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ILLEGAL¹ INDONESIAN MIGRANT WORKERS IN THE NETHERLANDS: A REFLECTION ON ILLEGAL CHINESE MIGRANT WORKERS IN INDONESIA (A COMPARATIVE STUDY)

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Abstract

The issue of illegal migrant workers is not a new phenomenon in developed countries, such as European countries, known as destination countries for migrants to seek better life. In the Netherlands, in particular, we find a big number of Indonesian migrants who stay and work without proper documents. These workers exist since the 18th century up to nowadays, especially since the establishment of the European Union (EU) which opens up European countries' internal borders, specifically known as the 'schengen countries'. They come mostly to European countries such as France and Germany as a tourist and thereafter go to the Netherlands to stay and work illegally. For developing countries such as Indonesia, the issue of illegal migrant workers is not really common. The existence of Chinese Illegal migrant workers has become a great issue in Indonesia at the end of the year 2016. Unlike the Indonesian workers in the Netherlands, the Chinese workers are invited by the company to come and work in Indonesia 'temporarily,' because of a contract between Chinese investors and the Indonesia government to transfer their knowledge and technology to the locals. A problem comes when these Chinese migrant workers stay even after their visa is expired and keep working in Indonesia. This paper will describe the background that drive migrants to stay and work illegally in another country and compare the law on migrant/ foreign workers and immigration law in EU, in particular in the Netherlands as well as the free movement regulation and its impact.

Keywords: *European Union, Migrant Workers, illegal, undocumented, Chinese, the Netherlands, free movement, immigration*

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I. INTRODUCTION

The issue of illegal migrant workers is mostly found in the developed countries. A lot of migrants from poor or developing countries come to developed countries to find job and better income to improve their family's life in their home country. We can see also how developed countries are busy with their immigration rules; make a limitation for migrants who are coming to their countries. For example, we see how

¹ There is no illegal human being. The term of 'illegal' in this article is used as a general term. The term is actually referred to irregular or undocumented migrants.

a lot of contradictions in USA on Trump's era in arranging immigration rules, also in Europe how EU countries are managing their immigration rules since refugees' flow is improved.

Issue of illegal workers could also be founded in receiving countries of migrant workers such as in Malaysia, Hong Kong, Taiwan and Saudi Arabia. It is happened since a lot of workers who finished their contract keep staying in such countries to continue their work without proper documents. For developing countries such as Indonesia, the issue of illegal migrant workers is not really common, yet we can find illegal workers.

The existence of Chinese Illegal migrant workers has become a great issue in Indonesia in the end of the year 2016. Chinese workers are invited by company to come and work in Indonesia 'temporarily.' It is allowed since the contract of work between the Chinese investors and the Indonesian government includes 'turnkey project' clause which allow Chinese investor to provide Chinese workers to work in their projects in Indonesia. Problem comes when these workers stay after their visa is expired.

In another hand, Indonesian workers themselves become illegal workers in other countries, for example in the Netherlands. Same situation apply, a lot of Indonesians come and work without proper documents in the Netherlands. They come with tourist visa and stay over after their visa expired to work in the Netherlands.

The situation of Indonesian illegal workers in the Netherlands can be compared to the existence of illegal Chinese migrant workers in Indonesia. Therefore, this paper will describe the situation on illegal Chinese migrant workers in Indonesia and illegal Indonesian workers in the Netherlands.

This paper will also compare the policy of migrant/foreign workers as well as policy of free movement or mobility of workers in Indonesia (and ASEAN) and in the Netherlands and/or EU. The most important aspect also in related to migrant workers is on immigration law. Therefore, this paper will take a look at immigration policy in Indonesia and EU as well as immigration policy in the Netherland and in EU.

The paper at last will give analysis and recommendation that could

be used as considerations for further studies.

II. THE SITUATION ON ILLEGAL CHINESE MIGRANTS IN INDONESIA AND INDONESIAN WORKERS IN THE NETHERLANDS

A. CHINESE MIGRANT WORKERS IN INDONESIA

The issue on Chinese illegal migrant workers has become a great issue in Indonesia at the end of 2016. Undefined sources said there are millions of Chinese migrant workers who live and work illegally in Indonesia. There is a fear that there will be more Chinese migrant workers who will come and work in Indonesia and the existence of them could not be controlled anymore. However, Indonesian government has argued this issue. Based on their information there are 31.030² migrant workers from China in Indonesia and their existence is known and registered. Indonesian government took action for those who stay and work illegally. They declared that up to 2016, they have deported about 1.837³ migrant workers from China who were staying and working illegally in Indonesia.

The problem on illegal migrant workers in Indonesia came up since President Jokowi has intention to bring in a lot of investors to develop Indonesia. Jokowi, therefore, in his second economic package policy, applied the new standard operational procedure for three hours investment license system which cut the procedure in providing licenses for investors and applied the three hours system in assisting investor to have 8 permits of investment.⁴ Jokowi opened up an opportunity for investors to take part in development projects in Indonesia. The priority of Jokowi's program is to develop Indonesia in all sectors especially in infrastructure and industry sector. For this, Jokowi engaged Chinese

² Wisnu, Arkhelaus, "Imigrasi: Tenaga kerja asal Cina mencapai 31 ribu orang", available at: <https://nasional.tempo.co/read/news/2016/12/24/078830295/imigrasi-tenaga-kerja-asal-cina-mencapai-31-ribu-orang>, accessed on 24 December 2016.

³ *Ibid.*

⁴ The 3 hours service is available since 26 October 2015 and can be accessed: http://www2.bkpm.go.id/images/uploads/prosedur_investasi/file_upload/NEW-3-JAM-1.pdf.

investor to implement their project in Indonesia. China has become one of the main investors of Indonesia also for ASEAN. The economic growth of China which is considered slow will give impact to continuation of China investment.⁵ On March 26th 2015 the Indonesian government signed an MOU (Memorandum of Understanding) with China.⁶ The MOU explained in details that collaboration between Indonesia and China will be in infrastructure sectors such as railway, highway, harbor and airport and in industrial sectors such as power generation, steel, metal, ship building, cement and glass, agriculture, logistic, tourism, chemical, industrial parks and finance.

With this MOU, a lot of investor from China came for projects in Indonesia and made an agreement with Indonesian government. In the agreement of doing projects in Indonesia, investors have implement a 'turnkey project' method which places the duty to design and construct solely on the contractor, in other words it's a package deal including in providing workers.⁷ Joseph A. Huse explains in his book that under turnkey construction contract, the contractor is responsible for providing and supervising the necessary staff and labour.⁸ Therefore, it became a reason for Chinese investors to bring workers from China. The problem comes when these workers stay over after their visa validation and work illegally in Indonesia.

