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Free Flow of Skilled Labor in ASEAN: Is it A Threat for Labor Market in Indonesia.?^{*}

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Abstract

The establishment of AEC is offering opportunities in the form of a huge market for ASEAN Member Countries (AMCs). Many have doubts and worried that Indonesia will mainly be the market for the AEC and Indonesia's progress in developing its human capital will be negatively impacted by competition from free flow of migrant workers from other AMCs.

In practice, however, progress towards freer mobility in ASEAN has been slow and uneven, due to rigid national immigration policies, inequalities in professional education and licensing regimes, public ambivalence toward the AEC, and the vast income gap that many countries fear will contribute to brain drain. This article examines impediment of free movement of skilled labors as a result of weak political and public support to drive the process forward as well as the myriad policy and procedural obstacles of free movement of skilled labors in ASEAN as well as in Indonesia.

Key words: skilled labor, AEC 2015, free flow skilled labor, single market

I. Introduction

On 23 November 2015 in the 27th meeting of the Association of Southeast Asian Nation's (ASEAN) Summit in Kuala Lumpur, ASEAN has declared the establishment of an ASEAN Community and adopted a set of new Community Blueprints, including the ASEAN Economic Community Blueprint 2025 (AEC Blueprint 2025), succeeding the Roadmap for an ASEAN Community (2009 – 2015).¹ The Kuala Lumpur Declaration 2025 reaffirms ASEAN Member Countries' (AMCs) commitment toward the full establishment of an ASEAN Community, which consists of three community pillars.² It can be said that the AEC is the most important pillar of all of ASEAN Community pillars and described as the 'heart' of the ASEAN Community.³ One of the aims of the AEC Blueprint 2025 is to "create a deeply integrated and highly cohesive ASEAN economy that would support sustained high economic growth and resilience even in the face of global economic shocks and

^{*}This article has been presented in Regional Conference of AsianSIL: International Law and a Dynamic Asia, Hanoi, 14-15 June 2016

¹ Kuala Lumpur Declaration on ASEAN 2025: Forging Ahead Together, see at <http://www.asean.org/storage/2015/12/ASEAN-2025-Forging-Ahead-Together-final.pdf> (Accessed on 12/02/2016)

² Three ASEAN Communities are the ASEAN Political Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio Cultural Community (ASCC), see at <http://www.asean.org/asean-economic-community/>

³ ?

volatilities".⁴ The AEC Blueprint 2025 consists of interrelated and mutually reinforcing characteristics, namely, (i) a highly integrated and cohesive economy; (ii) a competitive, innovative, and dynamic ASEAN; (iii) enhanced connectivity and sectoral cooperation; (iv) a resilient, inclusive, people-oriented, and people-centred ASEAN; and (v) a global ASEAN.

However, AMCs compliance with the 2007 AEC Blueprint was considerably weak. Not all AMCs have fully complied with the 2007 AEC Blueprint, which term of application ended in December 2015.⁵ For example, Indonesia has only implemented 92,7 percent or 469 of the total 506 measures.⁶ The full scorecard comprised a total of 611 ASEAN-wide measures, with Prioritized Key Deliverables under the Phnom Penh Agenda 2013. Overall implementation rate by all 10 AMCs on 31 October 2015 stood at 92,7% or 469 of 506 measures.⁷ The unmet measures of the 2007 AEC Blueprint⁸ in become immediate priorities that AMCs have to meet at the end 2016 (for Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand), and 2018 (for Cambodia, Lao, Myanmar and Vietnam or CLMV countries).⁸

The realization of the AEC on 1 January 2016 embodies the long process that ASEAN undertook toward an integrated region that requires stronger cooperation and integration among AMCs in 80 years to come. According to the AEC Blue Print, the AEC involve²⁵ launch of a single market and production base among AMCs, hence allowing the free flow of goods,⁶⁸ vices, investment, and skilled labor as well as freer flow of capital. By inserting free flow of skilled labor in the AEC scheme, many Indonesian expressed deep concerns whether there would be a massive inflow of foreign workers into Indonesia that lead to more competition in the domestic labor market. Considering that the demand for high-skill, medium-skill and low-skill employment will increase by an additional 55.7 percent, 26.1 percent and 3.2 percent respectively. The ILO's and ADB's 2014 joint study shows that the implementation of the AEC could generate up to 14 million additional jobs in Southeast Asia, with 1.9 million jobs in Indonesia.⁹ On one side the AEC will bring improvements to the livelihoods the Indonesian population, on the other side Indonesia must be ready to take hold of the challenges that come with it.

This article discusses and evaluates the AMCs performance in complying⁵⁹ in the AEC, particularly on the issue of free flow of skilled labor as a part of trade liberalization in the region and in the face of the rising demand for skilled labors due

⁴ Point 6 para.1 the AEC Blueprint 2025 see at <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf> (retrieved on 02/01/2018)

⁵ Kuala Lumpur Declaration 2025, para. 3.

⁶ Rizky Jaramaya, Republika.co.id, 23 August 2015 "Mendag Lembong: Implementasi Cetak Biru MEA Sulit", see at <http://www.republika.co.id/berita/internasional/global/15/08/23/ntj2ku254-mendag-lembong-implementasi-cetak-biru-mea-sulit> (accessed on 10/01/2016). It should be noted that the percentage of other AMCs achievements hardly published for public, but the average percentage was stood at below 100%.

⁷ For the detailed implementation measures see at ASEAN, 2015, A Blueprint for Growth: ASEAN Economic Community 2015: Progress and Key Achievements, p. 17, see at http://asean.org/?static_post=asean-economic-community-2015-progress-and-key-achievements-2 (retrieved on 12/01/2018)

⁸ The AEC Blueprint 2025, point 4, ibid

⁹ Jakarta Globe, ILO Warns Indonesia to Invest in Skilled Labor or Lose Out. <http://jakartaglobe.beritasatu.com/news/ilo-warns-indonesia-invest-skilled-labor-lose/>

to the AEC. Since free flow of skilled labor has important implications on trade in services, foreign direct investment and productivity, this article also analyses the investment and service liberalization under the AEC, in particular its implementation in. In this context, this article highlights the Indonesian policy on its workforce in innovating and improving its labor sector.

It also examines the nature of ASEAN organizational structure by comparing it with the European Union (EU) *vis-à-vis* its status as an intergovernmental organization. Finally, it offers some solutions for ASEAN's structural transformation towards productive economic activities to raise living standards through increasing aggregate labor productivity in the region.

II. ASEAN Decentralized Regional Governance

The adoption of the ASEAN Concord II at the 9th ASEAN Summit in Bali served as the impetus to the establishment of the AEC in 2015.¹⁰ This leads to the development of ASEAN economic agreements into an economic integration. ASEAN adopted the AEC Blueprint in 2007 that consists of roadmap and hundreds of measures for the AMCs to accomplish the establishment of the AEC by 2015.¹¹ However, AMCs failed to accomplish the full implementation of all AEC measures outlined in the roadmap. Insufficient time is likely the main cause to AMC's failure to implement all these measures comprehensively. Initially, the ASEAN Concord II envisaged the establishment of an ASEAN Community by 2020 however, in 2007 AMCs agreed to accelerate the full implementation of the ASEAN Community, including the AEC, by 2015, five years earlier than the planned date set by the Bali Concord II.¹² Furthermore, there is no sanction for AMCs non-compliance with the AEC Blueprint measures¹³ as the ASEAN economic integration agreements are mainly based on AMC's commitments prescribed in ASEAN instruments that have no legally binding power.

