Indonesia's Promotion of UN Migrant Protection Norms in ASEAN

Ruji Auethavornpipat and Wayne Palmer

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Abstract

Scholars have devoted insufficient attention to Indonesia's foreign policy on migrant worker protection, especially as mobilized in multilateral institutions. This article addresses such knowledge gaps by analyzing why Indonesia has, for almost two decades, persistently promoted the United Nations Migrant Worker Convention in the Association of Southeast Asian Nations (ASEAN) despite constant pushback from migrant-receiving countries. It argues that Indonesia's persistence is driven by its locally constituted meaning of migrant worker rights. In particular, this article advances the critical norms approach in international relations to demonstrate that its interpretation is influenced by "Indonesia's normative baggage," or past experiences with labour migration that have too frequently dealt with the exploitation of Indonesian citizens abroad. This normative baggage in turn shapes the country's diplomacy and promotion of convention standards deemed appropriate for safeguarding Indonesian migrants in ASEAN. In presenting the argument, this article contributes to the study of labour migration by scrutinizing Indonesia's foreign policy on migrant protection and unpacking norm interpretation processes that are necessary in international negotiations.

Keywords: migrant worker rights, Indonesia, ASEAN, norm interpretation, normative baggage, meaning-in-use

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Indonesia has increasingly become an important actor in demanding migrant worker protection in Southeast Asia. On November 14, 2017, the president of Indonesia signed the Association of Southeast Asian Nations' Consensus on the Protection and Promotion of the Rights of Migrant Workers (hereafter the ASEAN Consensus) along with nine ASEAN member states. The ASEAN Consensus seeks to increase the protection of migrant rights in a region that is often criticized for its appalling treatment of migrant workers. But much to Indonesia's disappointment, the ASEAN Consensus was not a legally binding instrument that would guard migrant rights in line with international standards, which Indonesia had adopted by ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter the ICRMW).

Indonesian officials were persistent in fighting for the same set of ICRMW standards for almost two decades in the ASEAN Consensus negotiation. The country's activist stance was surprising because not all migrant-sending states were as vocal as Indonesia despite having the opportunity to do so, especially in ASEAN. Indonesia's persistence also reveals an empirical and theoretical gap in the study of labour migration. In terms of the empirical gap, the existing literature on Indonesia's labour migration tends to focus on domestic policy making and migrant experiences. Other studies that examine Indonesia's actions abroad have done so largely at the bilateral level, with the expectation that Indonesia as a migrant-sending state would readily concede to migrant-receiving countries because of power asymmetries.[1] This assumption cannot capture Indonesia's staunch action in ASEAN. Additionally, in the broader migration literature, scholars often highlight the international engagement of other sending countries such as Mexico and the Philippines, thus overlooking Indonesia.[2] Such knowledge gaps warrant a new study that seriously interrogates Indonesia's migration diplomacy in multilateral institutions.

This contribution further addresses the theoretical lacunae by advancing the critical norms approach[3] from the discipline of international relations (IR) to shed light on how and why Indonesia approached the ASEAN Consensus negotiation in the way that it did. In particular, the critical norms approach offers a better explanatory lens than existing approaches, namely rational choice and critical political economy, which neglect the agentic[4]

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[1] Alice Huling, "Domestic workers in Malaysia: Hidden Victims of Abuse and Forced Labor," *New York University Journal of International Law and Politics* 44 (2011): 629–680.

[2] Graziano Battistella, "Multi-level Policy Approach in the Governance of Labour Migration: Considerations from the Philippine Experience," *Asian Journal of Social Science* 40, no. 4 (2012): 419–446.

[3] See Antje Wiener, *A Theory of Contestation* (Heidelberg: Springer, 2014).

[4] As discussed more in the following section, the rational choice approach employs cost-benefit analysis in explaining actor behaviour and overlooks normative factors, while critical political economy is more open to the agentic view of social action but has insufficiently teased out such processes. On the agentic norm interpretation, see Ruji Auethavornpipat, "Norm Contestation and the Weakening of Migrant Fisher Protection in Thailand," *Global Constitutionalism*, forthcoming.

interpretation of norms that drives state actors' diplomatic efforts. The agentic emphasis provides a much more complete account in comprehending actors' preference formation and multilateral engagement. As such, this article makes contributions to both IR and migration studies scholarship by offering new conceptual and empirical analyses of Indonesia's foreign policy on labour migration that deserve greater attention from both scholars and policy makers.

This article argues that Indonesia's promotion of ICRMW standards in ASEAN was driven by what Wiener calls "normative baggage"[5] or distinctive past experiences with labour migration that acted as sources of norm interpretation for Indonesian officials. In particular, normative baggage provided references for constructing specific meanings of "migrant rights" through local contestation. These domestically negotiated meanings in turn shaped the Indonesian government's advocacy of the ICRMW in ASEAN. The critical norms approach as advanced in this article not only enables scholars to scrutinize the development of Indonesia's understanding of migrant rights over time but also highlights the dynamic and agentic norm interpretation regardless of actors' strategic or altruistic motivations, i.e., whether protection is meant for strengthening remittances systems or actually upholding migrant rights. By foregrounding distinctive normative beliefs, we can further demonstrate complexity and difference in both re-interpretation and re-enactment of international standards on migrant protection.[6] In doing so, this article makes a new contribution to the labour migration literature by unpacking necessary processes of norm interpretation that guide how state actors advocate for particular norms in multilateral negotiations.

To empirically demonstrate the argument, we used interviews with policy makers and a wide range of primary and secondary sources in English and Indonesian. We deployed process tracing to show the formation of what we call "Indonesia's normative baggage" in identifying Indonesia's interpretation of migrant rights and how such an interpretation shapes the course of the country's invocation of the ICRMW in ASEAN. To do so, we first relied on the *HukumOnline* database, a source on Indonesia's legal development that was established in 2000 and contains more than 60,000 laws and archival materials. With the data from *HukumOnline,* we mapped Indonesia's interpretation of migrant rights over 15 years, from when it began more aggressively pursuing such objectives until the adoption of the ASEAN Consensus in 2017. We analyzed ASEAN and Indonesian policy documents from the Ministry of Foreign Affairs, together with interview data from ASEAN

[5] Wiener, *A Theory of Contestation*, 41.

[6] Girard Tyler, "When Bribery is Considered an Economic Necessity: Facilitation Payments, Norm Translation, and the Role of Cognitive Beliefs," *International Studies Quarterly* 22, no. 1 (2021): 65–83.

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officials, Indonesian government officials from the Ministry of Manpower and Transmigration and the Ministry of Foreign Affairs, ASEAN experts, and trade union and nongovernmental organization (NGO) representatives, who were involved in the negotiations.[7] To ensure data validity, these interview data were triangulated with public statements. Given that migrant protection is an extremely sensitive issue in ASEAN, we anonymized interviewees to protect them from potential backlash that could undermine their policymaking capacity.

To be sure, this article deals with the norm promotion stage, which is distinguished from the norm implementation stage.[8] In other words, it does not claim that the Indonesian government has consistently succeeded or failed in enforcing the rights of Indonesian migrants on the ground. A vast body of literature has demonstrated that the Indonesian migration regime makes migrants vulnerable in both Indonesia and destination countries.[9] Moreover, this article is agnostic as to whether Indonesia has promoted protection because it genuinely believes in migrant rights or because it uses them to generate revenue from remittances. A number of IR scholarly works have already shown both behavioural logics often overlap in reality.[10] In contrast, this article contributes by revealing causal mechanisms in Indonesia's interpretation of migrant rights and approach to multilateral diplomacy. Importantly, the case of Indonesia is unique because ASEAN's regional norm of sovereign equality guarantees a level playing field among negotiation parties and Indonesia is often considered a natural leader within ASEAN.[11] Therefore, scholars should not take Indonesia's position as a sending country for granted as ASEAN's frameworks complicate the typical understanding in migration studies that views sending states as weak vis-à-vis receiving states.

