Critical Analysis of Domestic Worker Condition in Malaysia and Singapore: Ameliorated Economic Condition vs. Gateway to Modern Slavery or Servitude

Master Thesis
30 credits

Bustomi Arifin
840721T294

Supervisor: Professor Bo Petersson
Examiner: Professor Anne Sofie Roald
Malmö University

20121-IM029 - International Migration and Ethnic Relations
Contents

ABSTRACT 4

PREFACE 5

1 INTRODUCTION 6
  1.1 Aims of the Study 6
  1.2 Research Questions 7

2 CONTEXTUAL BACKGROUND 8
  2.1 Migration Path of Domestic Workers in Malaysia 9
  2.2 Migration Policies of Malaysia Imposed to Domestic Workers 11
  2.3 Migration Path of Domestic Workers in Singapore 16
  2.4 Migration Policies of Singapore Imposed to Domestic Workers 18

3 THEORETICAL FRAMEWORK 22
  3.1 Universality of Human Rights Theory 22
  3.2 Intersectionality Theory 23

4 METHOD 25
  4.1 Case Selection 25
  4.2 Data Collection and Literature Review 26

5 ANALYSIS 28
  5.1 Analysis of Migrant Labour Standard 28
    5.1.1 International Level 29
    5.1.2 Regional Level 31
    5.1.3 Domestic Level 33
  5.2 Rights of Domestic Workers in Relation to the Migration Policies of Malaysia 35
    5.2.1 Analysis of Domestic Workers Rights in Malaysia 37
      5.2.1.1 Universality of Human Rights 38
      5.2.1.2 Intersection of Race, Ethnicity, Gender and Class 40
  5.3 Rights of Domestic Workers in Relation to the Migration Policies of Singapore 44
    5.3.1 Analysis of Domestic Workers Rights in Singapore 47
      5.3.1.1 Universality of Human Rights 47
      5.3.1.2 Intersection of Race, Ethnicity, Gender and Class 50

6 CONCLUSION 53
Abstract

Some Asian countries such as Malaysia and Singapore have been experiencing economic growth which, in its turn have been stimulating migrant workers, mainly un-skilled, to migrate into those countries. The present paper tries to examine the human rights violations of domestic workers in Malaysia and Singapore which are occurring in the form of modern servitude or servitude. Moreover, the paper also tries to elaborate the working conditions of foreign domestic workers in Malaysia and Singapore. The present paper is using human rights coupled with intersectionality theories in order to examine whether enacted migration policies in Malaysia and Singapore in relation to migrant workers, though migration policies imposed to domestic workers are aimed to fulfill the national interests, can be regarded as a form of modern slavery or servitude. The present thesis is a case study which is examined by elaborating numerous literatures regarding the working conditions of foreign domestic workers in Malaysia and Singapore. The factual conditions of domestic workers in Malaysia and Singapore, namely the conditions and policies concerning the limitation of several rights of domestic workers will be described and analyzed under the human rights coupled with intersectionality perspectives.

Keywords: migrant workers, domestic worker, rights, modern slavery or servitude, case study, policies.

---

1 Manfred Novak, “Civil and Political Rights” in J. Symonides (ed.), Human Rights: Concept and Standards, 2000, Aldershot, Dartmouth, pp. 69-107 cited in Rhona Smith, Textbook on International Human Rights, 2010, Oxford University Press, New York, pp. 241-242 describes slavery or servitude as 'the most extreme expression of the power of human beings possess over their fellow human beings, the most attack on the essence of the human personity and dignity'.
Preface

I would like to take this opportunity to thank my supervisor, Professor Bo Petersson, for his close supervision; I sincerely appreciate his efforts and patience in guiding me in working on this thesis. My special thanks also go to Tafsir Matin Kashfi and Oybek Nurmuhammedov for supporting and helping me in writing my thesis, all staffs and lectures in the International Migration and Ethnic Relations Master Program of Malmo University, my fellow Indonesian friends and families in Lund-Malmo, my classmates, and all of my friends and colleagues in Sweden for these two years of wonderful friendship and togetherness in Sweden.