The program of development in industrial sector of Indonesian tourism became another factor of the existence of Chinese illegal migrant workers.⁹ On March 2nd 2016, Jokowi has signed Presidential Regulation No. 21 year of 2016 on Indonesia Free Visa Entry. This Presidential regulation is in line with article 43¹⁰ Law No. 6 year of

⁵ Virgianita, Astra, "Menuju Dua Tahun Masyarakat Ekonomi ASEAN", available at: <https://nasional.sindonews.com/read/1193687/18/menuju-dua-tahun-masyarakat-ekonomi-asean-1491165510/>, accessed on 2 April 2017.

⁶ MOU available at: http://treaty.kemlu.go.id/uploads-pub/5644_CHN-2015-0150.pdf. Further explanation can be also available at: http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1249201.shtml.

⁷ Joseph A. Huse, *Understanding and Negotiating Turnkey and EPC Contracts*, Sweet & Maxwell London, 2002.

⁸ *Ibid.*, p.233.

⁹ Information is gathered from various sources.

¹⁰ Article 43 Law No. 6 year of 2011 states '(1) in specific circumstance, the foreigners can be released from an obligation to have visa.'

2011 on Immigration and article 98¹¹ Government regulation No. 31 year of 2013. In 2016, there were 239.048 people who received stay permit on their visit to Indonesia.¹² They come from various countries including countries on the list of the recipient countries of free visa entry in Presidential regulation. There are 67 additional countries declared as recipient of free visa entry in such Presidential regulation and it is including China. People from China, therefore, could get visa on arrival for 30 days when they come into Indonesia. The Chinese workers take this opportunity to come as a tourist with visa on arrival and stay and work illegally in Indonesia.

B. INDONESIAN MIGRANT WORKERS IN THE NETHERLANDS

In Europe, there are a lot of types of irregular migrants as follow: (1) migrants who are rejected for asylum and still stay in the country (2) victim of smuggling or human trafficking who came without legal visa (3) children of irregular migrants and (4) Overstayers, who were entering Europe legally.¹³ The migrants from the last category are usually coming to the Netherlands for economic reason; to work in the Netherlands. This group of migrants is the largest group of irregular migrants¹⁴ and Indonesian group is one of migrant groups included in this category.

Indonesian migrant workers in the Netherlands have a similar situation with Chinese migrant workers in Indonesia. There are various types of Indonesian migrant workers in the Netherlands, from high-

¹¹ Article 98 Government Regulation No 31 years of 2013, states 'Foreigner from certain countries may be exempted from any responsibility to have a visit visa in order to enter the Indonesia territory.'

¹² Information based on presentation of Yudi Kurniadi, the Director of Intelligent of immigration Directorate General, on surveillance of foreigners at Expert Meeting on Encounter the problems of migrant workers in Indonesia, organized by Faculty of Law University of Indonesia, March 30, 2017 in Depok, Indonesia.

¹³ Biswas, Toebes, Hjern, Ascher, and Norredam, "Access to Health Care for Undocumented Migrants from a Human Rights Perspective: A Comparative Study of Denmark, Sweden and the Netherlands" in *Health and Human Rights: Vol.4 No.2*, December 2012.

¹⁴ Muijsenbergh ad Schoevers, *Zorg voor ongedocumenteerden*, UMC st.Radboud, 2009.

skilled or low-skilled, from documented workers to undocumented workers. Indonesian migrant workers have already existed since the 16th century in the Netherlands. They were brought to the Netherlands as *baboe* or domestic workers to assist Dutch people in taking care of their children on their way back to the Netherlands.¹⁵ Some of the workers returned to Indonesia, some of them died and some stayed in the Netherlands. Afterwards, the migration of Indonesian people has become more in numbers.

In 1950s Indonesian people who were mostly Moluccan people were coming to the Netherlands.¹⁶ Moluccan people in the Netherlands are one of big communities in the Netherlands nowadays.¹⁷ In 1958s, Dutch-Indonesian people who rejected the naturalisation in Indonesia were going back to the Netherlands. Nowadays we call this community as Indo community in the Netherlands. In 1965, members of communist party in Indonesia, came to the Netherlands to seek for asylum. It was in 1970, when Netherlands opened up an opportunity for migrant workers to come and work in the Netherlands especially for Turkish people, Indonesian migrant workers came also to the Netherlands.¹⁸ In 2014, the numbers of Indonesian people in the Netherlands are 16.088¹⁹ people consists of students, professional workers, tourists and permanent residents. Such number are not included those who stay illegally in the Netherlands. Dutch Immigration and Naturalisation Service estimated that there are between 75.000- 185.000 undocumented migrants in the Netherlands²⁰ which Indonesian Embassy estimated that there are about

¹⁵ Poeze, Harry A., *Di Negeri Penjajah: Orang Indonesia di Negeri Belanda 1600-1950*, KPG and KITLV, 2014.

¹⁶ Gusnelly, "Trend Issues on Indonesian Labor Migration in the Netherlands", *Jurnal kajian Wilayah PS DR LIPI*, vol.3 no.2, 2012.

¹⁷ About 42.300 people, data of CBS, *Demografische ontwikkeling van de Molukse bevolkingsgroep in de Nederland, maandstatistiek van de Bevolking*, June 2002 as cited from Zincone, Penninx, and Borkert, *Migration Policy Making in Europe, the Dynamics of Actors and Contexts in Past and Presents*, IMISCOE Research, Amsterdam University Press, 2011, pg.130.

¹⁸ Mudzakir, Amin, "Pekerja Indonesia di Belanda: Studi kasus Pekerja Tidak Terampil dan Tidak Terdokumnetasi," *Jurnal Kajian Wilayah PS DR LIPI*, vol.3 no.1, 2012.2001, ISSN 2087-2119.

¹⁹ http://www.kpu.go.id/dmdocuments/Data_Agregat_WNI.pdf, accessed in August 2016.

²⁰ Biswas, Toebes, Hjern, Asscherand Norredam, *Op Cit*, p. 50.

400-500²¹ undocumented/ illegal Indonesian workers in the Netherlands.

Indonesian workers in the Netherlands work in various sectors. Some of them are high skilled and work as professionals at various companies, organisations, hospitals etc, including those who hold *EU Blue Card* permit,²² some of them work as *au pair* in a culture exchange program. Some who are in interracial marriage become a Dutch resident and can work as local worker. Students have also opportunity to have side jobs for 10 hours per week and after they graduate, they could have *zoekjaar* visa for a year and look for a job.

Indonesian workers come into Netherlands in various ways; invited by the company, invited by partner, by host family, with student visa and with temporary working visa (in purpose of work training or working at festivals).²³ They become illegal when they stay over after their validation of stay permit. Some of illegal Indonesian workers come to the Netherlands through other ways such as using tourist visa or temporary seasonal working visa and seamen visa.²⁴ Once they arrive in the Netherlands, they will overstay and find a job.