The argument of this article unfolds over four sections. First, the article introduces the critical norms approach to conceptually make sense of the processes involved in Indonesia's interpretation of migrant worker rights. Second, the article shows the reshaping of "Indonesia's normative baggage"

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[7] Ruji Auethavornpipat conducted 29 semi-structured interviews in total: 28 with aforementioned participants between February and March 2016 and one with a Philippine Department of Foreign Affairs official in September 2019 to capture the ASEAN negotiation conclusion.

[8] Alexander Betts and Phil Orchard, *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014).

[9] See for instance, Rachel Silvey, "Transnational Domestication: State Power and Indonesian Migrant Women in Saudi Arabia," *Political Geography* 23, no. 3 (2004): 245–264; Sulistyowati Irianto et al., *Akses Keadilan dan Migrasi Global: Kisah Perempuan Indonesia Pekerja Domestik di Uni Emirat Arab* [Access to justice and global migration: Stories of Indonesian women domestic workers in the United Arab Emirates] (Jakarta: Yayasan Pustaka Obor Indonesia, 2011).

[10] Judith G. Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton, New Jersey: Princeton University Press, 2010); Ruji Auethavornpipat, "Translating Sustainable Fishing Norms: The EU's External Relations with Ghana," *Third World Quarterly* 42, no. 11 (2021): 2593–2610.

[11] Despite being perceived as a natural leader, it does not mean that Indonesia can readily impose its decision on other ASEAN members due to ASEAN's regional norms. On Indonesia's position, see Dewi Fortuna Anwar, "Indonesia and the ASEAN Outlook on the Indo-Pacific," *International Affairs* 96, no. 1 (2020): 111–129.

through stakeholders' past experiences with migration that serve as sources of interpretation and influence the Indonesian government's understanding of migrant rights. Third, it demonstrates how the Indonesian government promoted ICRMW norms in ASEAN based on a specific meaning of migrant worker rights that was re-enacted based on its normative baggage. Fourth, the article concludes by discussing the implications of Indonesia's interpretation for its diplomatic aspirations.

Norm Interpretation for Multilateral Negotiations

This article applies the critical norms approach from IR to advance the study of labour migration by unpacking the processes of norm interpretation. As discussed below, the critical norms approach addresses the limitations of other IR approaches such as rational choice and critical political economy, which tend to take actors' preferences for granted by overlooking normative factors (rational choice) or mechanisms behind norm interpretation (critical political economy). In particular, the critical norms approach illustrates how previous experiences with labour migration shaped Indonesian elites' interpretation of migrant rights that in turn influenced their action in international fora.

The critical norms approach shares constructivist understandings that agents and international structure are mutually constitutive.[12] Norms are understood as a broad set of prescriptive statements about what one ought and ought not to do. Norms constitute both actors' identity and the international normative structure. However, critical norms scholars disagree with other approaches that emphasize norms only as social facts or static entities that do not require actors' interpretation. By contrast, the critical norms approach asserts that norms are dynamic entities that can be reinterpreted and reshaped in the context where norms are re-enacted. In other words, the approach is *critical* in the sense that scholars should take norms' meanings and interpretation seriously. With this view, norms can be both structuring in terms of guiding an actor's behaviour and reconstituted with new meanings in the context where actors re-invoke norms.[13]

Norm interpretation is necessary because international treaties are often left vague in order to gain a much-needed consensus among negotiating parties.[14] Treaty language, including that found in the ICRMW, "in and by itself provides insufficient information about [norms'] meaning."[15] Therefore, norm interpretation is crucial for actors to resolve norms'

[12] Wiener, *A Theory of Contestation*.

[13] Wiener, *A Theory of Contestation*.

[14] Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47, no. 2 (1993): 175–205.

[15] Antje Wiener, "Enacting Meaning-in-Use: Qualitative Research on Norms and International Relations," *Review of International Studies* 35, no. 1 (2009): 178.

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ambiguity despite norms' legal standing in international law. In practice, norms formally adopted in international conventions merely serve as a loose reference for decision making, and subsequent interpretation would provide further detail and guidance on how to use norms. This conceptual insight entails that there is a diversity of ways norms can be interpreted across settings, and that the meaning of norms can change subject to an actor's interpretation. Consequently, due to norms' fluidity and ambiguity, subsequent interpretation and deliberation are required, which can then align the intended purpose of norms with how they are understood and applied in context.

The critical norms approach advances the study of labour migration with insights into international negotiation. Previous studies of Indonesian labour migration tend to focus on labour organizing,[16] gender,[17] migrant experiences,[18] and domestic governmentality.[19] In addition, scholars who examine Indonesia's role abroad have done so largely at the bilateral level.[20] Moreover, while the broader migration literature has analyzed sending countries' multilateral negotiations,[21] scholars have yet to provide an in-depth analysis of Indonesia's engagement at the multilateral level. This article therefore addresses such knowledge gaps by using the critical norms approach to capture Indonesia's foreign policy on migration protection as executed in multilateral settings. This contribution is significant as it moves beyond the study of bilateral agreements, which have terms that only apply to the two parties, and therefore have limited consequences for migration cooperation.

The critical norms approach offers more explanatory power than existing approaches, namely rational choice and critical political economy. Rational choice scholars understand states to be utility maximizers who achieve their goals by ranking the preferred course of action at a given moment.[22] Rational choice has been adopted to analyze "migration diplomacy" in relation to expected material benefits—zero-sum and positive-sum gains—from economics and game theory perspectives.[23] However, such an approach only

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[16] Michele Ford, "Organizing the Unorganizable: Unions, NGOs, and Indonesian Migrant Labour," *International Migration* 42, no. 5 (2004): 99–119.

[17] Johan Lindquist, "Labour Recruitment, Circuits of Capital and Gendered Mobility: Reconceptualizing the Indonesian Migration Industry," *Pacific Affairs* 83, no. 1 (2010): 115–132.

[18] Rhacel Salazar Parreñas et al., "Serial Labor Migration: Precarity and Itinerancy among Filipino and Indonesian Domestic Workers," *International Migration Review* 53, no. 4 (2019): 1230–1258.

[19] Andy Scott Chang, "Producing the Self-Regulating Subject: Liberal Protection in Indonesia's Migration Infrastructure," *Pacific Affairs* 91, no. 4 (2018): 695–716.

[20] Graziano Battistella, "Labour Migration in Asia and the Role of Bilateral Migration Agreements," in *The Palgrave Handbook of International Labour Migration*, eds. Marion Panizzon, Gottfried Zürcher, and Elisa Fornalé (New York: Palgrave Macmillan, 2015).

[21] Roger Böhning, "The ILO and the New UN Convention on Migrant Workers: The Past and Future," *International Migration Review* 25, no. 4 (1991): 698–709.

[22] Duncan Snidal, "Rational Choice and International Relations," in *Handbook of International Relations*, eds. Walter Carlsnaes, Thomas Risse, and Beth Simmons (London: Sage, 2013).

[23] Fiona B. Adamson and Gerasimos Tsourapas, "Migration Diplomacy in World Politics," *International Studies Perspectives* 20, no. 2 (2019): 113–128.

pays attention to tangible benefits that drive states' egoist behaviour and therefore neglects ideational and normative influences. Rational choice is also subject to the critique that it treats state interests as pre-determined, rather than something that is endogenously constructed by actors through their previous experiences. This approach is thus unable to conceptualize an actor's long-term motivation and normative preference formation.