Compared to the EU, ASEAN is more informal and less legalistic. Although AMCs proclaimed ASEAN as a rule-based organization with the adoption of the ASEAN Charter in 2008,¹⁴ ASEAN still lacks of necessary legal instruments and judicial body to ensure AMC's full compliance with their commitments. This begs the question whether the implementation of the 2025 AEC Blueprint will experience similar fate as its predecessor.

In the regional level, in the context of free flow of skilled labor, AMCs have agreed several agreements. Three important agreements are (1) the mutual recognition arrangements (abbreviated MRAs), which recognize education, experience, licenses, or certifications obtained in one of the ASEAN member

¹⁰ Bali Concord II, see at http://www.asean.org/?static_post=declaration-of-asean-concord-ii-bali-concord-ii (accessed on 01/02/2016)

¹¹ AEC Blueprint, see <http://www.asean.org/>

¹² Cebu Declaration, see at <http://www.asean.org/cebu-declaration-on-the-acceleration-of-the-establishment-of-an-asean-community-by-2015/> (accessed on 01/02/2016)

¹³ Koesrianti, Pembentukan Masyarakat Ekonomi ASEAN (ASEAN Economic Community/AEC) 2015: Integrasi Ekonomi Berdasar Komitmen Tanpa Sanksi, see at https://www.researchgate.net/publication/279915791_Pembentukan_Masyarakat_Ekonomi_ASEAN_ASEAN_Economic_CommunityAEC_2015_Integrasi_Ekonomi_Berdasar_Komitmen_Tanpa_Sanksi (Accessed 20/02/2016)

¹⁴ Koesrianti, Analisa Kekuatan Mengikat Piagam ASEAN dan Perkembangan Mekanisme Penyelesaian Sengketa di ASEAN, see at <http://e-journal.unair.ac.id/index.php/YDK/article/download/262/140>.

9 countries for engineering, nursing, surveying, architecture, medicine, dentistry, 9 tourism, and accounting; (2) streamlined visa and employment regulations for professionals and skilled laborers engaged in cross-border trade and investment; and (3) enhanced cooperation among universities in the ASEAN region in order to increase the mobility of students and staff.

ASEAN's ineffectiveness mainly lays on ASEAN 34 status as an intergovernmental organization, which operates based on the principles of mutual respect for the sovereignty and non-interference in the internal affairs of AMCs. Due to this, ASEAN has built inter-state relations based on informal basis and for many years has an aversion against rule-based and centralized approach to cooperation. ASEAN has been operating based on decentralized regional governance, i.e. through collective management with a singular focus on dialogue and consultation by which ASEAN aware of the existence of mutual interest and interdependence among the AMCs and peoples. Historically, ASEAN is a group of nations, each consists of multitudes of societies belonging to different ethnicities, languages, cultures and religious beliefs, which bound by geography, common objectives and shared destiny and they use ASEAN as a regional mechanism to drive common interests and free up resources to build unified nation-states of societies. ASEAN as an intergovernmental organization means as top-down organization. The leaders decide the decisions and the implementation of the agreements have to be done by the agencies and ministries in national level.

Considering its status as an intergovernmental organization, it can be said that ASEAN leaders have demonstrated strong commitments and political will consistently to integrate ASEAN economies but the process of implementation at the national and provincial levels remains slow. This is especially so in Indonesia. Due to the decentralization system in Indonesia, the provinces and local governments wield considerable autonomy to determine their own policies and the extent to which they would implement the AEC's agreements and measures, notwithstanding the fact that those agreements and measures have been agreed by the central government at the regional level.

Decentralization reveals an underlying problem of coordination between the central and local governments leading to problems of implementation of international commitments at the regional level. In the context of Foreign Direct Investment (FDI), under Presidential Decree 117 (1999) the provincial government is given authority to administer the processes of FDI. This means, decentralization has provided local government with some room to maneuver in the process of FDI management. This provision based on Law No.22 on regional autonomy (1999) provided for authority to be devolved from the central government to the provincial and district levels of government, except in respect of national security, national defense, religious affairs, foreign affairs, monetary affairs and judicial systems. In addition, pursuant to current regional autonomy Law No.23 of 2014 the management of FDI involves government functions being performed at all three levels of government, i.e, the central government (National Coordinating Investment Board), the provincial government, and local governments.¹⁵ Instead of complimented authority among them, their authorities often end up on conflicting situation due to different interests and lack of

15 K. Kuswanto, Herman W.Hoen & Ronald L.Holzaker, Bargaining between local governments and Multinational Corporations in a Decentralized sys 46 of governance: the cases of Ogan Komering Ilir and Banyuwangi Districts in Indoensia, *Asia Pacific Journal of Public Administration*, 49 39, 2017, Issue 3, p 193 can be retrieved at <http://www.tandfonline.com/doi/full/10.1080/23276665.2017.1368246>

coordination; for example, infant agricultural industries in certain province should be protected and not included into ASEAN trade liberalization agreements.

Historically, ASEAN was formed as a loose organization, which gives much room for ASEAN member governments to have their own policies, which Jaques Pelkmans aptly described:¹⁶

Conflict avoidance took primacy and good connections between the administrations were regarded as the lubricant of a successful ASEAN. Not the striving for economic regionalism, nor, for that matter, any formalization of their relationship. Except for a tiny elite which was in favor of deepening ASEAN into a form of economic regionalism, the economic cooperation networking remained a de facto instrument of good political and bureaucratic relations.

In the context of economic cooperation, article 1 (5) of the ASEAN Charter stated one of ASEAN's general goals is "to create a stable, prosperous and highly competitive ASEAN economic region with effective facilitation for trade and investment in which there is a free flow of goods, services, investment and a freer flow of capital, equitable economic development and reduction of poverty and socio-economic disparities". Nearly two decades ago, before the adoption of the ASEAN Charter in 2008, ASEAN has initiated a number economic programs such as ASEAN Free Trade Area (AFTA)¹⁷ ASEAN Framework Agreement on Services (AFAS),¹⁸ ASEAN Investment Area (AIA)¹⁹ as well as industrial complementation under ASEAN Industrial Cooperation (AICO)²⁰ Scheme, which has encouraged Foreign Direct Investment (FDI) by MNCs in ASEAN to build their multi-plants in AMCs. All of these economic programs had a modest progress except AFTA. As AFTA has equipped by main mechanism, Common Effective Preferential Tariff (CEPT-AFTA)²¹ for reducing tariffs and thereby according businesses price competitiveness for the goods, that means, traders have benefits from AFTA such as, save time, lower the cost of doing business in ASEAN. ASEAN Trade in Good Agreement (ATIGA) has replaced AFTA in 2009 and it superseded the CEPT Scheme, which is monitored by five discrete monitoring regimes.²²

¹⁶ Jacques Pelkmans, the ASEAN Economic Community: Dilemma's of a Shallow Trading Club, UNU-CRIS Working Papers, W-2009/5, p.5, PDF version http://www.ucrm.org/fileadmin/workingpapers/W-2009-5_The_Asean_Community_Dilemma_s_of_a_shallow_trading_club.pdf

¹⁷ ASEAN Free Trade Area, see <http://asean.org/asean-economic-community/asean-free-trade-area-afta-council/agreements-declarations/>

¹⁸ ASEAN Framework Agreement of Services (AFAS), see <http://investasean.asean.org/files/upload/Doc%2008%20-%20AFAS.pdf>

¹⁹ ASEAN Investment Area (AIA), see <http://asean.org/asean-economic-community/asean-investment-area-aia-council/>

²⁰ ASEAN Industrial Cooperation (AICO) Scheme, see http://asean.org/?static_post=asean-industrial-cooperation-scheme

²¹ Common Effective Preferential Tariff (CEPT – AFTA), see http://www.asean.org/wp-content/uploads/images/2012/Economic/AFTA/Common_Effective_Preferential_Tariff/Agreement%20on%20the%20Common%20Effective%20Preferential%20Tariff%20Scheme%20for%20the%20ASEAN%20Free%20Trade%20Area.pdf

²² Simon Chesterman, 2015, From Community to Compliance?, the Evolution of Monitoring Obligations in ASEAN, Cambridge University Press, p 23

19

The AEC is a regional initiative; it is implemented by national economies. Domestic law and policy is required to do things as their commitments to AEC, such as, reduce tariff, remove non-tariff barriers, and liberalize the service sectors. With economic growth and resources, ASEAN is seen as the next engine of growth in Asia provided that it became successful in achieving AEC. Also with various economic, cultural, and demographic issues to overcome, the proximity of ASEAN region bring a unique opportunity for all ASEAN members to get significant benefit.