As tourists, Indonesian people could apply Schengen visa and get into European Union (EU) through countries such as Belgium, France and Germany. Once they arrive in one of Schengen countries,²⁵ they

²¹ Estimation data of Indonesian Embassy is based on the registered members of Indonesian Migrant Workers Union (IMWU NL), 98% Dokumen Buruh Migran di Belanda Bodong, accessed at: <http://berita.suaramerdeka.com/smcetak/98-dokumen-buruh-migran-di-belanda-bodong/>, 10 August 2015.

²² Work permit for high-skilled workers based on Council Directive 2009/50/EC of 25 May 2015 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. Also look at Soraya, Yasmine, "Migration of Highly Qualified Workers in EU and in the United States: EU Blue Card, the US Green Card, and the Visa H-1B", LAP LAMBERT Academic Publishing, October 2010.

²³ Soraya, Yasmine, Permasalahan Pekerja Migran Indonesia di Belanda, available at: <http://majalahsedane.org/migran-indonesia-di-belanda/>, accessed on August 2016.

²⁴ Soraya, Yasmine, "Indonesian (undocumented) Migrant Workers in the Netherlands" available at: <http://picum.org/en/news/blog/32079/>, accessed on February 2012.

²⁵ Information of Schengen countries could be found here: "Europe without Borders, the Schengen Area", available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen_brochure/schengen_brochure_dr3111126_en.pdf, accessed on August 2017.

take the train to go to the Netherlands, to stay and to find work. Amin Mudzakir in his research found that there are three categories of illegal Indonesian workers in the Netherlands; *First*, those who are deceived by work agencies and paid 50-90 million rupiah to go to the Netherlands. *Secondly* are those who have purpose to work in the Netherlands and come with tourist visa. *Thirdly* are those who come with an invitation (from partner, family, au pairs, student visa, etc).²⁶ These ways are taken by Indonesian workers to come and work in the Netherlands since there is no formal sending of Indonesian workers to Europe.

Illegal Indonesian workers work usually in domestic sector to clean houses, babysitting or gardening. Others work also in the restaurant, construction sector, building a home or panting houses. Domestic sector is the sector fulfilled mostly by illegal workers since there is a great demand of workers in this sector and Dutch people have no interest to fulfill this sector. FNV, the biggest trade union in the Netherlands estimates that there are 100.000 households that need domestic workers and there are only 6.000 domestic workers in the Netherlands.²⁷ Another reason why illegal workers fulfill this sector is because domestic sector itself is exempted by Dutch law as an ‘ordinary’ work and it’s not included in Dutch labor law. It is still questionable if domestic work is a real work. Under Dutch law, part-time work is not a real work since the domestic workers nowadays work based on hours and they do not live-in the employers’ house.²⁸

III. MIGRANT/FOREIGN WORKERS’ AND FREE MOVEMENT/ LABOR MOBILITY POLICY

A. IN INDONESIA

Migrant workers face two different regulations. Not only labour law but also immigration law, not only from the origin country but also from the recipient country as well as international laws. The people from China could legally come to Indonesia as workers under the

²⁶ Mudzakir, Amin, *Op Cit.*

²⁷ Mudzakir Amin, *Ibid.*

²⁸ Kraamwinkel, Margriet, “Organizing in the Shadow: Domestic Workers in the Netherlands”, *Theoretical Inquiries in Law*, Vol.17, Issue 1, February 2016.

agreement of the investors with turnkey project clause. However, there is an argument about the turnkey project clause if it's in line with the regulation on migrant/foreign workers in Indonesia.

Migrant workers are regulated under Law No. 39 of 2004. However this law regulates Indonesian people who go and work overseas. Foreign workers who come and work in Indonesia are regulated in other regulations of labour law. The general labour Law No. 13 of 2003 article 42 – 49 regulate on foreign workers in Indonesia. In employing a foreign worker, a company should obtain a permit to do so. The position and duration of work of foreign worker should be also declared in the agreement. There should be also a reason why a company employ foreign worker and there should be also a transfer knowledge from foreign worker to local worker.²⁹ This regulation is also stressed out at Presidential Regulation No. 72 year of 2014 on Foreign worker Utilization and implementation of Education and Training for Indonesian as Associate for Foreign Workers.

Article 46 of Law No. 13 year of 2003 stated a limitation of function and position of the foreign worker. Foreign workers are not allowed to fulfill the position of Human Resource Department and other functions. "Other" functions are limited by Minister Decision No. 15 year of 2015. Under such Minister Decision, Foreign workers are only to fulfill the position as director, commissioners, manager and experts.

Furthermore, the procedures to employ foreign workers are regulated under Regulation of Ministry of Manpower No. 16 year of 2015 which amended by Regulation No. 35 year of 2015. Under these regulations, there is an exemption foreign workers to hold position as commissioners in the form of Domestic Capital Investment.³⁰

There was a requirement to employ foreign workers. In article 3 of Regulation No 16 year of 2015 stated that the comparison of Foreign and local workers is 1:10. However such requirement is already withdrawn by Regulation No. 35 year of 2015.

Article 16 regulates also on Manpower Plan for Interim employment which stated that a company allows to employ foreign workers

²⁹ Article 43 Law No.13 year of 2003.

³⁰ Article 4 Regulation of Ministry of Manpower No 35 year of 2015.

temporarily in 3 (three) conditions: a. creating of commercial film that has obtained license from the authorized institution; b. conducting an audit, production quality control, or inspection in company's branches in Indonesia within the period of 1 (one) month; c. work related to machinery installation, electrical, after-sales service, or product in business trial phase.

Furthermore, article 36 stated on the requirements of foreign workers as follow: a. that they should have background of education that fits the required position to be occupied by Foreign workers, b. have competency certificate or at least 5 years experience, c. makes a statement to transfer knowledge to Indonesian associate for foreign worker, d. Has a tax number, e. has an insurance and f. Has a social security number, however in point 4 of this article stated that temporary foreign workers are exempted from point a,b,c,d,f of those requirements.

From all regulations above, the 'turnkey project' clause is implemented based on the valid regulation. It seems also that the regulations are made to support the 'tunkey project' clause, concluded from the withdrawal of requirement of 1:10 foreign and local workers. Though the position of foreign workers are regulated in Minister Decision No.15 year of 2015 and only for high-skilled workers, however article 16 of Regulation of Ministry of Manpower No. 16 year of 2015 opens for foreign workers who will work for machinery installation, electrical, after-sales service, or product in business trial phase. The definition of working in machinery installation, electrical, after-sales service, or product in business trial phase is wide , could be done by low and high skilled workers and this could be used and become the basis of the agreement between investor and Indonesian government which include 'turnkey project' clause and inviting Chinese workers to work in Indonesia.