The alternative critical political economy approach also has limitations. Critical political economists focus on scalar analysis, which moves beyond examining a specific governance scale in a local, national, or international setting as a discrete level of analysis. The approach instead views these governance scales as parts of a social whole.[24] It contends that analysis even at the most local level should be situated within the wider set of power relations. Furthermore, it asserts that political outcomes are primarily a product of struggles over resource control between socio-political forces that include class, religious, gendered, and state-based groups. While this approach is receptive to the agentic view of social actions,[25] it has not gone far enough to conceptualize how particular actors interpret their own interests, ideologies, and norms that drive their action. Consequently, the critical political economy approach risks taking actors' position and normative outlook for granted. As discussed further below, these limitations are rectified by the critical norms approach, which also bridges the divide between the other two theoretical positions.

To illuminate the process of norm interpretation, the critical norms approach introduces the concept of "normative baggage."[26] Normative baggage is made up of actors' background experiences that determine when, how, or even if the norm in question should be applied. Previous experiences constitute normative baggage, acting as sources of knowledge to which actors turn when interpreting new norms. In other words, the experiences embodied in normative baggage become "a lesson learned" for Indonesian actors, shaping specific ways they interpret norms. Normative baggage can therefore be a tool to use to validate one's interpretation of norms as distinctively understood in relation to one's experiences. Emphasizing the agentic approach, normative baggage is individually held and can be carried with actors to new settings such as international fora. It can be so deeply ingrained that those tasked with applying the norm may not realize that their

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[24] Critical political economy discussed here is the Murdoch School approach. See Shahar Hameiri and Lee Jones, "Theorising Political Economy in Southeast Asia," in *The Political Economy of Southeast Asia: Politics and Uneven Development Under Hyperglobalisation*, eds. Toby Carroll, Shahar Hameiri, and Lee Jones (Switzerland: Palgrave Macmillan, 2020); Charanpal S. Bal and Kelly Gerard, "ASEAN's Governance of Migrant Worker Rights," *Third World Quarterly* 39, no. 4 (2018): 799–819; Bob Jessop, *State Theory: Putting the Capitalist State in its Place* (Pennsylvania: The Pennsylvania State University Press, 1990).

[25] Jessop, *State Theory: Putting the Capitalist State in its Place.*

[26] Wiener, *A Theory of Contestation*, 41.

interpretation is markedly different from that of others.[27] While normative baggage can be deeply entrenched, it is amenable and can be updated with a new interpretation that can arise during social interaction. To understand this particular case study, it is important to note that Indonesia's normative baggage was contested and reconstituted after domestic NGOs re-orientated the government's interpretation of migration from a developmental view to an increasingly rights-based perspective based on the ICRMW.

Normative baggage influences an actor's interpretation, leading to an enactment of specific meanings of norms. The meaning that is enacted and used by actors in certain situations is referred to as a "meaning-in-use."[28] A norm's meaning illuminates the way in "which we represent and understand the world."[29] The particular meaning, created in relation to one's normative baggage, is significant because it allows actors to make sense of norms, which will guide their normative understanding and subsequent action. The meaning of norms can be diverse and even clash with other meanings because not all actors will share the same past experiences or normative baggage. Consequently, a single norm can have multiple meanings (meanings-in-use) and diverse stakeholders need to negotiate for a mutual normative understanding in order to sort out their clashing interpretation and establish a shared meaning of norms.[30] In our case, Indonesia's normative baggage was a product of contestation among governmental officials and civil society actors. This contestation sorted out the clashing interpretation of migrant rights, which resulted in a shared domestic understanding that narrowly equated the meaning of "migrant worker rights" with the "protection of Indonesian citizens," including undocumented migrant citizens and their families in line with the ICRMW. This specific interpretation was subsequently re-enacted and used (meaning-in-use) by Indonesian delegates in ASEAN to promote ICRMW standards deemed most relevant to protecting Indonesian migrant citizens. The following section discusses the development of Indonesia's normative baggage or sources of norm interpretation, which subsequently determined the government's understanding of migrant rights when engaging in ASEAN.

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Indonesia's Normative Baggage: From Migrant Export to Protection Diplomacy

This section traces the development of Indonesia's normative baggage or sources of norm interpretation. The normative baggage comprises Indonesia's

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[27] Antje Wiener, "The Dual Quality of Norms and Governance beyond the State: Sociological and Normative Approaches to 'Interaction,'" *Critical Review of International Social and Political Philosophy* 10, no. 1 (2007): 47–69.

[28] Wiener, *A Theory of Contestation*, 21.

[29] Jutta Weldes, "Bureaucratic Politics: A Critical Constructivist Assessment," *Mershon International Studies Review* 42, no. 2 (1998): 218.

[30] Wiener, *A Theory of Contestation.*

past experiences with frequent migrant abuses. NGOs' advocacy capitalized on migrant exploitation and shifted the government's understanding of migrant worker protection as sources of national income to rights protection based on the ICRMW.[31]

The authoritarian New Order regime (1966–1998) considered labour migration from economic perspectives. In 1966, President Suharto introduced the transmigration policy from inner Java to outer islands as a solution to domestic poverty and economic problems.[32] However, as state revenue decreased after the oil prices collapsed in the 1970s, the government saw remittances as an alternative source of national income. This prompted the regime to actively advocate emigration. For instance, Indonesian migrant women were promoted as "model mothers" and "foreign-exchange heroes" in order to lure Indonesians into working overseas and sending remittances in support of both family and nation.[33] This understanding led the government to establish the Center of Overseas Employment unit (Pusat Antar Kerja Antar Negara) in 1984 in what was then the Department of Manpower (Departemen Tenaga Kerja).[34] Such institutional development resulted in a sharp increase of Indonesian migrant deployment from 20,000 by the late 1970s to more than 800,000 in total in the 1990s.[35] The Indonesian state was thus central to constructing a migration regime, with a focus on labour export and revenue generation.

The government did not prioritize migrant protection, hence exposing itself to criticisms from civil society. Remittances remain an important concern for revenue generation even after the 1997 Asian Financial Crisis. However, the Indonesian migration regime puts Indonesian women at risk of gender-specific abuse by approving the supply of migrant labour for a "job that garners low wages, provides little security and few benefits, involves high rates of multiple forms of abuse, and offers only slim chances of occupational mobility."[36] Migrants were subject to frequent abuses from the mid-1980s onwards. In response, local media put the government under pressure by exposing the severe exploitation—including torture, rape, and capital punishment—that Indonesian migrants endured overseas. The media galvanized public sentiment and domestic activism.[37] As a result, coupled

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[31] NGOs' interpretations of protection, as extended to foreign policy, are different from Lindquist's articulation of protection escort that infantilizes, commodifies, and exploits migrants during the course of migration. See Johan Lindquist, "Infrastructures of Escort: Transnational Migration and Economies of Connection in Indonesia," *Indonesia*, no. 105 (2018): 77–95.

[32] Riwanto Tirtosudarmo, "The Indonesian State's Response to Migration," *SOJOURN: Journal of Social Issues in Southeast Asia* (1999): 212–228.

[33] Leslie Butt, "Affects of Unease: Mother–Infant Separation among Professional Indonesian Women Working in Singapore," *Global Networks* 18, no. 1 (2018): 156.

[34] Silvey, "Transnational Domestication," 249.

[35] Tirtosudarmo, "The Indonesian State's Response to Migration."

[36] Silvey, "Transnational Domestication," 249.