Investors and corporations are especially anticipating ASEAN economic integration in the hope exploiting the opportunities to expand and consolidate their business operation in the region. In order to support the foreign investors in the region, ASEAN launched its vision that to enhance connectivity for ASEAN people and business and foster growth, culture and welfare. ASEAN vision is to forge a better future for the Southeast Asian region, strengthen the links between countries, people and business, and enhance the region's prosperity. Therefore it is big relevant when AMCs participate in liberalizing their professionals in the region. It AMCs succeed at uniting economically; ASEAN also could have a stronger bargaining position and political voice in facing other economies in international forum. Having saying that, AMCs do not have other choices than forge together through the establishment of AEC 2025 as ASEAN connectivity will help AMCs to became stronger, safer and better prepare for the future. In order to support the AEC agenda, the AMCs should also liberalize the professional to fulfill the job-creation as a result of the single market and production base in the region. Some agreements have been signed to liberalization some professional as shown at box.1.

Furthermore, there are 124 economic agreements under AEC related to trade in goods, investment, transport and the cosmetics directive, and for period 2008-2009 only 75,5 per cent achievement rate according the scorecard, and in December 2015 as the final deadline for the 2015 AEC Blueprint, not all AEC measures are accomplished. Apparently some AMCs still are doubtful about the benefits of such liberalization.

This low rate implementation is due to the different capabilities of the diverse economic development of AMCs, in particular for the CLMV countries. In order to reduce economic gap between ASEAN-6 and CLMV countries, it has been new approaches in place that "ASEAN help ASEAN approach" which consist of three schemes; by sharing expertise and experiences through bilateral development assistance, by increasing intra-ASEAN investments so that can help to transfer knowledge and technical know-how to CLMV countries, and by introducing targeted and tailored programs for each of these countries, for example, the Lao Pilot Project (LPP) that gains aid from the donor the Japan International Cooperation Agency (JICA).²³

Similarly in liberalizing services, Indonesia only offer limited foreign equity participation as some health care sub-sectors in Indonesia are closed to foreign

²³ S.Pushpanathan, "ASEAN's Readiness in Achieving the AEC 2015: Prospect and Challenges", Anchita Basu Das (ed), *Achieving the ASEAN Economic Community 2015: Challenges for Member Countries & Businesses*, ISEAS Singapore, p. 17

investors e.g., general medical clinic and ambulance services.²⁴ This has happened also as there is no clear service-sector policy in place.²⁵ Services sector liberalization requires coordination across many government agencies and the commitment of the AMC's under AFAS is not significant as the governments of AMC's only offer limited foreign equity participation. Therefore, the liberalization in this sector becomes major challenge among AMC's. Mobility of services providers within the region has become an important aspect of regional economic integration with the adoption of the 1995 AFAS and the Movement of Natural Persons (MNP) Agreement. Free movement of skilled labor within ASEAN region is promoted through the so-called Mutual Recognition Arrangements (MRAs) of professional services. Furthermore, the goal to achieve the free flow of skilled labor and professionals within the AEC has brought along a series of reforms envisaged to enable AMC's to meet these liberalization targets. There is also a regional Declaration on Migrant workers signed by ASEAN leaders in 2007 on aspects related to migrant workers' rights.

Members agreed that "there shall be a freer flow of capital, skilled labor and professionals among Member States" (AFAS art.4.e). The flow of skilled labor and professionals related to trade in services is associated with the so-called "mode 4" mobility of natural persons, one of the four modes of cross border services supply, as defined by the 1995 World Trade Organization of General Agreement on Trade Services (WTO/GATS) agreement. The objective of the movement of natural persons is to expand trade in services and deepen economic integration.²⁶ AMC's have concluded eight packages of commitments within the AFAS framework, laying down Mode 4 conditions for market access and national treatment as a part of their horizontal commitments.²⁷ Moreover, the schedules of specific commitments and the Most Favored Nation (MFN) exemptions lists contain provisions taken by individual countries in specific sectors, for certain categories of service providers. For example, while Singapore's MFN exceptions allow the presence of unskilled/semi-skilled natural persons that come from traditional sources of supply, measures under periodical domestic policy review, Indonesia reserves low level occupations/semi-skilled jobs to Indonesians, with limited exceptions for citizens from Malaysia, Singapore, Brunei Darussalam, Papua New Guinea and Australia.²⁸ Despite these several rounds of services negotiations and the conclusion of commitment packages, AMC's have not moved much beyond the initial WTO/GATS outcome. In particular, commitments on mode 4 are mainly linked to investment and business flows, and seen as only facilitating the movement of professionals, managers, and qualified staff under the intra-corporate transferee category.²⁹ Recent developments have sought to

41

24

²⁴ Sanchita Basu Das, Introduction: State of Readiness of ASEAN Economies and Businesses, in Sanchita Basu Das (ed), *Achieving the ASEAN Economic Community 2015: Challenges for Member Countries & Businesses*, ISEAS Singapore, p. 3

²⁵ Ibid

²⁶ Tereso S. Tullao, Jr and Michael Angelo A. Cortez, 2006, Enhancing the movement of natural persons in the ASEAN Region: Opportunities and Constraints, Asia – Pacific Research and Training Network on Trade Working Paper Series, No. 23, December 2006, see at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.133.5759&rep=rep1&type=pdf> (retrieved on 11/01/2018)

²⁷ For initial up to eight package see at, http://asean.org/?static_post=member-countries-horizontal-commitments-schedules-of-specific-commitments-and-the-list-of-most-favoured-nation-exemptions

²⁸ Tereso S. Tullao, Jr and Michael Angelo A. Cortez, *ibid* note 25

²⁹ Nikomborirak Deunden Nikom and Supunnavadee Jotdumrong, 2013, ASEAN Trade in Services, in the ASEAN Economic Community: A Work in Progress, Sanchita Basu Das, Yayant Menon, Rodolfo Severino, Omark Lal Shrestha (Editors); Joint Study ILO/ADB, 2014.

include all mobility-related commitments in a separate binding document – the Agreement on Movement of Natural Persons – that would supersede all mode 4 provisions codified previously in AFAS.³⁰

The services Trade Restriction index shows that the commitments of AMCs toward ASEAN service liberalization for modes 1, 3 and 4 are not always similar to their ASEAN Comprehensive Investment Agreement (ACIA)³¹ commitments as shown in table 1.