However in another hand, there are some limitation of positions where foreigners may not fulfill, as follow:³¹

1. Personnel Director
2. Industrial Relation Manager

³¹ Article 46 Law No.13 year of 2003 jo. the addendum of Regulation of Minister of Labor and Transmigration No.40 year of 2012.

3. Human Resource Manager
4. Personnel Development Supervisor
5. Personnel Recruitment Supervisor
6. Personnel Placement Supervisor
7. Employee Career Development Supervisor
8. Personnel Declare Administration
9. Chief Executive Officer
10. Personnel and Careers Specialist
11. Personnel Specialist
12. Career Advisor
13. Job Advisor
14. Job Advisor and Counseling
15. Employee Mediator
16. Job training Administrator
17. Job interviewer
18. Job analyst
19. Occupational Safety Specialist

Moreover, the use of the foreign workers is only for some positions with a limited duration. The Minister of labor and transmigration stated also the limitation of the position of foreign workers in his decision:

1. No. 357 year of 2013 for foreign workers in textile industry
2. No. 359 year of 2013 for foreign workers in non-metal industry
3. No. 14 year of 2015 for foreign workers in furniture industry
4. No. 15 year of 2015 for foreign workers in footwear industry

Therefore, if the clause of turnkey project for Chinese workers is in the line with the limitation of the regulations above, it can be applied in Indonesia. However, some opinions say that the clause of turnkey project for Chinese workers are breaching regulations above. This brings some arguments.

In the bigger picture, Indonesia has ratified UN Convention on protection of Migrant Workers and their family as well as Universal Declaration on Human Rights and International Covenant on Civil and Political Rights (ICCPR). All international regulations recognize the right of every person to leave any countries including their own country and the right of every person to return to their home country. Indonesia is

also one of ASEAN countries which give support in protecting Migrant Workers under Cebu Declaration 2007 on ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW).³² However, ASEAN Framework Instrument for such Declaration is not yet adopted even though the Regional Civil Societies have called on such adoption.³³

Furthermore, Indonesia participates also in ASEAN Economic Community (AEC) which recognizing the free movement of goods, services, investments and capital and skilled labour.³⁴ The focus of ASEAN is more on the mobility of skilled labour. The AEC provides for market access for ASEAN professionals and skilled manpower. The main action is to implement Mutual Recognition Arrangements (MRAs) for major professional services.³⁵ MRAs would allow practitioners in eight³⁶ professions (engineering, nursing, architectural, accountancy, medical practitioners, dental practitioners, tourism professionals, and surveying qualification) to practice in other ASEAN Member States through mutual recognition of their qualifications and, where appropriate, through the implementation of the ASEAN Qualifications Reference Framework (AQRF).³⁷

The mobility of skilled labour in ASEAN is in practice as follow:

³² ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, available at: <http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf>, accessed on August 2017.

³³ (TITLE), available at: <http://www.central-cambodia.org/wp-content/uploads/2017/07/Regional-Civil-Society-Statement-on-Instrument-of-Migrant-Workers-Final.pdf>, accessed on 2017.

³⁴ ASEAN 2025: Forging Ahead Together, The Asean Secretariat, Jakarta, November 2015.

³⁵ Chia, S. Y. (2011), 'Free Flow of Skilled Labor in the AEC', in Urata, S. and M. Okabe (eds.), *Toward a Competitive ASEAN Single Market: Sectoral Analysis*. ERIA Research Project Report 2010-03, pg.205-279. Jakarta: ERIA.

³⁶ Another source mentioned 12 sectors which are tourism, healthcare, logistics, aviation, communication & information, agriculture, wood, rubber, automotive, textile & garment, electronics, and fishery. Sudarmanto, Heri, *Indonesia and ASEAN Economic Community: Free flow of skilled labour*, 20 January 2016, accessed in: <https://www.indonesia-investments.com/news/todays-headlines/indonesia-asean-economic-community-free-flow-of-skilled-labor/item6405?>, accessed on August 2017.

³⁷ ASEAN Qualifications Reference Framework, accessed in: <http://asean.org/storage/2017/03/ED-01-AQRF-Governance-and-Structure-document.pdf>, August 2017.

the skilled workers should have a license issued by the regulatory body of his/her home country and have at least seven years of work experience following graduation, two of which entail significant work. The application would then be submitted to the ASEAN Chartered Professional Engineers Coordinating Committee for review and, if successful, the applicant would be permitted to work in other ASEAN countries as a “Registered Foreign Professional.” The standards imposed by each MRA vary by profession.³⁸ However, AQRF is not yet approved and will only discuss on standard guide of high skilled of person and do not discussed on rights and protection of high skilled workers.

In addition to the MRAs, the ASEAN Agreement on the Movement of Natural Persons (MNP) and the ASEAN Comprehensive Investment Agreement (ACIA) streamline business visa procedures for citizens within ASEAN. People engaged in the trade of goods and services, investors, business visitors, contractual service providers, and intra-corporate transferees enjoy eased access for temporary cross-border stay.³⁹

The ten members of ASEAN countries are both source and destination for migrant worker.⁴⁰ Indonesia is always considered as sending country of migrant workers. However, it might be the time to change that stigma, since Indonesia now, realized or not, is also a destination country for migrant/ foreign workers.

Even though, the declaration is not yet supported by an instrument, however ACMW recognize the undocumented or illegal migrant (domestic) workers as worker.⁴¹ Indonesia is also one of countries that signed The Bangkok Declaration on Irregular Migration 1999.⁴²

³⁸ ASEAN Briefing, “Labor Mobility in ASEAN: Current Commitments and Future Limitations”, available at: <http://www.aseanbriefing.com/news/2016/05/13/asean-labor-mobility.html>, accessed on May 2016.

³⁹ *Ibid.*

⁴⁰ Roughneen, Simon, “Prospects fade for ASEAN Migrant Worker Deal”, available at: <https://asia.nikkei.com/Politics-Economy/International-Relations/Prospects-fade-for-ASEAN-migrant-worker-deal?page=1>, accessed on July 2017.

⁴¹ Santoso, Anisa, “Migrant Workers and ASEAN: A two Level State and Regional Analysis”, Routledge Contemporary Southeast Asia, 2017, p.74.

⁴² ASEAN Committee on Migrant Workers, available at: <https://humanrightsinasean.com>.

Therefore Indonesia commits to respect and recognize migrant workers' rights including rights of Chinese workers in Indonesia, regardless their immigration status, documented and undocumented.