[37] Linda Quayle, "Indonesia, the ASEAN Socio-Cultural Community, and the Contingent Profile of Regional 'Great-Power Management'," *The Pacific Review* 31, no. 2 (2018): 131–150.

with the political liberalization after the fall of the New Order regime, domestic NGOs started to challenge the government's understanding of migrant workers that overlooked protection by breaking "public walls of silence."[38]

The Nunukan incident in 2002 sparked domestic advocacy that introduced the ICRMW for domestic deliberation. This represented the initial effort to shape the government's interpretation of migrant rights as the protection of Indonesian citizens based on the ICRMW. The incident saw almost 400,000 undocumented Indonesian citizens forcibly deported from Malaysia to Nunukan, a small island with a permanent population of under 40,000.[39] Indonesia did not have a single law or government agency to protect migrant citizens and the government failed to respond to the mass deportation, resulting in the death of at least 81 migrants, including children.[40] NGOs constructed three groups of undocumented Indonesian migrants whose rights should be respected: first, those waiting for their passports to be processed in order to return to Malaysia; second, those who wanted to return home but lacked financial resources; and third, those whose family members were still detained or fugitives in Malaysia.[41] This normative understanding raised an impetus to protect undocumented Indonesian migrants and their families in destination countries. This is observed with Tim Advokasi Tragedi Nunukan, a local migrant advocacy network, which engaged in judicial activism by filing a lawsuit against the government. The court ruled in favour of civil society and mandated the government create a new law to provide better protection for migrants; ratify the ICRMW; negotiate a new agreement with Malaysia to ensure the rights of migrants and their families; and demand compensation from the Malaysian government on behalf of affected migrants.[42] Despite the ruling being overturned by the higher court, it was significant for introducing the normative obligation to protect undocumented Indonesians and their families by referencing the ICRMW. As argued by Susanti, the ruling built a momentum for advocacy, paving a long road towards domestic reforms and ICRMW ratification.[43]

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[38] Christine B. N. Chin, "Walls of Silence and Late Twentieth Century Representations of the Foreign Female Domestic Worker: the Case of Filipina and Indonesian Female Servants in Malaysia," *International Migration Review* (1997): 353–385.

[39] Michele Ford, "After Nunukan: the Regulation of Indonesian Migration to Malaysia," in *Mobility, Labour Migration and Border Controls in Asia*, eds. Amarjit Kaur and Ian Metcalfe (Hampshire: Palgrave Macmillan, 2006).

[40] Wayne Palmer, "Discretion and the Trafficking-Like Practices of the Indonesian State," in *Labour Migration and Human Trafficking in Southeast Asia,* eds. Michel Ford, Lenore Lyons, and Willem van Schendel (New York: Routledge, 2012).

[41] Bivitri Susanti, "The Implementation of the Rights to Health Care and Education in Indonesia," in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, eds. Varun Gauri and Daniel M. Brinks (New York: Cambridge University Press, 2008).

[42] Fifty-three Indonesian citizens acting for all Indonesian citizens v. the Republic of Indonesia Government (Civil Court, Jakarta), Case No. 28/Pdt.G/2003/PN.Jkt.pusat (2003).

[43] Susanti, "The Implementation of the Rights to Health Care and Education in Indonesia," 252.

High-profile migrant abuse in 2004 elevated concerns for migrant protection at the national level, specifically in the legislative and presidential elections. In parallel to the presidential election, campaigning for the legislative elections in March 2004 focused on anti-corruption and domestic reforms to better protect Indonesian citizens abroad. Then in May 2004, news exposed the severe exploitation of Nirmala Bonat, a domestic worker from West Timor who was severely beaten, and scalded with hot water and a hot iron by her employer in Malaysia. After the incident, presidential hopefuls made the protection of migrant workers central to their campaign promise in the country's first presidential election in July 2004.[44] A network of rights groups, comprising the Consortium for the Defence of Indonesian Migrant Workers (Kopbumi), the Federation of Indonesian Migrant Workers Organisations (Fobmi), the National Commission On Violence Against Women (Komnas Perempuan), the Indonesian Women's Congress (Kowani), the Women's Movement for the Protection of Migrant Workers (GPPBM), and the Women's Coalition for Justice and Democracy (KPI), further criticized the government for favouring migrant recruitment over ICRMW protection standards. Thus, the advocacy attempted to change the government's developmental perspective to the understanding of migrant protection based on the ICRMW.[45]

In response to civil society, President Megawati Sukarnoputri shored up her "pro-migrant" credentials prior to the election day and instructed her minister for manpower to help the national legislature develop Law No. 39 of 2004 on the placement and protection of Indonesian migrant workers, which she signed into law a few days before leaving office. Although the law was criticized by civil society for insufficient protection provisions, it showed the initial shift in the government's rationale, as seen in House of Representative member K.H. Luthfi Achmad's remarks: with this law, there would be no more migrants "who have illegal status [and] experience bad treatment from their employers."[46] In addition to the new law, President Megawati's legacy included the signing of the ICRMW on 22 September 2004, effectively requiring future governments to fulfill the international obligation to protect the rights of migrant workers. Indonesia's signatory without ratification showed tacit and increasing support for rights interpretation.

Domestic rights groups pressed the new Susilo Bambang Yudhoyono (SBY)

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[44] Wayne Palmer, *Indonesia's Overseas Labour Migration Programme, 1969–2010* (Leiden: Brill, 2016).

[45] HukumOnline, "RUU Buruh Migran Versi Depnakertrans Dinilai Tidak Berorientasi Perlindungan" [The Ministry of Manpower and Transmigration's Migrant Worker Bill is not protection-oriented], *HukumOnline*, 26 July 2004, https://www.hukumonline.com/berita/baca/hol10806/ruu-buruh-migran-versi-depnakertrans-dinilai-tidak-berorientasi-perlindungan?page=1.

[46] Irwan Sinaga, "State and the Migration Industry in Indonesia: Legal and Institutional Reforms and the Protection of Migrant Workers," (PhD dissertation, Australian National University, 2012), 68.

administration (2004–2014) to use the ICRMW to protect Indonesian migrant citizens. The lobbying efforts followed the failure of bilateral agreements with destination countries, which necessitated alternative protection standards and venues to protect Indonesian migrants. This raised the importance of multilateral engagement for rights advancement in ASEAN. After the severe abuse of Nirmala Bonat mentioned above, the government negotiated a memorandum of understanding (MOU) with Malaysia in 2004, which was revised in 2006. However, the agreement revealed serious shortcomings in bilateral cooperation. It allowed employers to "safekeep" migrants' passports, and lacked provisions on working hours, minimum wages, rest periods, and days off. Moreover, it omitted clear penalties and enforcement measures, thus making the MOU non-binding.[47] According to the Indonesian Legal Aid Foundation, such failures indicated that effective protection would only be guaranteed by a legally binding agreement consistent with ICRMW standards. In addition, Komnas Perempuan argued that bilateral settings prevented Indonesia from making high demands, out of a fear that Malaysia would turn to cheaper pools of migrant workers. It further criticized the MOU for refusing to extend protection to informal and undocumented Indonesian workers. Consequently, Komnas Perempuan urged both Indonesian and Malaysian governments to adopt Articles 22 and 56 of the ICRMW to ensure the human rights of migrants.[48] In effect, rights groups framed bilateral cooperation as undesirable and prompted the government to heighten regional cooperation to secure a comprehensive and legally binding agreement.[49]

From 2009 until the ratification of the ICRMW in 2012, the Ministry of Manpower and civil society engaged in an intensified interpretation battle in sorting out the meaning of migrant rights in relation to the ICRMW ratification. This battle was not only demonstrative of the norms' diverging interpretation but also crucial to crystallizing a shared meaning of migrant rights that would inform the Indonesian delegation to ASEAN. From the Manpower Ministry's perspective, migrant rights as guaranteed by the ICRMW were interpreted as opening the floodgate to foreign workers and thus increasing the government's burden to grant equal rights to foreigners.[50] It further argued the ICRMW would extend rights protection to migrants and their families only in Indonesia as opposed to destination countries like

[47] Human Rights Watch, *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East* (New York: Human Right Watch, 2010), 13.

[48] HukumOnline, "Hak-Hak Buruh Migran Perempuan Masih Terancam" [Women migrant workers' rights are still threatened], *HukumOnline*, 1 August 2006, https://www.hukumonline.com/berita/baca/hol15244/hakhak-buruh-migran-perempuan-masih-terancam?page=1.

[49] Interview with former senior official, Ministry of Manpower and Transmigration, 21 March 2016. See also, Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004), 54.