Table.1. Services Trade Restriction Index in some AMCs³²

No	Country	Overall	Mode 1	Mode 3	Mode 4
1	Cambodia				
	Overall	23,7	42,95	18,73	75
	Professional	60	66,67	40	75
	Accounting & Auditor	N/A	100	50	75
	Legal	N/A	0	33,33	75
2	Indonesia				
	Overall	50	11,22	56,47	70
	Professional	76	0	100	70
	Accounting & Auditor	N/A	0	100	50
	Legal	N/A	0	100	83,33
3	Malaysia				
	Overall	46,1	32,49	46,52	90
	Professional	73	33,33	65	90
	Accounting & Auditor	N/A	50	50	75
	Legal	N/A	0	75	100
4	Philippina				
	Overall	53,5	27,56	57,59	80
	Professional	80	0	100	80
	Accounting & Auditor	N/A	0	100	75
	Legal	N/A	0	100	83,33
5	Thailand				
	Overall	48	65,99	44,03	100
	Professional	74	66,67	50	100
	Accounting & Auditor	N/A	100	50	100
	Legal	N/A	0	50	100
6	Vietnam				
	Overall	41,5	23,16	38,43	60
	Professional	31,5	0	10	60
	Accounting & Auditor	N/A	0	25	50

³⁰ AFAS, see note 18

³¹ For the full version of the ACIA see at http://www.asean.org/storage/images/2013/economic/aia/ACIA_Final_Text_26%20Feb%202009.pdf

³² See <http://iresearch.worldbank.org/servicetrade/>. Notes: 0 = completely open, 25 = virtually open with minor restrictions, 50 = major restrict, 75 = virtually closed with limited opportunities to enter and operate, 100 = completely closed. See more at: <http://www.asiapathways-adbi.org/2014/12/asean-economic-community-2015-what-is-next/#sthash.>

Legal	N/A	0	0	66.67
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Table.2: Definition of mode under the GATS – WTO³³

Mode 1: Cross-border supply of services. Under the GATS, this mode is defined as the supply of a service from the territory of one Member into the territory of any other Member. It is analogous to trade in goods, and arises when a service crosses a national border, for example, if a consumer in country A purchases software or insurance from a provider located in country B. It would also include the purchase by a consumer in country A of transportation services – such as a train ride or flight - from a provider located in country B.

Mode 3: The supply of services through commercial presence. Under the GATS, “commercial presence” means any type of business or professional establishment, including through (i) the institution, acquisition or maintenance of a juridical person, or (ii) the creation or maintenance of a branch or a representative office within the territory of a Member for the purpose of supplying a service commercial. This survey considers four types of commercial presence: a firm from country B might open a branch or subsidiary in the territory of country A, it might acquire part or all of an already existing firm in the territory of country A, or it might enter through Joint Venture with an already existing firm in the territory of country A. Thus, the service is provided within A by a locally-established affiliate, subsidiary, or branch of the foreign-owned and controlled firm.

Mode 4: The temporary presence of natural persons. Under the GATS, this mode is defined as the supply of a service by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member. Thus, it covers the temporary presence of individuals for the purpose of providing services directly to firms or consumers or for employment in service providing firms.

³³ Ministry of International Trade and Industry Malaysia, Liberalizing Services, see at <http://www.miti.gov.my/index.php/pages/view/3770>. Note: Measures governing mode 1 are slightly different from measures related to mode 3 in that they typically stipulate conditions under which cross-border trade may take place. Mode 4 measures, covered only in professional services, cover also immigration rules and qualification requirements that significantly affect this mode (Accessed on 09/01/2018)

Table 3: Indonesia and Malaysia Service Trade Restrictiveness

Indonesia		Malaysia	
Professional	Accounting and Auditing	Mode 3	Mode 4
Accounting	Allowed.	Not allowed.	No licensing conditions for foreign-licensed professionals are set forth by law. Entry as an SSE or an IP who is a contractual service provider is permitted. General conditions: for a foreigner to work in Indonesia as set forth by local labor law, the foreign worker must: <ol style="list-style-type: none"> 1) appoint a local worker as an assistant to the foreign worker for the purpose of technology and skills transfer; 2) provide education and training; 3) have education and/or work experience of at least five years; 4) transfer his/her skills to an Indonesian worker; and 5) communicate in Indonesian. There is a quota: one foreigner to three Indonesians. There is also a minimum wage/wage parity requirement. The limit on the length of stay initially allowed is one year. Extensions of stay are allowed up to five times, for one year each.
Auditing	Allowed.	Not allowed.	No licensing conditions for foreign-licensed professionals are set forth by law. Entry as an SSE or an IP who is a contractual service provider is permitted. General conditions: for a foreigner to work in Indonesia as set forth by local labor law, the foreign worker must: 1) appoint a local worker as an assistant to the foreign worker for the purpose of technology and skills transfer; 2) provide education and training; 3) have education and/or work experience of at least five years; 4) transfer his/her skills to an Indonesian worker; and 5) communicate in Indonesian. There is a quota: one foreigner to three Indonesians. There is also a minimum wage/wage parity requirement. The limit on the length of stay initially allowed is one year. Extensions of stay are allowed up to five times, for one year each.
Legal Advice	Allowed.	Not allowed.	No licensing conditions for foreign-licensed professionals are set forth by law. Entry as an IP

Foreign Law			who is a contractual service provider is permitted. General conditions: for a foreigner to work in Indonesia as set forth by local labor law, the foreign worker must: 1) appoint a local worker as an assistant to the foreign worker for the purpose of technology and skills transfer; 2) provide education and training; 3) have education and/or work experience of at least five years; 4) transfer his/her skills to an Indonesian worker; and 5) communicate in Indonesian. There is a quota: one foreigner to three Indonesians. There is also a minimum wage/wage parity requirement. The limit on the length of stay initially allowed is one year. Extensions of stay are allowed up to five times, for one year each.
Legal Advice Domestic Law	Not allowed.		Not allowed.
Legal Representation in Court	Not allowed.		Not allowed.
Malaysia Professional			
		Accounting and Auditing	
Accounting	Mode 1 Allowed.	Mode 3 Ownership by foreign nationals is limited to 30 percent. Ownership by non-locally-licensed professionals is not permitted.	Mode 4 Accountants licensed in the UK, Aust, 60a, New Zealand, Canada, and India may have their licenses recognized and be registered as a chartered accountant with the Malaysian Institute of Accountants. Applicants must attend a two-day introductory course. Three years' work experience is also necessary. The duration of stay is limited to one year; extensions are not permitted.

Auditing	Not allowed.	There must be at least one Malaysian partner in the firm. Ownership by foreign nationals is limited to 30 percent. Ownership by non-locally-licensed professionals is not permitted. There must be at least one Malaysian partner in the firm.	Not allowed. In practice, the Auditor General's Office will not issue an audit license to a foreigner regardless of his/her registration with the Malaysian Institute of Accountants as a chartered accountant.
Legal Legal Advice Foreign Law	Allowed, as long as the foreign firm is staffed with professionals	Not allowed. Exceptions include corporations incorporated in the Federal Territory of Labuan which can only provide	Not allowed, but ad hoc, special admission may be given to foreign-licensed lawyers with at least seven years of experience to appear before a court in Malaysia. The lawyer must have qualifications or experience not available in Malaysia.

Legal Advice Domestic Law	licensed to provide the service desired.	services to offshore corporations established in the Federal Territory of Labuan.	Not allowed, but ad hoc, special admission may be given to foreign-licensed lawyers with at least seven years of experience to appear before a court in Malaysia. The lawyer must have qualifications or experience not available in Malaysia.
		Not allowed. Exceptions include corporations incorporated in the Federal Territory of Labuan which can only provide services to offshore corporations established in the Federal Territory of Labuan.	
Legal Representation in Court		Not allowed. Exceptions include corporations incorporated in the Federal	Not allowed, but ad hoc, special admission may be given to foreign-licensed lawyers with at least seven years of experience to appear before a court in Malaysia. The lawyer must have qualifications or experience not available in Malaysia.