B. IN EUROPE

In 1977, Europe has adopted European Convention on the Legal Status of Migrant Workers. The convention was adopted when the recruitment of foreign labour in Europe was commonplace.⁴³ However, after more than two decades, the situation in Europe is changed and the regulations for migrant /third-country nationals are developed.

a. Nationals of the EU Member States

Since the establishment of the European Union, the European community decided to abolish their internal border controls for the purpose of their internal common market. Following the abolishing of the internal border controls, the European Union under the Treaty of European Community (EC Treaty) has regulated the free movement of workers.⁴⁴ However, the free movement of workers which was included in the EC Treaty applies only for citizens of the EU.⁴⁵ Article 17 explains that citizens of the EU are every person holding the nationality of a Member State. Moreover, the common market's free movement of workers agreement for EU citizens was developed by four successive regulations:

1. Regulation 15 of 1961;
2. Regulation 38 of 1964;
3. Regulation 1612 of 1968; and
4. Directive 2004/38.

info/asean-committee-migrant-workers/about.html, accessed on August 2017.

⁴³ Guild, Elspeth, "The European Convention on the Legal Status of Migrant Workers (1977): An analysis of its Scope and Benefits", University of Nijmegen, the Netherlands, March 1999.

⁴⁴ Article 39 EC Treaty regulates the free movement for workers which shall be secured within the Community and shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other condition of work and employment.

⁴⁵ Article 18 of EC Treaty stated that every citizen of the Union shall have the right to move and reside freely within territory of the Member States.

The Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004, on the rights of citizens of the Union and their family members, expands the rights of free movement of workers for non-EU nationality. It states the definition of family members including partners and non-EU nationality. Under article 1 of the Directive, Union citizens and their family members have the right of free movement and residence within the territory of the Member States and also the right of permanent residence. It gives the right to entry and exit, right to residence including for family members who are not EU citizens (by applying residence card).⁴⁶ It also gives the right of permanent residence for Union citizens and their family members who have resided legally for a continuous period of five year in the host Member State⁴⁷ and also for citizens who have reached pension age or permanent incapacity to work.

b. Nationals from non-EU Member States

Nationals from non-EU Member States shall be the persons aside from article 17 EC Treaty that hold the nationality of non-EU Member States and are also known as third-country nationals. The legislations at the European level, concerning the third-country nationals who come and can work in the EU, are concluded in the scope of the refugees, asylum seekers, displaced persons, students, third-country nationals who are long term residents and their family members also third-country nationals who come for the purpose of working.

At the EU level, after a long negotiation between state members, there is finally a Directive adopted for high skilled workers. The EU had initiated a Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities of 11 July 2001⁴⁸ which creates a single national application procedure leading to one combined title, encompassing both residence and work permit within one administrative act, which will contribute to simplifying and harmonizing the diverging rules currently applicable in Member States. However, such proposal

⁴⁶ Article 9 Directive 2004/38/EC.

⁴⁷ Article 16 of Directive 2004/38/EC.

⁴⁸ (TITLE), available at: http://www.era.int/web/eng/resources/5_1095_6884_file_en.10056.pdf, accessed on August 2017.

was withdrawn in 2006. Furthermore, the EU has made a Proposal for a Council Directive 2007 on a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country national workers legally residing in a Member State. The proposal provides conditions for specific migrants such as highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees and introduces a general framework for a fair and right labour migration. However, such proposal was still in progress and at the end, there were still no regulations for migrant workers from third-country nationals at European levels and it remains under national law of Member States in that time.

Responding to the difficulties raised by the third-country nationals, on 23 October 2007 European Commission has proposed the Proposal on the Condition of entry and residence of third-country nationals for the purposes of highly qualified employment (EU Blue Card). The proposal's purpose is to attract high qualified third-country national workers. It establishes a fast-track procedure for the admission of highly qualified third-country national workers. Workers who are admitted will obtain a residence permit allowing them to work which will endow them and their families a series of rights and to access the Member States' labour market after two consecutive years of residence. It opens the possibility for them to move from one Member State to another. This proposal was finally adopted on May 25, 2009 on Council Directive 2009/50/EC.

The requirements of the EU Blue Card holder are having a high skilled education or at least 3 years experience of expertise. The salary should also be 1,5 time the average gross annual salary and the first two years, the worker should work with the company that invite him/her.⁴⁹ After two years, the worker can get equal treatment with nationals as regards access to highly qualified employment. When the contract is done with the first employer, the worker can access labour market in European Union with temporary unemployment up to 3 months.⁵⁰ The workers can bring their family and can get long residents permit when some requirements such as staying 5 years continuously and requirements

⁴⁹ Article 12 Council Directive 2009/50/EC.

⁵⁰ Article 13 Council Directive 2009/50/EC.

under article 16 Council Directive 2009/50/EC are fulfilled.

Besides Council Directive 2009/50/EC, EU has adopted ICT (Intra-corporate Transferee) Directive (2014/66/EU) which entered into force in May 2014. It aims for the prospective multinational companies to assign their own employees to their subsidiaries inside the EU. Researcher Directive (2005/71/EC) allows also third-country nationals to come and work in EU for the purposes of conducting scientific research.⁵¹ EU has also adopted Council Directive 2004/ 114/EC on 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service (Studies and Training Directive).⁵²

European Union has also adopted a Directive on the Condition of Entry and Stay of Third-Country Nationals for the Purpose of Seasonal Workers (Seasonal Workers Directive) on 26 February 2014. This Directive seeks to respond to the needs of Member States for a source of labour to fill the low skill, seasonal, and, typically, precarious, jobs, that are not attractive to EU residents and citizens, while simultaneously minimizing the possibility of ‘economic and social exploitation’ of the third-country migrant workers by providing them with the set of rights, including the employment rights to which resident seasonal workers are entitled. At the same time, the Directive is designed to promote circular migration and to ensure that these low-skilled workers do not become permanent residents of the EU, while also stemming what is perceived to be a flood of irregular migrant workers into the EU.⁵³ The workers from outside Europe can come and work maximally up to 90 days (3 months). Workers can exceed the period of work to 5-9 months if the requirement in article 16 are fulfilled (contract, insurance, accommodation etc).

Furthermore, to anticipate illegal workers, EU has adopted Employer Sanction Directive (2009/52/EC) which prohibits the employment of

⁵¹ Jafari, Golnaz, “EU Labor Migration: From an Intra-community and a third county perspective”, EU Migration Policy Working Paper No. 17, Bridging Europe, 2014.

⁵² Laws for Legal Immigration in the 27 EU Member States, ISSN 1813-2278, IOM, 2009.

⁵³ Fudge, Judy and Herzfeld-Olsson, Petra, “The EU Seasonal Workers Directive: When Immigration Control Meet Labour Rights. European Journal of Migration and Law”, pp. 439-466, 2014

illegally-staying migrants from outside the EU. The Directive gives fines also administrative and criminal sanctions in the most serious cases against employers of irregular-staying migrants. On the other hand, migrants can also claim back outstanding payments, and can be supported in this process by NGOs.