[50] Interview with an NGO representative, Peduli Buruh Migran (Caring for Migrant Workers) as part of the ARRAK 1990, 15 March 2016.

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Malaysia which did not ratify the convention.[51] So the ratification, in the Ministry of Manpower's understanding, would not prevent the rampant abuse of Indonesian migrants abroad.

Rights groups opposed the Ministry of Manpower's interpretation. NGOs pushed for expanded protection through the National Agency for the Placement and Protection of Overseas Indonesian Workers (BNP2TKI), creating tensions with the Manpower Ministry, which still favoured recruitment agencies' preferences for labour export.[52] Moreover, Komnas Perempuan Chairperson Yuniyanti Chuzaifah asserted that migrant protection through the ICRMW would dismiss the hypocrisy that Indonesia had not adopted the convention, thus increasing its bargaining position in pushing receiving countries to make concessions in line with the ICRMW.[53] For the People's Alliance for the Ratification of the Migrant Workers Protection Convention 1990 (hereafter ARRAK 1990), a national advocacy network established in 2010 among 24 organizations, the Manpower Ministry's understanding, which associated migrant rights with the protection of foreign workers, represented a spoiler in terms of delaying the ratification.[54] To put more pressure on the government to change its interpretation of the ICRMW, an NGO coalition of 35 groups led by JALA PRT resorted to judicial activism in April 2011. It filed a lawsuit against Manpower Minister Muhaimin Iskandar along with other defendants including the Indonesian president, the vice-president, and the foreign affairs minister. The plaintiffs invoked the trauma from the Nunukan incident once again in order to identify the lack of protection for undocumented migrants and their families.[55] By this point, the Ministry of Foreign Affairs and Commission IX came to endorse the NGOs' interpretation.[56]

In the months leading to the ICRMW ratification, the Ministry of Manpower finally shifted its interpretation and accepted the rights groups' understanding. According to ARRAK 1990 coordinator Ali Akbar, the Ministry of Manpower changed its interpretation of the ICRMW in early 2012 due to both civil society pressure and increasing violations of Indonesian migrant rights.[57] To be specific, more than 450 cases of migrant worker abuse were

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[51] Leolita Masnun and Erly Wijayani, "Ratifikasi International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families dan Upaya Perlindungan Tenaga Kerja Indonesia" [Ratification of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and effort for the protection of Indonesian workers], *Jurnal Masyarakat dan Budaya* 12, no. 1 (2010): 93–118.

[52] Palmer, *Indonesia's Overseas Labour Migration Programme*.

[53] Ady, "DPR Siap Bahas Ratifikasi Konvensi Pekerja Migran" [DPR ready to discuss ratification of migrant workers convention], *HukumOnline*, 7 April 2012, https://www.hukumonline.com/berita/baca/lt4f7fc7a1a2a14/dpr-siap-bahas-ratifikasi-konvensi-pekerja-migran.

[54] Ady, "DPR Ready to Discuss Ratification."

[55] Leo Wisnu Susapto, "PRT Menggugat SBY" [PRT sues SBY], *HukumOnline*, 1 April 2011, https://www.hukumonline.com/berita/baca/lt4d95b95c26803/-prt-menggugat-sby.

[56] Ady, "DPR Ready to Discuss Ratification."

[57] Ady, "DPR Ready to Discuss Ratification."

reported by the *Jakarta Post* between 2009 and 2012.[58] The civil society coalition was also crucial in changing the official interpretation of migrant rights as Manpower Minister Muhaimin stated the normative change represented the "success of human rights activists and advocates."[59] The altered interpretation that dismissed the previous understanding regarding the burden to protect foreign workers was expressed by Minister Muhaimin: "This convention also provides a minimum protection framework for migrant workers in *various categories* and *their families*, for all stages, both at the time of pre-departure, the period of working abroad and after placement."[60] The Ministry of Manpower's new normative interpretation eventually facilitated a consensus with members of Commission IX, the Ministries of Foreign Affairs and Law and Human Rights, who agreed to submit the ratification bill to be passed into law. To summarize, the domestic contestation of migrant rights resolved disagreements on migrant worker rights between government agencies, leading to a shared understanding that the ICRMW ratification was *meant* to protect Indonesian migrant citizens, including undocumented migrants and their families.

The consolidation of Indonesia's normative baggage—with a crystallized meaning of migrant rights associated with the protection of Indonesian documented and undocumented migrant citizens and their families—facilitated the translation of migrant rights into foreign policy. Following the parliamentary approval, Foreign Minister Marty Natalegawa deposited the ratification instrument at the UN in 2012, with the following declaration:

> The ratification of this Convention is important to strengthen the protection framework for *Indonesian migrant workers and their entire families*. In this way, all migrant workers, especially those in a vulnerable position, namely migrant workers in the informal sector and in *irregular* situations, are protected.[61]

For him, the ICRMW "is the minimum standard for the protection of Indonesian workers."[62] Such a normative understanding was reaffirmed in the White Papers, which Marty termed the "Grand Design of the Protection

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[58] Mary Austin, "Defending Indonesia's Migrant Domestic Workers," in *Citizenship and Democratization in Southeast Asia*, eds. Ward Berenschot, Henk Schulte Nordholt, and Laurens Bakker (Leiden: Brill, 2016).

[59] Ady, "Pemerintah-DPR Sepakat Ratifikasi Konvensi Buruh Migran" [Government-DPR agree on ratification of migrant workers convention], *HukumOnline*, 9 April 2012, https://www.hukumonline.com/berita/baca/lt4f82f4362c22e/pemerintah-dpr-sepakat-ratifikasi-konvensi-buruh-migran.

[60] Iman Rosidi, "Alasan Pemerintah Ratifikasi Konvensi Perlindungan Pekerja Migran" [Reasons for the government to ratify the convention on the protection of migrant workers], *OkeFinance*, 6 August 2012, https://economy.okezone.com/read/2012/08/06/320/674027/alasan-pemerintah-ratifikasi-konvensi-perlindungan-pekerja-migran. Emphasis added.

[61] Ady, "Government-DPR agree on ratification." Emphasis added.

[62] Marty Natalegawa, communication with Ruji Auethavornpipat, 1 November 2018.

of Indonesian Citizens Overseas."[63] The policy extended on what former Foreign Minister Hassan Wirajuda formulated as "*intermestik*" policy, which was underpinned by the idea that Indonesia should elevate domestic issues as public diplomacy.[64] The core of the Grand Design also exemplifies a paradigm shift in the SBY administration's foreign policy to uphold human rights of Indonesian citizens, especially in multilateral platforms.[65] This important shift was further observed by a former Manpower official, who stated, "you [previously] just sent, sent, sent" migrants without considering their wellbeing.[66] The Foreign Affairs Ministry's attempts to "protect" are now officially known as "protection diplomacy," which continued under President Joko Widodo (2014 onwards). As officially stated, protection diplomacy entails early prevention, detection, and protection of Indonesian citizens abroad. It involves providing consular functions, shelter, legal assistance, physical and psychological rehabilitation, and family reunification.[67] The next section illustrates the execution of protection diplomacy in ASEAN as shaped by Indonesia's normative baggage.

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Negotiating the ICRMW in the ASEAN Consensus

This section demonstrates how the crystallized meaning of "migrant rights" as "the protection of Indonesian documented and undocumented migrants and their families" was re-enacted from Indonesia's normative baggage as the meaning-in-use in the ASEAN negotiation. This meaning motivated the Indonesian delegation to promote ICRMW standards deemed relevant to safeguarding Indonesian migrants in the region.