Territory of Labuan which can only provide services to offshore corporations established in the Federal Territory of Labuan.

From table 3 it can be seen that service liberation in AMCs has not been fully implemented, at least, in Indonesia and Malaysia there are still service trade restrictions on certain professions, such as, accountant, auditor, and legal profession. In other words, free movement of professionals in ASEAN is not really implemented even though accountancy services agreement has been signed by AMCs in 2009 (see box 1).³⁴

The AEC is detrimental to ordinary people in AMCs because they think that it will contribute to an erosion of sovereignty, which will reduce the government's authority to control national economy. Instead of the government the market will control the economy of AMCs when they join the free trade scheme. A leading Indonesian economist, Sri Edi Swasono asserted that the Indonesian government is supposed to control the national market and protect its citizens in the economy field.³⁵ Even in Indonesia, after the ratification of ASEAN Charter representative from some civil society organizations and NGOs have filed a judicial review to the Constitutional Court against Law No. 38/2008 on the Ratification of the Charter of the ASEAN requested to revoke Article 1 (5) and 2 (2) and Indonesia should **1523** w ASEAN Charter. They claimed that the ratification contradicts the 1945 Constitution, in **5** particular Article 33 paragraphs (1), (2), and (3) on the National Economy and Social Welfare. Article 33 of the Indonesian Constitution stated that the 'land, the waters and the national resources within sha**47** e under the powers of the State and shall be used to the greatest benefit of the people'. (as amended through 2002).³⁶ They further claimed that Article 1 paragraph (5) and Article **2 paragraph (2)** ASEAN Charter is a blatant breach of the Constitution. They suggested that the country's economy should not be trusted to market mechanism.³⁷ In term of free flow of skilled labour, they claimed that by joining regional organization, it will create job insecurity in Indonesia. This case study shows that there is resistance from the people of the AMCs as they feel unsecured when their countries joining FTA and should implement the regional commitments. In other words, the service liberation in ASEAN has not been fully implemented due to the restrictions in AMCs domestic law system.

³⁴ ASEAN Mutual Recognition Arrangement Framework on Accountancy Services, Cha-am, Thailand, 26 February 2009, see at http://asean.org/?static_post=asean-mutual-recognition-arrangement-framework-on-accountancy-services

³⁵ Hukum Online, Indonesia Can't Avoid ASEAN FTAs, July 22, 2011, Hukum Online website, <http://en.hukumonline.com/pages/14e2978e2994a1/indonesia-can-t-avoid-asean-ftas>

³⁶ the 1945 Constitution of Republic of Indonesia, article 33 para.3 ILO website, can be retrieved http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_174556.pdf

³⁷ Ernesto Srinanungkalit, Judicial review for ASEAN Charter.?, The Jakarta Post, May 13 2011, See more at: <http://www.thejakartapost.com/news/2011/05/13/judicial-review-asean-charter.html#shashsTxyDmlLdpuf> (Accessed 24/01/2016)

Box 1: Free Movements of Skilled Labour by 2015 (AEC 2015)

1. Engineering Services (signed December, 2005)
2. Nursing Services (signed December, 2006)
3. Architectural Services (signed November 2007)
4. Surveying Qualifications (signed November 2007)
5. Accountancy services (signed February 2009)
6. Dental Practitioners (signed February 2009)
7. Medical Practitioners (signed February 2009)
8. Tourism Professionals (2012)
9. ASEAN Agreement on Movement of Natural Persons (signed November 19,2012) – Business visitors, intra-corporate transferees, contractual service supplier)

III. Liberalization of trade in the region: free flow of investment and skilled labor

The first period of the AEC Blueprint between 2007 and 2015 ASEAN has made commendable progress in terms of the realization of the AEC, notably, through the elimination of tariffs in intra-ASEAN trade. The ASEAN-6, for example applied 63) tariffs on 99 per cent of goods traded within the region as prescribe is the ASEAN Trade in Good Agreement (ATIGA) that came into effect in 2010, which provides more coherence and transparency for businesses in ASEAN.³⁸ It ref 22) the compliance of AMCs in implementing one of the AEC pillars, the free of flow of goods. The free flow of investment, free flow of selected services, free flow of capital and free flow of skilled labor are the AEC's other pillars that AMCs should strive to comply.

The AEC Blueprint calls for four strategic approaches to be taken to ensure the free flow of investments – i.e. liberalization, facilitation, promotion, and protection. In the context of investment liberalization, AMCs have utilized the ASEAN Comprehensive Investment Agreement (ACIA) as a guidance to promote ASEAN as a single investment destination and buttress the single market and production base of ASEAN.³⁹ It liberalizes, facilitates and promotes investment in ASEAN region to ASEAN investors and ASEAN-based foreign investors. The ACIA also provides some protections for investments. In general, the AMCs have no real difficulty in implementing the measures necessary for facilitation, promotion, and 62) tection as prescribed in the Blueprint, but AMCs had some challenges in realizing a free and open investment regime by the end of 2015.

The implementation of the investment agreement in each AMC's domestic jurisdiction, however, differs based on the investment regulations and policies of each AMC. In other words, in practice, there are sectors that are more restrictive than compared to what have been agreed in the ACIA commitments. [This suggests that the ACIA commitments are not binding enough to the AMCs.] For example, the ACIA reservation list did not influence the creation of the current Indonesian Negative Investment List.⁴⁰ It can be said that the investment liberalization in Indonesia is largely autonomous and its progress rest on Indonesia's appreciation of the critical role of FDI for the development of its economy and national interests.

Indonesia, allows up to 100 per cent foreign ownership during concession period in same sectors like power generation of more than 10 megawatts or power plant transmission and distribution in order to encourage foreign investors to participate in public-private partnership scheme.⁴¹ Indonesia substantially lowered allowable foreign equity in sectors, such as, information and communication (e.g. call centers, data communication services, telecom content services like ringtone or premium, text), oil and gas drilling offshore sector.

Indonesia ho 43) er effectively closed some sectors from foreign equity participation, such as drilling services and supporting oil and gas services (design and maintenance), which was previously opened up to 95 per cent foreign equity in same

Commented [RY1]: Move this to a footnote. Also provide full citation of the ATIGA in a footnote.

Commented [RY2]: Name a number of examples of such sectors.

Commented [RY3]: The fact that states do not comply with their obligations under the ACIA does not affect or reduce the binding status of the ACIA. I suggest to revise this sentence.

³⁸ David Parsons, "Challenges to Achieving the ASEAN Economic Community" in *Life after the Charter*, edited by S Tiwari, Singapore: Institute of Southeast Asian Studies, 2010

³⁹ Full citation of the ACIA

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⁴¹ ?

sectors.⁴² Now they are reserved for domestic micro, small or medium enterprises. Such restrictive regulation is common to some AMCs. In Thailand the remaining ACIA commitment that it has yet to implement is forestry from forest plantation. In general, Thailand has no plan to liberalize more than what Thailand had committed to in the ACIA.

In implementing the AEC Blueprint, especially on the liberalization of investment, every AMC has its own reasons to postpone the implementation of free flow of investment measures. For example Brunei Darussalam claimed as a developing economy with embryonic private sector, which comprises of small and medium enterprises (SMEs), the government should guarantee a balance between the growth of local SMEs and foreign investment inflows into the country.⁴³ It also does not have investment law so for foreign investment activities are governed by administrative policies and guidelines. This may lead to difficulties to identify sectors that could be liberalized and create unpredictability for foreign investors due to their margin for administrative discretion. Indeed, one can see that in reality there is slow process of true legal harmonization in ASEAN. As Darryl Jarvis stated that empirically ⁴⁴

“ ASEAN countries tend to prioritize the preservation of nationalism versus regionalism, particularly in investment policies, which then results in segmented/sectional sheltering and investment protectionism. The ASEAN countries may not be perceived as really pushing liberalization, but instead perhaps only trying to protect their own regional-based enterprises against threats of the western ones”.