Finally I want to express my deepest gratitude to my sister in Stockholm and United States (Ningtyas Ternow and Munifah Fairbaugh) coupled with my family, my girlfriend (Ani Yuliani) and friends (Alwi, Ashrilia, Warda, and many others) in Indonesia for their constant love, support and encouragement, especially for my late Mom and Dad, … this one is for you.

Glory to the almighty Allah SWT, who has given His blessing upon my life in so many mysterious ways.

Bustomi Arifin
Malmo, May 2012.
1 Introduction

Policies regarding labour and migration in Malaysia and Singapore are criticized by many international organizations because of many human rights violations happening to the domestic workers in these countries. Policies of Malaysian and Singaporean governments are created in the aim of controlling the influx of domestic workers in these countries. However, apart from fulfilling this aim, those policies are also triggering the occurrence of many cases concerning violation of rights of domestic workers. The present study uses a case study method by applying critical literature review of factual conditions of domestic workers in Malaysia and Singapore, with a special focus on migration policies which are enacted by Malaysian and Singaporean government. This topic is particularly significant to elaborate the justification that migration policies of Malaysia and Singapore imposed to domestic workers\(^2\) stimulate the occurrence of modern slavery or servitude.

The present thesis is organized in the following way. Following this introduction, sections 1.1 and 1.2 present the aim of the study and research questions. Chapter 2 provides the contextual background in particular describing the historical preview of migrant domestic workers and migration policies imposed to domestic workers in Malaysia and Singapore. Chapter 3 presents the theoretical framework of the present paper. Chapter 4 illustrates the method uses in the present study including the selection case for the subject of the present paper. Chapter 5 presents the analysis of the collected materials in elaborating the benchmark of migrant labour standards in the international, regional and domestic level coupled with working conditions of foreign domestic workers in Malaysia and Singapore. Lastly, chapter 6 presents overall findings of the present study.

1.1 Aims of the Study

The present paper has two aims where the first aim is to assess the working conditions and rights of domestic workers in Malaysia and Singapore to determine whether they are in accordance with recognized standards of human rights as workers. The second aim of the present paper is to

\(^2\) Note that, Here and after, the present paper will use the term domestic workers in referring to foreign female migrant workers who are working in the private sectors mainly as house maids.
examine the human rights violations of domestic workers in Malaysia and Singapore which are occurring in the form of modern servitude.

1.2 Research Questions

1. Do migration policies in Malaysia and Singapore constitute breaches of internationally recognized human rights, if so in what ways?
2. Do migration policies in Malaysia and Singapore support the occurrence of modern slavery or servitude of domestic workers, if so in what ways?
3. In what ways employers coupled with political leaders of Malaysia and Singapore perceive the presence of domestic workers?
2 Contextual Background

Nowadays there are numerous issues regarding international migration around the world that are attracting many scholars in conducting researches since those issues are not merely concerning the movement of individuals or groups from one country into other country. They are also paving the way for economic, political and legal concerns. The trend of migration nowadays is changing since the migrant workers are not only considering European and American countries as a target of destination but also considering some Asian countries such as Gulf States, Japan, Malaysia, and Singapore. Labour migration in Malaysia and Singapore is confronted with a double dilemma for them as the receiving country. First, while labour market in Malaysia and Singapore demand large number of, mainly un-skilled, migrant workers, Malaysian and Singaporean governments are in need to create policies regarding migration in order to limit the influx of legal and illegal migrants. On the other hand, the policies issued by Malaysian and Singaporean governments are criticized by numerous international organizations since their policies do not cover several rights of migrant workers which can justifiably be called as the form of modern servitude. Meanwhile, the numbers of migrant workers who are coming to work as house maids in Malaysia and Singapore are growing day by day albeit in this sector domestic workers are vulnerable to be the victim of human rights violation.