All of EU Directives are being implemented by its member states including the Netherlands. Netherlands recognize and acknowledge high skilled and seasonal workers. The Aliens Act 2000 (*Vreemdelingenwet*) of the Netherlands reflect the restrictive admission policy for migrants: they will only be admitted if their presence benefits the Netherlands economically or culturally, if there is an international obligation to admit them (for example, refugees), or if there are humanitarian reasons to do so (such as family reunification or medical treatment).⁵⁴ The labour market implies that the work permit will only be granted if there are no Dutch or EU workers available for the position. This regulation is based on 1994 Dutch Aliens Employment Act (*Wet Arbeid Vreemdelingen*). Therefore, work permits are mostly granted for highly skilled work or to *KennisMigrant* (Knowledge migrant workers).

To be acknowledged as *kennismigrant*, the employer should be responsible of the stay and work permit of the worker. The worker should also receive a salary of at least 34.130 Euro per year (for under 30) or 46.541 Euro per year (for above 30). The employer qualifies as a knowledge migrant employer if he can prove that he has always paid the required social security benefits and taxes, and has sufficient turnover to pay the salary of a potential knowledge migrant.⁵⁵

Netherlands opens also for self-employment scheme. The admission policy for the self-employed requires that the activities the migrant undertakes are innovative and beneficial to the Dutch economy. A business plan must be provided showing that the migrant will at least be able to earn sufficient financial means for his own support. The person should also own 5% of the company's assets; have enough financial means to be self-sufficient; possess a valid health insurance; and have no criminal record.⁵⁶

⁵⁴ Laws for Legal Immigration in the 27 EU Member States, Op Cit.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

The seasonal workers can get permit up to 24 consecutive weeks. The seasonal workers are mostly working in meat processing industry and horticulture/ agriculture and hotel and catering sector.⁵⁷ Students get permit to study for one year which can be extended and after the graduation they are permitted to find a job as *kennismigrant* with *zoekjaar* visa. Student allows working for maximum 10 hours per week. Trainee and *practicant* permits are given for those who come to the Netherlands to gain work experience in regard of their studies.

There is no recognition or acknowledgement on migrant works in domestic sector in the Netherlands as explained before. Dutch labour regulation itself exempts domestic workers from its labour law since domestic workers work part time and only considered to gain extra income and cannot be considered as real work. The Regulation concerns part-time work by an individual performed for another individual in and around the house, like cleaning, cooking, washing and ironing, taking care of children and animals, picking up drugs from the pharmacy, and simple care tasks. The domestic workers who perform these tasks are excluded from part of the labor laws and all of the social security system.⁵⁸

The migrant domestic workers, such as Indonesian workers in the Netherlands, face two different regulations; not only labour law but also immigration law. Since domestic work is not recognized as a real work, it is difficult for migrant domestic workers to get recognition as well. Migrant domestic workers therefore cannot apply to work in the domestic sector, even with a seasonal working permit. This is the reason that a lot of Indonesian or other migrants who work in the domestic sector remain illegal.

⁵⁷ Snel, de Boom, Engbersen, "Migration and Migration Policies in the Netherlands", Dutch SOPEMI Report, Rotterdam Institute of Social Policy Research (RISbo), 2002.

⁵⁸ Kraamwinkel, Margriet, Organizing in the Shadow: Domestic Workers in the Netherlands, Op Cit, pg. 357.

IV. IMMIGRATION POLICY

A. IN INDONESIA

The illegal workers come to a country also with tourist visa, some use seamen visa. Therefore, the immigration policy in regards with visa should be reviewed.

Indonesia under the government of Jokowi has put tourism as priority and put target 20 million foreigners to come to Indonesia for tourism visits. Tourism is one of important sectors which can bring a lot of devisa for Indonesia. Therefore, for this purpose, Indonesia apply free visa entry to 169 countries under Presiden Regulation No.69 year of 2015 jo. Presidential Regulation No. 21 year of 2016. Based on article 2 in this regulation, free entry visa is given based on reciprocity purpose which Indonesia will also take benefit. It is not very clear what kind of benefit will Indonesia get but the government has predicted some benefits and good relations to the countries on the list.

The Immigration Law No. 6 year of 2011 has also stated on free entry visa in its article 43 which is supported by article 99 Government Regulation No. 31 year of 2013 on implementing Regulation of Law No. 6 year of 2011. There is also a policy on visa on arrival which people from some countries could ask visa when they arrive in Indonesia. China is one of the countries that are on the list of free visa entry and visa on arrival. The visa on arrival policy is based on article 41 Law No.6 year of 2011 and explained further in article 95 Government Regulation No. 31 year of 2013 and under Minister of Law and Human Rights' Regulation No. 39 year of 2015. Visa on Arrival is valid for 30 (thirty days) which could be extended for another 30 days.

The purpose of visa on arrival is stated on Regulation of Director General of Immigration No. IMI-819.IZ.01.10 year of 2009 which in article 4 (point 2.4) index 213 stated that the visa on arrival can be used for:

1. Collaboration between other countries and Indonesia
2. Visits
3. Family or Social
4. Inter education institute

5. Short training
6. Journalistic
7. Non-commercial film maker
8. Business meeting
9. Non commercial seminar
10. Non commercial international exhibition; and
11. Meeting between head office and its branches in Indonesia

Visa on arrival is an important permission at the Indonesian border beside it could be used in purpose to get into Indonesia but it could also be misused for some foreigners to get into Indonesia and stay over illegally for other purpose beside the purposes explained above. This become the concern of immigration department since it is found a lot of foreigners who misuse the visa on arrival and (also free visa entry) and stay over after the validation of the visa and work illegally in Indonesia.

B. IN THE NETHERLANDS

Unlike Indonesia, Netherlands is an immigration country⁵⁹ and has multicultural society. A lot of migrants come and make a living in the Netherlands. As immigration country, migration policies of the Netherlands could be studied as a reference of Indonesia in facing the wave of foreigners/ migrants coming to Indonesia.

The immigration in the Netherlands is regulated before under the Dutch Aliens Act of 1849. Under this law, aliens had to be admitted when they had enough money and were respectable. The Aliens Act of 1965 was the first codification of the increasing limitations and growing administrative requirements for admission. The Act is still in force until year of 2000, however has been amended several times and has been supplemented by the so-called ‘Aliens Decree’ (*Vreemdelingenbesluit*) and the ‘Aliens Circular’ (*Vreemdelingencirculaire*).⁶⁰

The *vreemdelingenwet* 2000 and *koppelingswet* or linkage act 1998 are the valid regulations which now applied for aliens in the Netherlands. The act regulates on the right to stay for migrants/ foreigners or other

⁵⁹ Zincone, Penninx, and Borkert, Op cit, pg.133.