AMCs seem to revere its fundamental principle of sovereignty more compared to their commitments under ASEAN agreements. This can be discerned from their marked reluctance to impose regional rules and standards on its member states *vis-à-vis* compliance. Furthermore, the AMCs have interpreted the non-interference principle broadly including government authorization to exclude any issue that they consider as sensitive issues, both politically and culturally, for deliberations at the regional level.

IV. ASEAN skilled labor movement: threat for Indonesian labor market?

Mobility of service providers within the Southeast Asian region has become an important aspect of regional economic integration with the adoption of the 1995 ASEAN Framework Agreement on Services (AFAS) and then later with the conclusion of the agreement on the MNP. Mobility of skilled labor within ASEAN is also promoted through the so-called Mutual Recognition Arrangements (MRAs) of professional services. Furthermore, the goal to achieve free flow of skilled labor and

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⁴³ Lim Jock Hoi, *Achieving the AEC 2015: Challenges for Brunei Darussalam*, in in Sanchita Basu Das (ed), *Achieving the ASEAN Economic Community 2015: Challenges for Member Countries & Businesses*, ISEAS Singapore, p. 26

⁴⁴ Darryl Stuart Jarvis, *Foreign Direct Investment and Investment Liberalization in Asia: Assessing ASEAN's Initiatives*, *Australian Journal of International Affairs*, Vol. 66, No.2, pp 223-264, April 2012. Can be accessed on line at https://www.academia.edu/4233339/Foreign_Direct_Investment_and_Investment_Liberalization_in_Asia_Assessing_ASEAN_s_Initiatives, (Accessed 23/01/2016)

Commented [RY4]: You may want to mention what are the corresponding commitments under the ACIA so you can compare with the application in member states.

professionals under the AEC has brought along a series of reforms envisaged to enable member states to meet these liberalization targets. In addition, aspects related to migrant workers' rights are covered in a regional Declaration signed by ASEAN leaders in 2007.⁴⁵

IV.A. ASEAN free flow skilled labor: an overview

ASEAN region is a prospective region in terms of FDI. The region is also one of the world's most dynamic regions since ASEAN has made strong economic performance since 2007 with approximately 14 million migrant workers from ASEAN Member States, of whom 6 million moved within Southeast Asia.⁴⁶ ASEAN annual average growth was 5.1 per cent while the global economy was only 3.3 per cent.⁴⁷ This has boosted the region's living standards: between 1991 and 2013, 83 million workers moved out of poverty into the middle class. The region also has one of the world's highest foreign investment inflows – attracted by its workforce of 300 million, growing consumer markets and expanding networks of infrastructure.⁴⁸

As of 1 January 2016, ASEAN launched the AEC. This will lead to freer flow of goods, services, investment capital and skilled labors in the region. The 2014 joint study conducted by ILO and ADB showed that the implementation of the AEC could generate up to 14 million additional jobs, improving the livelihoods of the 600 million women and men in the region.⁴⁹ This will drive growth and prosperity in AMCs, but the challenge is to ensure that growth is inclusive and prosperity is shared among AMCs' people.

It is worth noting that according to the joint study, demand for high-skill employment under the AEC will increase by an additional 55.7 per cent during the 2010 to 2025 period, compared to the increase of 26.1 percent for medium-skill employment and a contraction of demand of 3.2 percent for low-skilled jobs.⁵⁰ Thus, it is apparent that the biggest part of the AEC (scheme for freer movement of labour) consists of high-skilled jobs.

Furthermore, the AEC scheme of free flow of skilled labor is limited on eight professions only and require the fulfillment of the MRAs based on national and ASEAN Qualification Frameworks (AQF) with temporary visa.⁵¹ The objective of facilitating the movement of skilled labor in ASEAN began with MRAs that would allow practitioners in eight professions to practice in other AMCs through mutual

⁴⁵ ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, signed on 13 January 2007, can be retrieved at <http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf>

⁴⁶ ILO, Tripartite Action to Enhance the Contribution of Labor Migration to Growth and Development in ASEAN (Triangle II) see more at

http://www.ilo.org/asia/whatwedo/projects/WCMS_428584/lang--en/index.htm

⁴⁷ ILO and ADB Joint Study, ASEAN Community 2015: Managing Integration for Better Jobs and Shared Prosperity, 2014, p. xi

⁴⁸ Ibid

⁴⁹ Yoshiteru Uramoto, Can the AEC 2015 deliver for ASEAN's People?, ILO in Asia and the Pacific, August 19, 2014 can be retrieved at http://www.ilo.org/asia/media-centre/articles/WCMS_300671/lang--en/index.htm (Accessed on 12/01/2018)

⁵⁰ Andreyka Natalegawa, ILO Warns Indonesia to Invest in Skilled Labor or Lose Out, Jakarta Globe, July 09, 2015 can be retrieved at <http://jakartaglobe.id/news/ilo-warns-indonesia-invest-skilled-labor-lose/> (Accessed on 12/01/2018)

⁵¹ Guntur Sugiyarto and Dovelyn Rannveig Agunias, 2014, A 'Freer' Flow of Skilled Labour within ASEAN: Aspiration, Opportunities, and Challenges in 2015 and Beyond, Bangkok and Washington D.C., International Organization for Migration and Migration Policy Institute, p. 1

38

recognition of their qualifications and, where appropriate, through the implementation of the AQF. In this context, referencing by the AMCs is voluntary, to support lifelong learning and enhance recognition and the MNP Agreement.

The arrangements aim to facilitate the temporary cross-border movement of natural persons and business visitors engaged in trade in goods, trade in services, and investment. Strategic measures include the following:

1. Expand and deepen commitments under the ASEAN Agreement on MNP where appropriate; and
2. Reduce, if not standardize, documentation requirements.⁵²

In practice, however, the workers should also fulfill other requirements for their mobility, such as, technical qualification, recruitment process that is primary handled by the private sector.⁵³ Furthermore, there are other elements that contribute to slow process of mobility of skilled labor in ASEAN, namely labor market demand and supply gaps, admissions and visa policies, and the recruitment process related to determine who migrates and under what circumstances.⁵⁴ Therefore, making the progress toward free flow of skilled labor slow and uneven.