The destination countries of migration in Asia and the Pacific are not spatially contiguous but it is clustered around four regions, which are: Australia, Japan, Singapore-Malaysia, and Hong Kong-Taiwan-Korea. Moreover, contemporary South East Asia is currently having a large movement of non-permanent labour which is mainly un-skilled migrant workers from labour surplus countries such as Indonesia, Philippines and Myanmar to non-surplus countries such as Malaysia, Singapore and Thailand. The present paper is a focus on Malaysia and Singapore as

---

3 Nicola Piper, “Rights of Foreign Workers and the Politics of Migration in South-East and East Asia” in International Migration, Vol. 42 (5), 2004, Blackwell Publishing Ltd., p. 71, para. 1, where the author has stated that, “[s]ince the late 1970s, Asia has witnessed increasing intra-and inter-regional migratory flows constituting an important subject area for the study of migration…”

4 Douglas S. Massey et al., Worlds in Motion: Understanding International Migration at the End of the Millenium, 1998, Oxford University Press, p. 60, Explained that, these countries have rapid and steady economic growth which make these countries attractive for migrant workers.

the center of discussion since they are the main destination countries for migrants in South East Asia and at the same time they have similarities in many aspects such as economic development, migration coupled with labour market and migration policies. The similarities between Malaysia and Singapore will be used as the starting point in elaborating domestic migrant worker rights and their working conditions in these countries.

2.1 Migration Path of Domestic Workers in Malaysia

Migration in Malaysia can be explained in economic terms since most of migration path in Malaysia is strongly influenced by the economic growth of Malaysia. Migration in Malaysia from the beginning of migration up to contemporary migration is known as “exporting goods, importing labour”\(^6\). By elaborating the migration path of domestic workers in Malaysia, the present paper tries to depict the movement of domestic workers in Malaysia.

The high influx of domestic workers migrate and fulfill the demand of the labour market started in early 1991 when the economic growth continued to grow with the average rates 8 per cent from 1987 to 1996\(^7\). Moreover, there was labour shortage in manufacturing and service sectors which led to the movement of migrant workers from their former concentration in agriculture and construction into four sectors of employment which are manufacturing, agriculture, construction and service. In the late of 1990s manufacturing sector represented 31 per cent, construction sector represented 20 per cent, plantations represented 25.9 per cent, and service sector represented 20.9 percent (where 9.3 per cent were in domestic service) of the total labour force in four sectors\(^8\). This stage was also followed by the growing number of female migrant workers in Malaysia where in 1994 the number of female migrant workers represented 29 per cent of the total number of migrant workers in Malaysia. The sustained economic growth in this period stimulated Malays women to become the labour force which created a new labour market in Malaysia with concentration on service sector, mainly in housing sector, due to the


\(^7\) *ibid*, p. 45.

absence of women in the houses coupled with the occurrence of middle class in Malaysia\(^9\). It can be said that this stage was a stage of feminization of labour force in Malaysia. The number of migrant workers (legal and illegal) in Malaysia has been growing due to the steady Malaysian economic development. According to the estimation of Malaysian government, illegal migrant workers in 2005 and 2008 reached 500,000 to 1,000,000 which were spread in all four sectors of labour force mentioned above\(^10\).

Table 2: Legal migrant workers in Malaysia by economic sector (‘000)