⁶⁰ Van Bennekom, et al., Comparative study of member states on immigration law, with special reference to deportation and administrative detention: Report on the Netherlands, Centre for Migration Law, University of Nijmegen, January 2000.

non-dutch people, become centrepiece to the principle of an integrated immigration policy. It gives an explanation on rights for migrants/foreigners when they stay legally in the Netherlands including rights and access to secondary or higher education, housing, rent subsidy, handicapped facilities and health care.⁶¹

Netherlands is one of *schengen* countries,⁶² which since 1985 have agreed to abolish their internal border. In 1990, a convention was signed for the concrete implementation of the Schengen Agreement. This convention covered issues on abolition of internal border controls, definition of procedures for issuing a uniform visa, operation of a single database for all members known as SIS – Schengen Information System⁶³ as well as the establishment of a cooperating structure between internal and immigration officers.⁶⁴ The real implementation of Schengen Agreement started in 1995 where seven countries including the Netherlands decided to abolish their internal border checks.

The Schengen provisions abolish checks at the Union's internal borders, while tightening controls at the external borders. These rules cover several areas:⁶⁵

- a common set of rules applying to people crossing the EU external borders, including the types of visa needed and how checks at external borders have to be carried out (citizens are subject to a visa requirement when entering the EU and a list of countries for which this requirement is waived (long-stay visas and residence permits for visits exceeding three months remain subject to national conditions are regulated in Regulation EC No 539/2001 amended by Regulation EU No 1289/2013).

⁶¹ Zincone, Penninx, and Borkert, Op cit, pg. 139.

⁶² There 26 schengen countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Liechtenstein.

⁶³ SIS regulations are based on Regulation (EC) No 1987/2006 on Border control cooperation, Council Decision 2007/533/JHA on Law enforcement cooperation, Regulation (EC) No 1986/2006 on Cooperation on vehicle registration.

⁶⁴ (TITLE), available at: <https://www.schengenvisainfo.com/schengen-agreement/>, accessed on August 2017.

⁶⁵ (TITLE), available at: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en, accessed on August 2017.

- harmonization of the conditions of entry and of the rules on visas for short stays (up to three months) - the Schengen Border Code (based on Regulation EU 2016/399)
- enhanced police cooperation (including rights of cross-border surveillance and hot pursuit) - information sharing and cooperation mechanism through EUROSUR (European Border Surveillance System).
- stronger judicial cooperation through a faster extradition system and transfer of enforcement of criminal judgments
- establishment and development of the Schengen Information System (SIS) and VIS (visa information system)⁶⁶

EU States have also operational cooperation which is coordinated by the European Agency for the Management of Operational Cooperation at the External Border (“FRONTEX”). The major task of the Frontex Agency is to coordinate joint operations to assist EU States in managing migratory flows at their external borders (including at sea based on Regulation 656/2014).

Schengen countries’ visa policy is not only applying max 90 days short visit visa. There is also exemption of visa for some countries that are exempted from visa requirement. Such as Indonesia in giving free entry visa, the exemption of schengen visa requirement is based on reciprocity principle. EU has also visa facilitation agreements with some countries such as Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Cape Verde, Fyrom (Former Yugoslavia Republic of Macedonia), Georgia, Moldova, Montenegro, Serbia, Russia, Ukraine. Visa facilitation agreements are linked to readmission agreements which establish the procedures for the return to the EU or to the partner non-EU country of persons (own and third country nationals or stateless

⁶⁶ VIS regulations are based on Council Decision EC No.2004/512 on the establishment of VIS, Regulation EC No. 767/2008 on VIS and exchange of data between member states on short stay visas. Council Decision 2008/633/JHA on access for consultation of the VIS by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, Regulation EC No 81/2009 on the use of the Visa Information System (VIS) under the Schengen Borders Code, Commission Decision EC no. 2010/49 of 30 November 2009 determining the first regions for the start of operations of the Visa Information System (VIS), and Regulation EC No.810/2009 on Community Code on Visas (Visa Code).

persons) in irregular situation. EU States may also individually negotiate agreements on local border traffic with neighbor non-EU countries. These agreements enable border residents of well-defined areas to cross the EU external borders, under certain conditions, without having to obtain a visa.⁶⁷

From the explanation above, as schengen country, the Netherlands opens its border for people from countries that are exempted from visa requirement, people who come for short visit up to 90 day including tourist and seaman. It is not per se that the migrants come to the Netherlands via Netherlands. Migrants can also come to the Netherlands via other schengen countries. Once they get schengen visa from one of schengen countries, they could then go to the Netherlands. This way is mostly taken by Indonesian people who remain stay and become illegal workers in the Netherlands.

V. ANALYSIS AND CONCLUSION

The era of globalization has brought more mobility of migration, and migration wave cannot be stopped and denied especially if economic and the wealth of people are not yet assured. Poverty and inability to earn enough or produce enough to support one self or a family are major reasons behind the movement of work-seekers from one state to another,⁶⁸ therefore we cannot judge and blame people who try to seek and pursue better life for the family and better future for their children.

There are a lot of ways for people in chasing their better life. Some people can continue their study abroad and find a good work at their home country or in another country. Some can work as self-employed and establish a company. Some who have been working in his/her specialty for some times could be considered as expert and having high skilled and could earn better and more and can improve their life condition. However, for those who are 'unlucky', they must take another way such as going abroad to find better income, even if it means to stay and

⁶⁷ (TITLE), available at: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy_en, accessed on August 2017.

⁶⁸ Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 24, The Rights of Migrant Workers, available at: <http://www.unhcr.ch/html/menu6/2/fs24.htm>, accessed in August 2017.

work illegally.

Being an illegal citizen/ worker is not a voluntary decision. The decision is taken based on of life demand to pursue better life. Illegal alien is vulnerable to exploitation of labor condition and human trafficking such as low salary, long working hours, no free days, no social security, no pension, etc. They are also vulnerable in accessing health care, housing and get limited education opportunity.

Even though the illegal Indonesian workers in the Netherlands have no proper document to live and to work, however, their basic rights are protected. They have right to fair labour conditions: minimum salary, right to have free days, maternity leave, right to organize and to join trade union and other basic rights such as right to education, legal aid, shelter, family life, minimum subsistence, right to moral and physical integrity and right to access health care.⁶⁹ The illegal workers in Indonesia have also similar protection on their basic right especially since Indonesia has sign the Bangkok Declaration 1999:

“Irregular migrants should be granted humanitarian treatment, including appropriate health and other services, while the cases of irregular migration are being handled according to law. Any unfair treatment towards them should be avoided.”

Like Indonesia, China has a big population with a big number of unemployment and minimum labor market. We cannot argue that the clause of turnkey project is one of the ways from China to decrease their number of unemployment. However, on the other hand, since Indonesia declared its development program which includes infrastructure, tourism and other sectors, Indonesia needs a lot of workers.