According to Sugiyarto and Agunias, there are three key challenges as the reasons that the implementation of agreements and frameworks of ASEAN remains difficult, namely: (1). It difficult to adapt domestic policies and regulations to meet the provisions of the MRAs; (2). Low political and public support to drive the process; (3). The migration process requires regional cooperation and action along with the mutual recognition of qualification and experience.⁵⁵

The agreement on the MNP and the ACIA are government policies in substance that do not apply to individuals seeking employment, citizenship, residence, or permanent residence in another ASEAN. The MNP aims to establish streamlined and transparent procedures for business visitors, intra-corporate transferees, and contractual service suppliers to apply immigration formalities.⁵⁶ The ACIA provides the legal framework to facilitate temporary cross-border movement of people engaged in the conduct of trade in goods, services and investment. In short, the ACIA desires to eliminate all restrictions in the temporary cross-border movement of natural persons. The ACIA grants entry, temporary stay, and work authorization to investors, executives' managers, and board members of corporations in the process of "committing a substantial amount of capital or other resources".⁵⁷

ASEAN has undertaken two key initiatives in addressing the various problem of mobility of skilled labors, namely, the adoptions of the MRAs and the AQF. Between 2005 and 2015, AMCs have signed 8 MRAs on engineering, nursing, architecture, medicine, dentistry, tourism, surveying and accounting.⁵⁸ Each MRA aims to facilitate mobility within ASEAN, exchange of information and enhance cooperation on mutual recognition of qualifications, promote the adoption of best

45

⁵² Ibid, pp 8-9

⁵³ Ibid, p.10

⁵⁴ Ibid

⁵⁵ Ibid, pp 8-9

⁵⁶ Agreement on the Movement of Natural Persons, see PDF version, http://www.asean.org/storage/images/2012/Economic/sectoral_aem/service/agreement/ASEAN%20AGREEMENT%20ON%20THE%20MOVEMENT%20OF%20NATURAL%20PERSONS.pdf

⁵⁷ The ACIA, full text in PDF version, http://www.asean.org/storage/images/2013/economic/aia/ACIA_Final_Text_26%20Feb%202009.pdf

⁵⁸ The MRAs main text can be seen at, <http://investasean.asean.org/index.php/page/view/asean-free-trade-area-agreements/view/757/newsid/868/mutual-recognition-arrangements.html>

64

practices in standards and qualifications, and provide opportunities for capacity building and training.⁵⁹ Accordingly, movement of regulated professions for example, nurses is actually not easy due to the differences in underlying legal schemes, education systems, and quality standards, as well as professional associations' reluctance toward foreign labors. ASEAN has adopted a unique policy on the free movement of skilled labor as the AMCs do not aim to facilitate a complete "free" flow of skilled labor. It means, the AEC do not guarantee or seek full labor mobility even among the highly skilled, it only facilitates the movement.⁶⁰ The 14 in comparison, provides full freedom on the right of work to EU citizens; they can freely move, reside, and seek employment in any EU Member State, regardless of their skill level. ASEAN does not allow such general movement of people; thus, the MRAs are also constrained by immigration regulations.

In the EU context, there are pull and push factors for mobility of workers. Pull factors include educational opportunities and the acquisition of language skills in the host countries.⁶¹ Meanwhile, significant push factors include corruption, conflicts, poor governance and state protection policy in the sending countries. However, the shortage of skilled labor in the EU has yet to be filled. The main barriers to mobility from the European Neighborhood Policy (ENP) countries to the EU include restrictive visa regimes and costly immigration procedures, non-recognition of academic diplomas and professional certificates, strict limitations on the possibility to stay in the host country for migrants who lose their job and a lack of information about labor market opportunities.⁶² Restrictive immigration management, including binding quotas, language barriers and negative attitudes toward immigrants further hinder migration flows.

Hence, the potential benefits of immigration in Europe include: effects on the distribution of earnings, improved allocated efficiency in the labor market, a better flow of ideas, knowledge and technology, goods and services, as well as capital, increased diversity of the labor force and positive effects on public finance.⁶³ On the other hand, the outflow of young and skilled workers poses risks to sending countries' welfare systems. These risks seem to persist in spite of the potential of remittances and brain gain to compensate for the loss of labor.

ASEAN is also starting to address the issue of movement of 'unregulated professions' (e.g., tourism professionals) for which the differences in legal and education systems matter much less than in regulated professions.⁶⁴ The employment of foreign workers, whether associated with foreign investments or not, often brings new technology, new management skills, and new ideas and can thus help ASEAN countries upgrade their industrial structure to upper middle- or high-income levels. In addition, the actual movement (or even a potential one) will engender greater contestability in the host country, which leads to a better provision of skilled services

Commented [RY5]: This paragraph presents very good point however, restructuring of the order of sentences is needed to make it more solid and coherent.

Commented [RY6]: What do you mean by "state protection policy"? In which areas does it apply? Name examples.

Commented [RY7]: How and why are these observations relevant to the following observation on the problems/challenges of labour mobility in the EU? What has the EU done to overcome these push and pull factors? Is there any problem on unregulated labour migration despite the EU's full freedom of labour movement?

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⁶⁰ Sugiyarto and Ag 111s, n.22 above, p 4

⁶¹ Martin Kahanec, Skilled Labor Flows: Lessons from the European Union, Report under the World Bank ASEAN Labor Markets Program funded by AusAid, IZA Research Report no 49, December 2012 (accessed on 01/06/2016)

⁶² ?

⁶³ Ibid

⁶⁴ Yoshifumi FUKUNAGA, Assessing the Progress of ASEAN MRAs on Professional Services, ERIA Discussion Paper Series, p. 1, see PDF version at, <http://www.eria.org/ERIA-DP-2015-21.pdf> (Accessed on 01/06/2016)

because of skills upgrading and a competitive price that is a basis for competitive manufacturing sectors.

The MRA assessment at the national level is divided into two parts: (1) the stages of MRA implementation in each country, and (2) preparation of the regulatory environment in member states.⁶⁵ For the free movement of architectural services, the first element examines the progress in the following items: (1) submission of notification of participation, (2) establishment of a monitoring committee, (3) preparation and submission of an assessment statement, (4) screening of domestic applicants, (5) approval for domestic applicants by the ASEAN Architect Council (AAC), and (6) establishment of a system to authorize Registered Foreign Architect (RFAs).⁶⁶ Probably an important progress up until 2015 is the full participation of all the members to MRAs. While the MRA became effective on 19 November 2007, Article 8.3 requires member states to notify the ASEAN Secretariat of their intention to participate. With the notification by Brunei Darussalam (January 2013) and Cambodia (April 2012), all ASEAN countries are now members of the MRA.

IV.B. Indonesia's labor market and government policies

Free flow of skilled labor under the AEC scheme will certainly encourage people in the region to move to pursue better jobs in other AMC's. Migration is a significant driver of economic growth and poverty reduction in both countries of origin, e.g. contributing to employment, livelihoods, and remittance flows, and countries of destination, e.g. contributing to private sector growth and economic stability. The number of migrant workers are expected to continue to increase as migration offers significant opportunities for development. In the ASEAN region, there are approximately 14 million migrant workers, 6 million of whom are intra-ASEAN migrant workers who moved within Southeast Asia.⁶⁷ It can be said that the number of intra-ASEAN migrant workers is likely higher than the provided official data since the most contributor migrant workers; irregular migrants and temporary workers are not recorded officially.⁶⁸ ASEAN migrant workers are usually working based on contractual basis that there is working period limitation only for couple years even though it can be extended with certain requirements. Nearly half of these migrant workers are women who mostly work in the services sector, including domestic work, construction, manufacturing, agriculture, seafood processing and informal workplaces.⁶⁹ This lead to some concerned among AMC's in particular the Indonesian government, as it can become trafficking or people smuggling in the region.

The implementation of the AEC will create an additional 1.9 million jobs in Indonesia.⁷⁰ It is also predicted that the Indonesia's labor market will continue to expand after the establishment of the AEC.⁷¹ The individuals income from employment has increased, but the growth in average wages has lagged, as one in three regularly employed Indonesians receive a low wage of less than IDR 950,000

⁶⁵ FUKUNAGA, p. 5

⁶⁶ Ibid

⁶⁷ ?

⁶⁸ ILO, n. 21, see at http://www.ilo.org/asia/whatwedo/projects/WCMS_428584/lang-en/index.htm

⁶⁹ Ibid

⁷⁰ ILO Wams Indonesia to Invest in Skilled Labor or Lose Out, Jakarta Globe, see at <http://jakartaglobe.beritasatu.com/news/ilo-wams-indonesia-invest-skilled-labor-lose/>

⁷¹ ?