<table>
<thead>
<tr>
<th>Year</th>
<th>Agriculture</th>
<th>Manufacturing</th>
<th>Mining</th>
<th>Construction</th>
<th>Services</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>126.5</td>
<td>38.9</td>
<td>1.9</td>
<td>42.1</td>
<td>86.2</td>
<td>295.6</td>
</tr>
<tr>
<td>1992</td>
<td>137.2</td>
<td>54.1</td>
<td>2.3</td>
<td>59.1</td>
<td>96.5</td>
<td>349.2</td>
</tr>
<tr>
<td>1993</td>
<td>176.1</td>
<td>103.9</td>
<td>2.1</td>
<td>51.4</td>
<td>107.5</td>
<td>441.0</td>
</tr>
<tr>
<td>1994</td>
<td>179.5</td>
<td>109.8</td>
<td>2.0</td>
<td>58.1</td>
<td>110.9</td>
<td>460.3</td>
</tr>
<tr>
<td>1995</td>
<td>173.0</td>
<td>115.7</td>
<td>1.8</td>
<td>64.8</td>
<td>124.0</td>
<td>479.3</td>
</tr>
<tr>
<td>1996</td>
<td>271.6</td>
<td>264.8</td>
<td>3.5</td>
<td>31.2</td>
<td>229.0</td>
<td>900.1</td>
</tr>
<tr>
<td>1997</td>
<td>265.2</td>
<td>283.0</td>
<td>6.1</td>
<td>150.1</td>
<td>240.9</td>
<td>945.3</td>
</tr>
<tr>
<td>1998</td>
<td>317.6</td>
<td>250.1</td>
<td>2.6</td>
<td>151.4</td>
<td>278.0</td>
<td>999.7</td>
</tr>
<tr>
<td>1999</td>
<td>363.6</td>
<td>363.6</td>
<td>6.0</td>
<td>131.1</td>
<td>301.9</td>
<td>1053.7</td>
</tr>
<tr>
<td>2000</td>
<td>415.4</td>
<td>262.5</td>
<td>2.9</td>
<td>163.5</td>
<td>326.7</td>
<td>1171.0</td>
</tr>
<tr>
<td>2001</td>
<td>281.4</td>
<td>213.0</td>
<td>2.1</td>
<td>99.0</td>
<td>265.6</td>
<td>861.1</td>
</tr>
<tr>
<td>2005*</td>
<td>412.0</td>
<td>614.0</td>
<td>n.a.</td>
<td>101.0</td>
<td>160.0</td>
<td>1800</td>
</tr>
</tbody>
</table>


The World Bank estimated the total number of legal migrant workers in Malaysia by 2010 reached approximately 2,357.6 thousand workers. It shows that the number of migrant workers in Malaysia has been increasing until nowadays. The number of migrant workers in Malaysia is mainly dominated by workers from Indonesia which represents 1,397.7; followed by workers from Philippines 227.4; Bangladesh 122.9; India 106.8; Thailand 79.6; Myanmar 17.0; Pakistan 16.5; and others 389.7. Furthermore, Immigration Department estimated the number of workers who work in private sector (housekeeping and cleaning) reached 224,544 workers and this number was mainly dominated by female workers or domestic workers.

2.2 Migration Policies of Malaysia Imposed to Domestic Workers

The high number of migrant workers migrate to Malaysia stimulate the government to create policies in order to control the number of domestic workers including domestic worker. Malaysian political leaders believe that the existence of migrant workers in a large number coupled with the dependent of Malaysian labour market towards migrant workers create a serious problem. Therefore, Malaysian government enforces migration policies to control the high influx of migrant workers mainly unskilled workers including domestic worker. The terminology of policy describes that policy can be used as an essential instrument to control or achieve selection of goals. Jenkins describes policy as ‘a set of interrelated decisions … concerning the selection of goals and the means of achieving them within a specified situation …’.

12 *Ibid*.
In regard to policies, Asian destination countries including Malaysia practise temporary contract arrangement as the norm and policy where the right of labour integration and settlement for un-skilled workers in the state are excluded\(^{15}\). The policies of those countries including Malaysia constructed character of unskilled migrant workers as ‘needed but not wanted’\(^{16}\). The construction of this character in those countries is influenced by the demand of labour market for migrant workers coupled with the concern of political leaders with the social problems that may occur by the existence of unskilled migrant workers. The presence of unskilled migrant workers including domestic workers in Malaysia is perceived as a threat to the distribution of wealth and employment or welfare among the different groups\(^{17}\). Moreover, the policies of Asian receiving countries are focused on controlling migrant workers through departure and entry dimensions in migration. These dimensions are commonly neglecting the labour standards, work or employment related aspects and rights of foreign workers lives mainly unskilled workers\(^{18}\).