Indonesia represented labour-sending countries in the negotiations. Together with the Philippines, it played key roles in advancing protection items in the ASEAN Consensus. Indonesia has more than 9 million overseas citizens, of whom approximately 4.3 million are not fully documented, lacking valid passports and employment visas.[68] In Southeast Asia, the population of migrant workers and their family members has grown, especially since the 1990s, and this population has been integral to the economic development

[63] Sindo, "Angka kasus WNI di luar negeri turun" [The number of cases of Indonesian citizens abroad has fallen], *Sindo*, 4 January 2013, https://international.sindonews.com/berita/703740/40/angka-kasus-wni-di-luar-negeri-turun.

[64] Nazar el Mahfudzi, "Tata Kelola Perlindungan Warga Negara Indonesia dalam Melakukan Peran Diplomasi Digital" [Protection governance of Indonesian citizens in digital diplomacy], *Jurnal Hubungan Internasional* 13, no. 1 (2020): 19–38.

[65] Interview with senior Indonesian official, Ministry of Foreign Affairs, 17 March 2016.

[66] Interview with former senior official, Ministry of Manpower and Transmigration, 21 March 2016.

[67] Salmon Abertnego Manurung and Nabitatus Sa'Adah, "Hukum Internasional Dan Diplomasi Indonesia Dalam Perlindungan Tenaga Kerja Migran Indonesia" [International law and Indonesian diplomacy in protecting Indonesian migrant workforce], *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 1–11.

[68] World Bank, *Indonesia's Global Worker: Juggling Opportunities and Risks* (Washington, DC: World Bank, 2017).

of the region.[69] Coupled with ASEAN's growing interests in human rights, this development increasingly necessitated the design and implementation of a regional mechanism to protect migrant rights.

ASEAN's human rights reforms in the 2000s facilitated Indonesia's advocacy for migrant protection. ASEAN adopted the Vientiane Action Programme (VAP) in 2004, which was the first document to incorporate regional concerns for migrant workers. The VAP tasked ASEAN members to negotiate an "ASEAN instrument" that would take 13 years to be finalized as "the ASEAN Consensus."[70] In January 2007, ASEAN members endorsed the Declaration on the Protection and Promotion of the Rights of Migrant Workers (hereafter the Cebu Declaration) in Cebu in January 2007. Together with the Philippines as ASEAN chair, Indonesia was a "prime mover in the drafting and adoption" of the Cebu Declaration.[71] The agreement tasked relevant ASEAN bodies to negotiate the ASEAN instrument in order to clarify the obligation of ASEAN members to protect the rights of migrants in their country.[72] Subsequently, the ASEAN Foreign Ministers' Meeting in July 2007 established the ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW). The committee reported directly to the Senior Labour Officials Meeting and designated two labour-sending states (Indonesia and the Philippines) and two labour-receiving states (Thailand and Malaysia) as the ACMW drafting team to deliberate on the ASEAN instrument. The rationale to do so was to "reach a common understanding on principles behind the rights of migrant workers," thus instigating the process to resolve normative differences among ASEAN members.[73]

To prepare for the first ACMW drafting team meeting in 2009, Indonesian NGOs linked up with regional advocacy groups in shaping the Indonesian delegation's normative outlook based on the ICRMW. To recall from the above discussion, 2009 followed the advocacy by Komnas Perempuan and Solidaritas Perempuan that propounded severe abuses of migrants and exposed the failure of the MOU with Malaysia to legally enforce the rights of undocumented migrants and their family members in line with the ICRMW. To advance their normative claims on rights protection, Indonesian NGOs, with the Human Rights Working Group (HRWG) and Indonesian

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[69] Susan Kneebone, "ASEAN: Setting the Agenda for the Rights of Migrant Workers," in *Human Rights in the Asia-Pacific Region: Towards Institution Building*, eds. Hitoshi Nasu and Ben Saul (Abingdon, UK: Routledge, 2011), 146.

[70] ASEAN, *Vientiane Action Programme 2004–2010* (Jakarta: ASEAN Secretariat, 2004).

[71] Interview with former senior official, Ministry of Manpower and Transmigration, 21 March 2016. See also, Donald Weatherbee, "Understanding Jokowi's foreign policy," *Trends in Southeast Asia*, no. 12 (2016): 14.

[72] Ruji Auethavornpipat, "Assessing Regional Cooperation: ASEAN States, Migrant Worker Rights and Norm Socialization in Southeast Asia," *Global Change, Peace & Security* 29, no. 2 (2017): 129–143.

[73] ASEAN, *ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) Work Plan* (Jakarta: ASEAN, 2008).

Workers' Union Association serving as the national focal point, worked with a regional advocacy network called the Task Force on ASEAN Migrant Workers (TF-AMW).[74] The TF-AMW organized national and regional consultations in eight ASEAN countries and united Southeast Asian civil society groups in making concerted demands based on the ICRMW with the publication of the Civil Society Proposal for the instrument. This document represented the only regional civil society's consensus submitted to the ASEAN Secretariat and ASEAN Senior Labour Officials Meeting in May 2009. In particular, the Indonesian Civil Society Committee (KMSI or Komite Masyarakat Sipil Indonesia) for ASEAN migrant workers, whose members included Indonesia's focal point organizations, demanded that the ASEAN instrument include Article 25 of the ICRMW, which guarantees equality of rights regardless of nationality and immigration status.[75] The KMSI further urged all negotiating parties in the ACMW to accept the Civil Society Proposal to create a legally binding instrument.

The Indonesian delegation enacted civil society's interpretation of migrant rights, which entailed the protection of Indonesian migrants and their families, at the first ACMW meeting in April 2009 in Bangkok.[76] The Indonesian delegation, led by Roostiawati, the director of overseas placement of migrant workers, demanded the instrument be legally binding and cover not only "migrant workers in a regular context, but also irregular ones, and their families."[77] From an Indonesian perspective, such an interpretation of migrant rights protection was driven by the understanding that when Indonesians become undocumented overseas, it does not mean they have lost their rights as human beings and, "when you try to protect them [undocumented migrants], you cannot avoid [the need] to look at the protection of [their] families" because migrants often bring their family members to destination countries.[78] Therefore, these vulnerable groups should be prioritized and protected through a legally binding agreement.[79] The interpretation of migrant rights based on the ICRMW—focused on the protection of Indonesian migrant

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[74] "The Role of Civil Society and Trade Unions in the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers," 2009, accessed 7 October 2021, http://www.workersconnection.org/articles/the-role-of-civil-society-and-trade-unions-in-the-implementation-of-the-asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers.

[75] Red, "KMSI Usulkan Legal Framework untuk Buruh Migran" [KMSI proposes legal framework for migrant workers], *HukumOnline*, 7 December 2009, https://www.hukumonline.com/berita/baca/lt4b1cd82190247/kmsi-usulkan-ilegal-frameworki-perlindungan-buruh-migran.

[76] Interview with senior official, Ministry of Manpower and Transmigration, 21 March 2016.

[77] HukumOnline, "Mendesak Ratifikasi Konvensi Perlindungan Buruh Migran" [Urge for ratification of the convention on the protection of migrant workers], *HukumOnline*, 30 October 2009, https://www.hukumonline.com/berita/baca/lt4aeaf633eff40/mendesak-ratifikasi-konvensi-perlindungan-buruh-migran.

[78] Interview with NGO representative, HRWG, 4 March 2016.

[79] Interview with senior government official in Indonesia who was active in the policy making of migrant workers (no attribution), 7 March 2016; interview with former senior official, Ministry of Manpower and Transmigration, 21 March 2016.

citizens, undocumented migrants, and their families—became the meaning-in-use by Indonesian officials in the negotiation.