Commented [RY8]: You have never mention this point before. If it is an important point, I think you need to include a short analysis on this issue before this para.

Commented [RY9]: This para looks out of place considering that it does not discuss about EU-ASEAN labour movement policies comparison. Don't you think it's better to re-locate this para to a more corresponding one (above)?

Considering this is the end of this section, you may want to consider to have a mini conclusion to close this section.

Commented [RY10]: To ensure consistency and a good flow of rationale, I think you should include points of discussion in the previous paras on the EU practice so that readers can discern the points of comparison.

Commented [RY11]: 14 million?

Commented [RY12]: Are these classified as services sector?

Commented [RY13]: How do these observations correspond with the AEC and MNP? It seems that they relate more to security concerns than economic.

or US\$71 per month and that low-wage workers tend to be disproportionately women.⁷² While ASEAN's rapid growth over the last four decades was largely fueled by strong export-oriented manufacturing industry, the services sector and trade in services have become increasingly important. On average, services contributed more than 40 percent of the total value added in AMCs in 2010 and accounted for more than 50 percent of total employment.⁷³ Trade in services has also risen sharply. The share of services in total export of all AMCs, except Indonesia, has increased.⁷⁴

In 2015, it has been found that 128.30 million Indonesians were part of the national labor force, or 69.50 percent of the total population of 252.7 million.⁷⁵ This is a high number of labor forces as an asset of national development. However, Indonesia is facing a number of problems, including low quality of workers, limited job opportunities and high unemployment rate. From of the total labor force, some 56.65 million (or 44.15 per cent) come from elementary school background and 23.12 million (or 18.02 per cent) are of junior school educational background.⁷⁶ The rest is divided into two categories; senior high school and university educational background, with a total 34.53 and 10.56 percent respectively.⁷⁷ Thus, 62.17 percent of Indonesia's labor force in Indonesia come from low level educational background (elementary and junior high school).

The huge number of low-educated work force warrants the government to pay serious attention to its work force. It is apparent that the Indonesian work force can only meet the low-skilled level that was predicted to only cover 3.2 percent of the total labor mobility under the AEC. The quality and quantity of Indonesia's work force should be improved, especially, in the eight areas of skilled labors covered in the AEC scheme.⁷⁸

No	Destination country	Total number	Percentage
1.	Malaysia	1.410.787	42 %
2.	Saudi Arabia	641.039	19 %
3.	Middle East	379.963	11 %
4.	East Asia	359.844	11 %
5.	Southeast Asia	249.100	7 %
6.	The United State of America	130.851	4 %
7.	Europe	59.735	2 %
8.	Pacific Countries	55.591	2 %
9.	Africa	4.439	1 %
10.	South Asia	2.760	1 %
	Total	3.294.109	100 %

Commented [RY14]: What are the solutions that the Indonesian government need to work on to overcome the challenges presented by the huge number of low-skilled labours in Indonesia?

⁷² Ibid

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⁷⁴ ASEAN Services Integration Report, see at

⁷⁵ ?

⁷⁶ ?

⁷⁷ Guntur Witjaksono, Menuju Instrument ASEAN untuk Perlindungan Tenaga Kerja Migran, paper presented in Forum Group Discussion on the Protection Indonesian Migrant Workers: Legal Issues, Bandung, 12 November 2015

⁷⁸ ?

Table 4: Destination countries and total number/percentage ⁷⁹

23

Approximately 400,000 Indonesians are registered to have legally migrated to other countries each year since 1998.⁸⁰ The Ministry of Foreign Affairs stated that the total number of Indonesian citizens who have reported to the Indonesian Embassy in foreign countries is more than three million people as can be seen at Table 4. From table 4, it can be seen that there are more than 3 million Indonesian workers who have migrated to other countries. Of that number, more than 1.6 million workers are intra-ASEAN migrant workers with the highest number resides in Malaysia. Malaysia becomes the top destination for Indonesian migrant workers because the similarity of language, lenient working visa requirements, and the role of 'middle man' in the migration process. Meanwhile, the total number of foreign workers from other AMCs who work in Indonesia as shown in table 5 is only 10,458.⁸¹ At the moment, Indonesia labor market is still conducive due to small number of foreign workers from other AMCs.

No	AMCs	Population	Indonesian MW	Foreign MW in Indonesia
1.	Brunei D	372.361	72.000	6
2.	Cambodia	16.607.000	1.100	2
3.	Laos	6.217.000	220	-
4.	Malaysia	23.953.000	3.000.000	4.000
5.	Myanmar	42.909.000	200	98
6.	Philippines	87.857.000	9.800	2.670
7.	Singapore	4.425.000	112.000	1.300
8.	Thailand	65.444.000	3.200	2.300
9.	Viet Nam	83.535.000	330	82

Table 5: Indonesian Migrant Worker and Foreign Migrant Worker (ASEAN), 2015⁸²

National economic development needs elements such as natural wealth, human resources, technology and innovation. In this context, Indonesia should be able to utilize its manpower to enhance its natural resources for the prosperity of the people by applying technology and innovation. Considering that the significant benefit that can be gained from the AEC is the high-skilled labor mobility, Indonesia should invest in higher education sector. Manpower in Indonesia in the field of eight professions needs to meet certain qualifications to be able to compete regionally and globally.

V. Conclusion

⁷⁹ Tatang Budi U Razak, 2013, Directorate of Protection Indonesian Citizens and Legal Entities, Ministry of Foreign Affairs, Workshop on the Improvement Capacity of District Civil Servant in Implementing Diplomacy and Technical Cooperation, Manado, 21 March 2013 ; see also Koesrianti, 2016, An Overview of Indonesia's Protection on Women Migrant Workers, ASIAN Yearbook of International Law, Januari 2016, (2012) Vol.18, see at <http://www.dilafoundation.org/asian-yearbook-of-international-law-2012-vol-18.html>

⁸⁰ ?

⁸¹ Guntur, see n. 38, loc.cit

⁸² Guntur, ibid

Commented [RY15]: This para further a nalysis and elaborations to sharpen this part's conclusion and to tie up all of the above observations.

The AEC Blueprint 2025 underlines the need for “the movement of business persons, skilled labor and talents”, as a key element for achieving greater economic integration in the region.⁸³ The movement of skilled labor in line with trade liberalization, the skilled laborers easily move from one country to another country without major restriction. The free movement of skilled labor in ASEAN is not equal to freer mobility of labor since the implementation of the MRAs and AQP does not guarantee the mobility of professionals within AMCs. These frameworks only enable the movement of professional service providers who are registered to or certified in equally recognize bodies in other signatory countries. In the AEC economic integration context, MRAs and AQP are parts of a larger system for facilitating free movement of skilled labor.

Having considered the structure of the workforce in Indonesia, i.e. it consist of mainly low-skilled laborers; Indonesia should have a comprehensive education and training policy to enhance its manpower so that they can compete regionally and globally. At the moment, Indonesia can only focus on eight professions prescribed under the AEC scheme. A failure to respond to changes in labor demand could have significant impact on the national economy. Indonesia need to invest in developing its workforce skills to be in a better place to take advantage of the AEC. Since AEC is a process, Indonesia can maximize its' current large supply of low-skilled labor force in the competitive sectors of AEC, such as manufacture and services in the region.

Commented [RY16]: Please rephrase the sentence.

Commented [RY17]: Such as?

Commented [RY18]: I think you need a sharper conclusion, which should include recommendations and practical suggestions for the betterment of the regional arrangement on freer movement of labour and Indonesia's effort to increase its workforce's skills.

83 ?

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