The policy that is enacted by Malaysian government in relation to the departure dimension of migration is the privatization or outsourcing system in recruiting migrant workers mainly unskilled workers. The privatization in recruiting domestic workers started when Malaysia was in the economic development stage. This system is integrated because there were numerous debates between employers and political leaders regarding this system. The political leaders introduced outsourcing system in order to rectify this issue. The outsourcing system of migrant workers introduced in 2007 by the government where recruitment agents are responsible not only for the recruitment process but also for the management system of domestic workers from departure until the end of the contract\(^{19}\). Malaysia adopts ‘front door’ policy where migrant workers are working under a contract which requires duration of employment for migrant workers\(^{20}\). The recruitment agencies not only organize pre and post departure but also organize

\(^{15}\text{Supra note 13, p. 66.}\)

\(^{16}\text{Ibid, p. 29, the authors described that unskilled migrant workers are needed since they play important role in fulfilling the demand of the labor market coued with maintaining the stable economic growth of Malaysia, meanwhile their presence in the state is problematic in regard to the social problems such as welfare system, social rights and many more.}\)

\(^{17}\text{Supra note 6, p. 54.}\)

\(^{18}\text{Supra note 13, p.67.}\)

\(^{19}\text{Amnesty International, }\textit{Trapped: The Exploitation of Migrant Workers in Malaysia}, 2010, \text{Amnesty International Publications, p. 15. it is pointed out that outsourcing adopts the same system as the recruitment system that organized by the private agency where both of these systems neglect to protect the rights of migrant workers including domestic workers.}\)

\(^{20}\text{Supra note 13, p. 67}\)
the renewal of work permit, contract coupled with annual payment of medical check-ups, insurance, and levy of migrant workers. It means that Malaysian government regulates where recruitment process of unskilled migrant workers is organized by the private agents. In the recruitment process, Malaysian government creates rules and regulations to determine the standards or requirements of migrant workers such as age, education, wage, duration of contract and many more and the agencies are responsible in fulfilling these standards.

The recruitment agencies in Malaysia are having cooperation with numerous recruitment agencies from sending countries as their networks to fulfill the need of employers in Malaysia. It can be said that the recruitment agencies play role as coordinators, managers or guardians who deal with the legal procedures, re-distribute and return migrant workers to their countries of origin. The government justified that privatization recruitment policy is an effective instruments in controlling the high number of migrant workers mainly unskilled workers. The head officer of Malaysian Association of Foreign Maid Agencies stated that recruitment agencies are an essential instrument that can control employers, mediate between them and migrant workers, and help the government to control the influx of migrant workers. Moreover, the government argued that this policy helps government to lower the significant social costs that are caused by labor immigration because the costs will be carried by the recruitment agencies or employers.

The next migration policy relates to the entry dimension of migration is policy regarding labour integration and settlement for unskilled migrant workers mainly domestic worker. Labour market in Malaysia has always been restricted for unskilled migrant workers including domestic worker in particular sectors. The main purpose in applying this policy is to limit the presence of migrant workers into specific economic sectors since the presence of migrant workers into these sectors will create social problems within the society. Furthermore, the privatization in the recruitment system supports the implementation of this policy because under this policy,

---

21 Supra note 6, p. 59.
22 Ibid, para. 4.
23 Ibid, p. 60.
25 Supra note, 6, p. 64.
unskilled migrant worker is tied to one specific employer and sector\textsuperscript{26}. Malaysian political leaders concern about the presence of migrant workers mainly unskilled worker in the labour market competition. The presence of unskilled migrant worker in the labour market will increase the labour competition for local workers and create social problems within the society such as high number of unemployment of the local people coupled with the number of criminality is increasing influenced by the high number of unemployment in the society. Moreover, the government justified that the enforcement of this policy has three advantages. Firstly, this policy can be used a legal guarantee whereby employers are able to recover from their initial investments such as recruitment fees, medical checkups and annual levy. Secondly, this policy maintains to reduce migrant workers into displacing employment in the labour market. Lastly, this policy helps the government to control the number of migrant workers since this policy sought to hold employers responsible for the presence of migrant workers\textsuperscript{27}.