Migrants are taking our jobs is a myth.⁷⁰ Indonesian program of development creates a lot of job opportunities in various sectors. There is lack of workers to implement the program of development especially in work that needs expertise of foreign workers. Indonesia needs a lot of workers including the expert/ foreign workers. Foreign workers are

⁶⁹ Basic Social Rights – Netherlands available at: http://picum.org/picum.org/uploads/file_/Basic%20Social%20Rights%20study%20-%20The%20Netherlands.pdf, accessed in August 2017.

⁷⁰ Chomsky, Aviva, They take our jobs: and 20 other myths about immigration, Beacon Press, Boston, 2007.

needed to support the investment construction process especially on the advance stage of investment.⁷¹ For example, tourism sector. To reach the targets declared by the government, Indonesia needs at least 2,5 million workers in tourism sector.⁷² Will this number be fulfilled by local workers from Indonesia? Will Indonesian employees be eligible to do the required work?

It is a similar situation with domestic sector in the Netherlands where Indonesian workers fulfill this sector. There are 100.000 households in need of domestic workers as FNV declared, however the Netherlands have not enough people to work or willing to work in this sector. Domestic work is also considered as a dirty and demeaning job. Only small numbers of Dutch people are willing to work in this sector. There will be no illegal migrant workers when there is no existing demand. There is no market without a demand. There will be no ants without any sugar.

Learning from the Netherlands and Europe, the Netherlands commits to be one of Schengen countries and give authority to Frontex in controlling the external border. However, when migrants apply to come to Europe via the Netherlands, the national regulation (*vreemdelingenwet*) is applied. As explained in the previous section, migrants could apply for short visit visa, seasonal workers visa, family reunification, asylum, and also for high skilled (*kennismigrant*) visa and EU Blue Card. Once migrants get the visa, they can come to Europe and freely movement from one to another Schengen countries.

There is no agreement of border control of ASEAN member countries (yet) however, ASEAN member countries have adopted ASEAN Framework Agreement on Visa Exemption. The citizens of ASEAN could freely go to other countries of ASEAN without having visa for up to 6 months.⁷³ The non-citizens of ASEAN are required a visa

⁷¹ Firman, Muhammad, Kepala BKPM: Indonesia Kekurangan Tenaga Kerja Asing, available at: <http://katadata.co.id/berita/2016/12/29/kepala-bkpm-indonesia-kekurangan-tenaga-kerja-asing> , accessed on August 2017.

⁷² Indriani, Indonesia butuh 2,5 juta tenaga kerja di bidang Pariwisata, available at: <http://nasional.kompas.com/read/2017/02/13/11153171/indonesia.butuh.2.5.juta.tenaga.kerja.di.bidang.pariwisata>, accessed on August 2017.

⁷³ (TITLE), available at: <http://agreement.asean.org/media/download/20160831072909.pdf>, accessed on August 2017.

to go to ASEAN countries and for this, national regulation of ASEAN's member countries are applied. Having visa for one of member countries of ASEAN does not mean can go to another ASEAN countries. However, ASEAN, in this regards, is considering having a Schengen-style single-visa scheme. It emerged at the Global Summit of the World Travel & Tourism Council held on April 26 and 27 in Bangkok.⁷⁴ The idea is to attract more tourists to come to ASEAN countries.⁷⁵ It began since Thailand and Cambodia applied single visa scheme for tourism in 2013 and was followed by an idea of common smart system which the Letter of Intent signed in 2015 by four member state of ASEAN (Myanmar, Indonesia, Cambodia and Philippines). With a single ASEAN visa, citizens of non ASEAN countries can freely go to one ASEAN country to another.

Learning from EU free movement principle and the experience of Indonesian illegal workers in the Netherlands, even though the border control system is made properly in EU, the free movement principle brings risk of having illegal migrants. The policy of free movement or free entry visa could be misused by the visitors.

Indonesia should therefore be aware of this impact. However, there is always an impact along the development. To follow the globalization era, improving the wealth for the people, improving state's income, Indonesia should take a step to develop all sectors including infrastructure and tourism sectors. And for this, Indonesia needs to take part in international community by opening its borders, by giving free entry visa, visa on arrival and etc. The risks are great and along with it, the improvement of national security should also be improved.

The supervision of foreign workers is also one of ways to protect national security. Immigration Law in Indonesia (No. 6 year of 2011) has regulated the supervision of foreign workers. However, the implementation should be improved since the system is still being done manually and there is lack of supervisor on the field as well as lack

⁷⁴ Maierbrugger, Arno, "ASEAN Considers Scheng-Style Single-Visa Scheme" available at: , <http://investvine.com/asean-considers-schengen-style-single-visa-scheme/>, accessed on May 2017.

⁷⁵ UWTO, The Impact of Visa Facilitation in ASEAN Member states, World Travel and Tourism Council, January 2014, pg.13.

of coordination between government institution on province and local district level.⁷⁶

Supervision of foreign workers is also weak since the policy of autonomy of local district in Indonesia was applied.⁷⁷ The function of supervision in the local district is taken over at province level therefore there is no supervision on local district level and the coordination between local and province stage are weak. The distances and number of supervisors and numbers of companies are also becoming main issues in supervising the utility of foreign workers. In the Netherlands, it is also difficult to do the supervision on private houses where illegal domestic workers work since it is against privacy law.

However, besides considering the national security, we need also to look at the contribution of illegal workers. They are always considered as a problem; however they give also a lot of contributions, not only for the destination country but also for their home country.

Indonesian illegal domestic workers in the Netherlands help the economy circulation in the Netherlands and in Indonesia. The remittance is improving and the domestic sector in the Netherlands is fulfilled. Dutch people could give focus to work on non-domestic sector. The Chinese illegal workers also contribute for the development in Indonesia; Indonesian people could also learn and take the knowledge and skills of foreign workers.

We need also to recognize the contribution given by illegal workers. By recognizing them and their contribution, the state could also gain benefits from them. Illegal workers pay no taxes; however it is not because that they do not want to pay taxes but they cannot pay it. If there is a system which can support them to pay taxes, they will pay taxes. It happened before in the Netherland. In 1980s and 1990s illegal workers are recognized and could pay premises for insurances and taxes. It happens also in the United States.

It gives, in a way, benefits, not only for the states but also for the

⁷⁶ Policy Brief Expert Meeting, “Menghadapi Persoalan Tenaga Kerja Asing di Indonesia”, Faculty of law University of Indonesia, March 2017.

⁷⁷ Otang, Andriko, “Masuknya Tenaga Kerja Asing di Indonesia dan Perkembangannya”, LEMBUR, 44th edition, April 2017.

workers and their family, not only for their wealth but also to protect them against exploitation.

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