Indonesia's normative understanding, which advanced three core protection items (legally binding instrument, rights of undocumented migrants, and rights of migrants' family members), received support from the Philippines. But the two labour-receiving countries disagreed, with Malaysia opposing rights protection for undocumented migrants and their families. The other labour-receiving state, Thailand, insisted that migrant rights should not exceed those granted to its own citizens.[80] Indonesian delegates summed up the clashing interpretation of rights at this initial negotiation stage:

> From the beginning, [the] definition [of migrant workers and their rights] is quite different … the government[s] from sending countries should be responsible even if they [migrants] go to destination countries *without any requirement*. But we [the Indonesian government] cannot push the receiving states to be responsible for *all* migrant workers.[81]

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Hence, it is clear that from the first round of negotiations, the Indonesian delegation took into consideration the interpretation based on the ICRMW as advocated by rights groups. The clashing interpretation of migrant rights also illustrates the norm's fluidity with diverging interpretations. The difference in normative interpretation brought the negotiation to a standstill by the third ACMW meeting in December 2009. To break the deadlock, the ACMW drafting team was expanded to include all ten ASEAN member states in 2010. ASEAN hoped it would facilitate a consensus on the ASEAN instrument.

During its 2011 ASEAN chairmanship, the Indonesian government and civil society sought to increase the salience of the ICRMW in ASEAN. In the same year, Indonesia also saw more serious shortcomings within its new MOU with Malaysia, which remained non-binding and did not specify minimum wages and overtime payment for Indonesian migrant workers. This made the ASEAN negotiation even more important, as observed in how Fajrul Falaakh, a member of Indonesia's National Law Commission, pressed the Indonesian government to increase "mutual protection" for undocumented migrants as ASEAN chair.[82] The government then publicly shifted its policy towards multilateral engagement.[83] Particularly at the ASEAN level, Rafendi

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[80] Tess Bacalla, "ASEAN Locks Horns on Migrant Workers' Rights (part two)," *ASEAN News*, 20 September 2012, http://www.aseannews.net/asean-locks-horns-on-migrant-workers-rights/.

[81] Interview with senior official, Ministry of Manpower and Transmigration, 21 March 2016. Emphasis added.

[82] HukumOnline, "Indonesia Motor Perlindungan Buruh Migran ASEAN" [Indonesia pushes for the protection of ASEAN migrant workers], *HukumOnline*, 9 March 2011, https://www.hukumonline.com/berita/baca/lt4d7644e3e79f9/indonesia-motor-perlindungan-buruh-migran-asean?page=2.

[83] Austin, "Defending Indonesia's Migrant Domestic Workers."

Djamin, the newly appointed chair of the ASEAN Intergovernmental Commission on Human Rights (AICHR) from Indonesia, prioritized the protection of migrants.[84] Rafendi had extensive involvement with ARRAK 1990 and acted as Indonesia's national focal point for TF-AMW. In his AICHR chair capacity, he closely monitored the negotiation of the ASEAN instrument to ensure the legally binding status was consistent with the ICRMW.[85]

Despite Indonesia's prioritization of migrant protection as ASEAN chair, the ACMW drafting team still could not reach an agreement and instead adopted a "zero-draft" in 2012, which merely contained recommendations from each ASEAN member.[86] In it, Indonesia retained its understanding of migrant rights based on the ICRMW. As explained by an Indonesian delegate, "I myself developed the zero draft of this instrument based on this UN convention [and] we'd like to have an instrument that protects *all kinds* of migrant workers, including *undocumented migrants* … It is important for everybody to understand the UN Convention in ASEAN."[87] This delegate's understanding of migrant rights further referred to the rights of undocumented Indonesian migrants and their families, especially migrant children who needed education when they accompanied their parents from Indonesia to Malaysia. However, Malaysia rejected this normative interpretation and asked that each state determine its own migration policy, an outcome that would negate the aspiration to develop a regional instrument.[88] To move the negotiation forward, the ACMW proposed a three-phase approach for future negotiations. First, in 2012, ASEAN states would discuss the issue of documented workers. Second, in 2013, the issue of undocumented workers would be addressed; and third, in 2014, member states would decide whether the instrument should be legally binding.[89]

Perceiving another impasse, the Indonesian government escalated the negotiation to higher levels of regional cooperation from 2014 onwards.[90] To bolster Indonesia's position, newly appointed Foreign Minister Retno Marsudi assumed the mandate of drafting the ASEAN instrument from the Ministry of Manpower and upgraded the official delegation from second-

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[84] HukumOnline, "AICHR Perlu Dorong Peningkatan Pelembagaan HAM" [AICHR needs to push for enhancement of human rights institutions], *HukumOnline*, 18 October 2010, https://www.hukumonline.com/berita/baca/lt4cbc1a2feb0b8/aichr-perlu-dorong-peningkatan-pelembagaan-ham?page=1.

[85] Interview with NGO representative, HRWG, 4 March 2016.

[86] Ruji Auethavornpipat, "Explaining the Lack of Change in Southeast Asia: The Practice of Migrant Worker Rights in the 'ASEAN Migration Field,'" *International Journal of Migration and Border Studies* 5, no. 3 (2019): 153–171.

[87] Interview with former senior official, Ministry of Manpower and Transmigration, 21 March 2016. Emphasis added.

[88] Tess Bacalla, "ASEAN Urged to Set Up Mechanism for Migrants' Rights," *ASEAN News*, 10 September 2012, http://www.aseannews.net/asean-locks-horns-on-migrant-workers-rights/.

[89] Anisa Santoso, *Migrant Workers and ASEAN: A Two Level State and Regional Analysis* (Oxon: Routledge, 2017).

[90] Interview with senior ASEAN official, ASEAN Secretariat, 18 February 2016.

most senior to the senior-most position in the Indonesian bureaucracy.[91] It was also at this stage of the negotiation that Indonesia's meaning-in-use of migrant rights was most pronounced. This is evidenced in Retno's remarks: "Strengthening the protection for *Indonesian migrant workers* will also be conducted at the regional level by, among others, promoting the establishment of a *non-discriminatory ASEAN legal instrument*."[92]

Her speech emphasizing a legally binding and non-discriminatory instrument reinforced Indonesia's meaning-in-use of migrant rights that extended protection to Indonesian migrants as well as undocumented migrants and their families. Moreover, at the ASEAN Foreign Ministers' Meeting in 2014 and again in 2015, the Indonesian government "urged ... [the ACMW] to take necessary actions to facilitate the timely conclusion" of the ASEAN instrument.[93] At this time, Indonesia's stance was so firm that it considered itself to be "the most extreme" in the negotiation.[94] The Ministry of Foreign Affairs reaffirmed, "[f]rom Indonesia's point of view, ASEAN would do better not to have a document than to produce one that does not provide comprehensive protection for Indonesian workers."[95] The Ministry of Foreign Affairs' involvement also "shows how pushy Indonesia [was] in the context of trying to finalize [the instrument] and even [tried] to take over this process of negotiation of the binding instrument."[96]

The Indonesian delegation further sought regional support for its firm interpretation of migrant protection in other ASEAN platforms, specifically the ASEAN Forum on Migrant Labour (AFML). In preparation for the AFML meeting in November 2016, the Indonesian government arranged that Indonesian trade union and NGO representatives would incorporate its official position on the ASEAN instrument negotiation in the AFML recommendations for the year.[97] The involvement of civil society at the AFML gave Indonesia additional leeway to pressure ASEAN by having governments and social partners debate migrant protection and make its preferred

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[91] Interview with NGO representative, HRWG, 4 March 2016.

[92] "Annual Press Statement: Minister for Foreign Affairs, Republic of Indonesia," 2015, accessed 10 October 2018, https://www.kemlu.go.id/Documents/PPTM%202015/PPTM%202015%20ENG%20FINAL%20PDF.pdf. Emphasis added.

[93] "Joint Communiqué 47th ASEAN Foreign Ministers' Meeting," 2014, accessed 27 September 2014, http://www.asean.org/images/documents/47thAMMandRelatedMeetings/Joint%20Communique%20of%2047th%20AMM%20as%20of%209-8-14%2010%20pm.pdf; "Joint Communiqué 48th ASEAN Foreign Ministers Meeting," 2015, accessed 6 August 2019, http://www.asean.org/wp-content/uploads/images/2015/August/48th_amm/JOINT%20COMMUNIQUE%20OF%20THE%2048TH%20AMM-FINAL.pdf.

