation between regional banks with: the implementation of a cooperative for former labour migrants; provision of facilities for the development of cooperatives in the form of subsidy programmes; and assistance with business capital.

For instance in Karanganyar, Kabupaten Semarang, a contribution of IDR 500 million (USD 54,800) was provided for a subsidy program and business credit of IDR 1 billion (USD 109,601). This aimed at establishing cooperatives for former labour migrants. The geographical coverage of these integration measures is thus still limited.

Engagement of non-state actors

Indonesian civil society is mainly mobilized on issues dealing with illegal low-skilled migration. It includes NGOs (the main stakeholders being Human Rights Watch and the Indonesian Legal Aid Foundation – Lembaga Bantuan Hukum, LBH, Indonesia) and labour unions. For instance, Buruhmigran is one of them (<http://buruhmigran.or.id/> [Accessed 11 December 2013]), and so is the Serikat Buruh Migran Indonesia (<http://sbmi.or.id/> [Accessed 11 December 2013]). Up to now, labour unions and organizations dealing with labour issues have failed to achieve adequate protection for labour migrants on their own.

Their actions include investigations and media campaigns. For instance protests and a hunger strike were held in Jakarta in front of the office of the Ministry of Manpower and Transmigration in August 2008 in order to exert pressure on the government in relation to the definition of actions on stalled insurance claims.

There are also three diaspora associations, two of them are based in the Netherlands and one of them in the United States. They are mostly economic associations, and they aim at developing trading activities between Indonesia and the rest of the world. They are relatively recent (less than ten years). They also have some charity programs.

Their websites are: <http://www.indonesia.nl/> for the Indonesian Diaspora Network; <http://idbizcouncil.com/> for the Indonesian Diaspora Business Council, and <http://www.indonesiandiasporafoundation.org/hal-the-team.html> for the Indonesian Diaspora Foundation [Accessed 11 December 2013].

They also gather information about migrants on the Indonesian Diaspora Network Brain Bank (<http://idnbrainbank.com/> [Accessed 11 December 2013]).

There are also several Recruitment Agency associations such as the AJASPAC (Indonesian Employment Association for Asia Pacific, <http://www.ajaspac.com/other.php> [Accessed 11 December 2013] which gathers 36 agencies) or the Indonesian Employment Agency Association that aims at developing networks between agencies and improving their efficiency in recruiting.

The agencies are mainly based in Jakarta and are not subsidized. The Lansima website provides a good example of what these agencies are: <http://www.lansima.com/> [Accessed 11 December 2013].

A short list of relevant agreements

Law No. 39/2004 *Concerning the Placement and Protection of Indonesian Workers Abroad*; including:

- Government Regulation No. 92/2000 on *Types of Valid Non-tax State Revenues in the Ministry of Manpower and Transmigration*;
- Presidential Instruction No. 6/2006 on *Reforming the System of Placement and Protection of Indonesian Migrant Workers*;
- Presidential Regulation No. 81/2006 on *the National Authority for the Placement and Protection of Indonesian Overseas Workers*;
- Ministry of Manpower and Transmigration Decree No. KEP-14/MEN/I/2005 on *the Prevention of Non-procedural Departures of Indonesian Labour Migrants and Repatriation Services for Indonesian Labour Migrants*;

- Ministry of Manpower and Transmigration Regulations, including No. PER-04/MEN/III/2005 on *Implementation of the Pre-departure Briefing of Indonesian Migrant Workers Abroad*;
- Ministry of Manpower and Transmigration Decree No. PER-05/MEN/III/2005 on *Regulations on Administrative Sanctions and Means of Determining Sanctions in the Placement and Protection of Indonesian Overseas Workers*;
- Ministry of Manpower and Transmigration Decree No. PER-07/MEN/IV/2005 on *Accommodation Standards for Prospective Migrant Workers*;
- Ministry of Manpower and Transmigration Decree No. PER-19/MEN/V/2006 on *Managing the Placement and Protection of Indonesian Overseas Workers*;
- Ministry of Manpower and Transmigration Decree No. PER-23/MEN/V/2006 on *Insurance for Indonesian Migrant Workers*.

The law is categorized into separate legal provisions namely:

- general provisions;
- duties, responsibilities and obligations of the government;
- rights and obligations of the migrant worker;
- worker placement institutions abroad;
- placement procedure, including worker pre-placement, manpower supply permit, recruitment and selection education and training, health and psychological examination, work agreement, placement period, post-placement and financing;
- worker protection;
- dispute settlement;
- supervision of placement and protection activities;
- establishment of the BNP2TKI;
- administrative sanctions, investigations and crimes;
- transition provisions.

While the individual sections of the law are connected, together they do not form a coherent or binding framework for the protection of Indonesian migrant workers.

Up to now I have not found any legal documents. In order to complete this synthesis. I gathered this information from secondary sources.