Malaysian government adopts strict policy in term of settlement for unskilled migrant workers including domestic workers. This policy regulates restriction for domestic workers to establish permanent residence and integration into the society through marriage and family reunification\textsuperscript{28}. This policy emphasizes that domestic workers cannot gain permanent residence or citizenship status by marrying local people and integrate with the society through marriage. Furthermore, legal domestic workers are required to do medical exams per year for sexually transmitted disease coupled with pregnancy. If they found to be pregnant, they will be sentenced to deportation immediately within twenty four hours\textsuperscript{29}. This policy is dedicated mainly for domestic workers because employers and society perceived domestic workers as ‘easily fall in love’ and ‘easily manipulated’\textsuperscript{30}. The character of domestic workers as ‘easily fall in love’ and ‘easily manipulated’ create high concern of the government regarding the issues of sexual

\textsuperscript{26} Supra note 13, p. 66.
\textsuperscript{27} Supra note, 6, p. 64, the author further explained that this system regulates employers to pay levy in which this policy will encourage employers to manage the presence of migrant workers including domestic workers wisely.
\textsuperscript{30} Supra note 6, p. 66.
diseases coupled with the permanent settlement of domestic workers as a citizen of the state\textsuperscript{31}. The government argued that the enforcement of this policy is to reduce social security costs and their incorporation into Malaysian society through marriage and family reunification\textsuperscript{32}. Malaysian government adopts this policy in order to minimize the obligation of state towards migrant workers in providing legal rights of membership including citizenship as Carens states that ‘a long term membership in civil society creates a moral entitlement to the legal rights of membership, including citizenship’\textsuperscript{33}.

In conclusion, it can be said that the migration policies impose to domestic workers are designed to limit labour migration, limit the duration of migration and integration or incorporation of unskilled migrant workers including domestic worker into the society\textsuperscript{34}. The policy of privatization recruitment can be seen as the form in which Malaysian government try to limit labour migration and duration of migration. The outsourcing system between employers and domestic workers in Malaysia is an example where the government tries to limit and control the high influx of domestic workers. Meanwhile, the policies regarding integration in the labour market and settlement of domestic workers are the methods which are used by the government in order to limit integration or incorporation of domestic workers into the society. Interestingly, those policies are aimed only for unskilled migrant workers in Malaysia. Similar to the most Western develop countries, East and South Asia employs a legal permit system on a long-term basis for professional or high skilled migrant workers. It means that professionals or high skilled migrant workers have different employment system compared to domestic workers.

\textsuperscript{31} S. Vogel, “Marriage and the boundaries of citizenship”, in B. van Steenberg (Ed.), \textit{The Condition of Citizenship}, 1994, Sage, London, pp.115-137, argues that marriage is a tool that is commonly used by migrants to achieve the permanent and citizenship status in the destination country. By achieving these statues, migrants are entitled to enjoy the rights that are guaranteed by the local law.

\textsuperscript{32} Supra note 6, p. 66.

\textsuperscript{33} Joseph Carens, \textit{Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness}, 2000, New York: Oxford University Press Inc., it is mentioned that long settlement and integration of migrant workers in a state creates moral obligation for the state to guarantee equal treatment in regard to several rights for migrant workers.

\textsuperscript{34} Supra note 13, p. 75.
2.3 Migration Path of Domestic Workers in Singapore

Migration played an essential role in the demographic history of Singapore because the population of Singapore was influenced by migration. In 1819 it was reported that there were only 150 fishermen and in 1957 the Singapore population reached approximately 1.4 million people\(^{35}\). The presence of domestic workers in a large number stimulates Singaporean government in enacting strict migration policies.