[94] Interview with senior Indonesian official, Ministry of Foreign Affairs, 17 March 2016.

[95] "Bagaimana Indonesia memperjuangkan hak pekerja migran di ASEAN?" [How Indonesia is fighting for the rights of migrant workers in ASEAN], *Masyarakat ASEAN* 13 (2016): 10–11, https://www.kemlu.go.id/Majalah/MAJALAH%20MASYARAKAT%20ASEAN%20Edisi%2013.pdf.

[96] Interview with NGO representative, HRWG, 4 March 2016.

[97] Interview with trade union representative, 9 March 2016; confirmed in interview with NGO representative, 15 March 2016.

recommendations.[98] But despite Indonesia's efforts to generate a consensus at the AFML, the recommendations failed to include Indonesia's demands, merely stating that participants "supported the finalization of the ASEAN instrument" by April 2017. In comparison to the recommendations made in 2011, when Indonesia was ASEAN chair and AFML host, participants not only agreed on "a speedy development" of the ASEAN instrument, but also recommended the instrument be legally binding.[99]

Concurrent with Indonesia's effort, the Philippine government reignited the ASEAN instrument negotiation in 2016 in its preparation to become ASEAN chair the following year. The rationale was that in 2017 ASEAN would celebrate its 50th anniversary and the Cebu Declaration would reach a 10-year milestone. The Philippines then aimed to make the adoption of the ASEAN instrument a deliverable. A leaked draft report of the 9th ACMW meeting in May 2016 revealed that the Philippine government requested that ASEAN member states "try with their utmost to reach consensus" by April 2017 at the latest.[100] The report further indicated that ASEAN members were in favour of the proposed timeline. But the ACMW still had not decided if the instrument would be legally binding. Indonesia and the Philippines were in favour; Malaysia, Singapore, and Brunei were against; Thailand did not take a position; and Vietnam dropped out of the negotiation due to a lack of technical and financial resources. In contrast to the Philippines, however, Indonesia remained flexible on how long it would take to finalize the legally binding ASEAN instrument. Indonesia's flexibility strongly demonstrates its continuation of meaning-in-use of migrant rights and its tremendous efforts towards securing the protection of its migrant citizens through ASEAN. By this point, the Philippine government also changed its role to be "an honest broker" and organized out-of-round meetings between Indonesian and Malaysian officials who "set the tone of the negotiation."[101] The objective was to reconcile their normative differences in migrant rights interpretation. Such meetings led to the addition of undocumented worker protections to the final agreement, consistent with Indonesia's demands.[102]

To finalize the negotiation, the Philippines shifted its position a few months before the 2017 ASEAN summit by dropping support for a legally binding instrument. Under pressure to deliver as ASEAN chair, the Philippines proposed instead that the ASEAN instrument only be "morally binding" as opposed to "legally binding," effectively dismissing Indonesia's interpretation

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[98] Stefan Rother, "ASEAN Forum on Migrant Labour: A Space for Civil Society in Migration Governance and the Regional Level," *Asia Pacific Viewpoint* 59, no. 1 (2018): 107–118.

[99] International Labour Organization, *The ASEAN Forum on Migrant Labour (AFML): Background Information Booklet*, 3rd ed. (Bangkok: International Labour Organization, 2018), 17.

[100] ASEAN, *The Report of the Ninth Meeting of the ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (9th ACMW Meeting): Draft* (Jakarta: ASEAN Secretariat, 2016).

[101] Interview with a senior Philippine official, Department of Foreign Affairs, 6 September 2019.

[102] Interview with a senior Philippine official, Department of Foreign Affairs, 6 September 2019.

that rights protection should be legally enforceable in line with the ICRMW.[103] This change came as a surprise to observers because the Philippines was among the first countries to ratify the ICRMW in 1995 and had a strong reputation for protecting migrant rights. The retention of "binding" discourse surrounding the ASEAN Consensus was meant to appease Indonesia.[104] But by abandoning its aspiration for a legally binding instrument, the Philippines prioritized delivering a final result over achieving an enforceable regional mechanism for the protection of migrant rights. Consequently, Indonesia found itself at odds with all other ASEAN members, who made the non-binding document the preferred agreement. So it had to abandon the demand for a legally binding instrument "out of mutual respect" for regional consensus.[105] Yet, while Indonesia was disappointed with this outcome, the negotiation resulted in the official recognition of the human rights of undocumented migrants and their families. In particular, the ASEAN Consensus extends protection to undocumented migrants whereby ASEAN states are to provide assistance to undocumented workers for humanitarian reasons, hence preventing a repeat of events such as the Nunukan incident discussed above. It also commits ASEAN to protecting the rights of family members "in the entire migration process," including the rights to family visits and reunions in sending and receiving countries.[106] In comparison to the earlier Cebu Declaration, the ASEAN Consensus represents a clear and yet limited normative advancement in regional cooperation.

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Conclusion

This article advances the study of Indonesia's diplomacy on migrant protection through the critical norms perspective from IR. It offers an empirically informed analysis of how and why particular norms have been promoted in multilateral negotiations. It does so by unpacking the relationships between normative baggage (sources of norm interpretation) and a meaning-in-use or norm's meaning that is purposely enacted for a specific context (negotiation). Not only do the findings show that normative baggage shapes interpretations, but the meaning of norms also guides actors'

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[103] Samuel Medenilla, "Bello to Push Accord on Migrant Workers," *Manila Bulletin*, 23 April 2017, https://news.mb.com.ph/2017/04/23/bello-to-push-accord-on-migrant-workers/.

[104] Interview with a senior Philippine official, Department of Foreign Affairs, 6 September 2019.

[105] Carmencita A. Carillo, "ASEAN Labor Ministers to Finalize Draft Instrument for Migrant Workers' Rights," *Business World Online*, 21 February 2017, http://www.bworldonline.com/content.php?section=Nation&title=asean-labor-ministers-to-finalize-draft-instrument-for-migrant-workers&8217-rights&id=140951.

[106] ASEAN Secretariat, *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers* (Jakarta: ASEAN, 2017).

subsequent behaviour in negotiations. In the case study of the Indonesian delegation, the interpretation has led to the identification of relevant ICRMW standards considered appropriate for usage in the negotiation. This further demonstrates the significance of distinctive interpretations of norms, which are not readily shared by other actors who hold different normative baggage. Such normative meanings are also subject to contestation at both domestic and regional levels. The article also reaffirms that norm interpretation is crucial to re-enacting international standards such as those found in the ICRMW. As such, international agreements like those created by the UN should not be taken for granted but require constant (re-)interpretation by stakeholders who seek to apply them.

Another important finding is that Indonesia's persistence in the ASEAN negotiations can be explained through the enacted meaning of norms or meaning-in-use. While Indonesia's normative baggage has been reshaped to incorporate a rights-based interpretation of labour migration, the meaning of migrant rights, which was invoked from the normative baggage and specifically associated with Indonesian migrant citizens, has retained the same meaning during the negotiations. This normative meaning has thus shaped Indonesia's outlook and objectives when engaging with ASEAN. However, despite the government's institutionalization of protection diplomacy, such a meaning has been invoked only after migrant abuses and civil society pressure, suggesting Indonesia's policy is more reactive than proactive. Moreover, Indonesia's unchanging interpretation has implications for Indonesian policy makers and NGOs because such a narrowly conceived understanding puts constraints on Indonesia's diplomacy. A narrow interpretation will only drive Indonesia to put Indonesian migrants first while neglecting the plight of other groups of foreign migrants in Indonesia and elsewhere. On the contrary, a broadening of Indonesia's interpretation can strengthen Indonesia's migrant credentials and its aspirations to create regional and global migration governance structures that are more inclusive in nature.

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