The path of domestic workers migration in Singapore started from 1990 onwards and this period can be said as period of economic growth of Singapore. Economic development of Singapore in this period developed in a steady condition because all economic sectors such as manufacturing, infrastructure, industry, service and financial showed positive result followed by the increasing of gross domestic product (GDP). In 1980, GDP per capita reached US$ 4,904, US$ 12,281 in 1990 and US$ 23,042 in 2000\(^{36}\). In 1994, the GDP of Singapore was counted as the second highest in Asia behind Japan and the twelfth highest in the world\(^{37}\). The development of Singaporean economic condition was also influenced by the existence of migrant workers including un-skilled workers. Singapore would not have achieved its high and steady rate of economic growth without the existence of migrant workers\(^{38}\). The development period started in 1990 when the government created a policy which introduced regionalization of the economy by more encouraging local workers. Moreover, the aim of this policy was to encourage Singaporean companies in moving their relatively-intensive sectors to resource-rich regional locations, in


which this policy not only enhanced their competitiveness but also developed Singapore’s economic space beyond its limited geographical boundaries\(^\text{39}\).

In relation to the labour market for un-skilled worker, Singapore has similar problem like of Malaysia. The high and steady rate of economic growth demanded massive number of labour in all sectors of economic units. The low population coupled with low fertility rate of Singaporeans was not sufficient to fulfill the demand of labour market mainly in un-skilled sectors. The lack of interest of Singaporeans to work in this sector influenced by rising socio-economic condition and educational level of Singaporeans over time created a negative image of this sector in Singaporeans point of view\(^\text{40}\). This sector has negative image since it is considered to be dirty, difficult and demeaning (3D) works in terms of working environment, security and insurance. Moreover, Singaporeans consider this sector as a less glamorous because this sector does not provide advantages for them in terms of wage and social status in the society. The flows of migrant workers were not only dominated by un-skilled workers but also by skilled workers fulfilling skilled professional and managerial positions as a result of intensive recruitment and liberalized eligibility criteria\(^\text{41}\). The number of migrant workers also influenced the total population of Singapore. The number of migrant workers increased from 1990 to 2000 where migrant workers comprised 16.1 per cent of the labour force from 248, 000 into 612, 200. In 2006, their number had increased to 670,000 in which 580,000 (87 per cent) are un-skilled migrant workers coupled with 90,000 skilled migrant workers\(^\text{42}\). Furthermore, it is estimated that migrant workers who are working as domestic workers in Singapore are approximately 160,000 workers in every one of six households\(^\text{43}\).


\(^{41}\) Ibid

\(^{42}\) Ibid

\(^{43}\) Brenda S.A. Yeoh and Kavitha Annadurai, “Civil Society and the Creation of ‘Transformative’ Spaces for Migrant Domestic Workers in Singapore” in *Women Studies*, 2008, Vol. 37, Routledge: Taylor & Francis Group, p. 549, this large number of domestic workers in Singapore is influenced by the participation of female Singaporean citizens in fulfilling the demand of the labour market in numerous sector of employments.
2.4 Migration Policies of Singapore Imposed to Domestic Workers

As a state which has a stable economic growth, the presence of migrant workers and domestic workers in particular in Singapore is essential as a tool in maintaining the economic growth. Historically, the presence of migrant workers and domestic workers in particular helps Singapore to maintain and improve the economic growth. This condition creates an image of Singapore as an aspiring global city with high dependency on labour migrants. Moreover, the presence of foreign domestic workers in Singapore can be regarded as micro solution to the crisis of the reproduction sphere. It can be said that unskilled migrant workers and domestic workers in particular play essential role in maintaining the economic growth of Singapore. This condition stimulates the high number of migrant workers and domestic workers in particular migrate to Singapore since this state has an attractive pull factor in the labour market for those workers. The high influx of migrant workers including domestic workers in Singapore creates awareness for the Singaporean political leaders. The political leaders assume that the presence of unskilled migrant workers and domestic workers in a large number will cause social problems if left unregulated. Migration policies in Singapore toward unskilled migrant workers including domestic workers are more or less similar to migration policies that are enacted by Malaysian government where these policies aim to limit the large number of these workers and limit the long settlement of these workers by focusing the migration policies in the departure and entry dimensions. Singaporean government is focusing on the work permit system in order to manage the large number of foreign workers including domestic workers.

In relation to the departure dimension, Singapore enacts policy that regulates unskilled migrant workers and domestic workers in particular to work in a contract with one or two year’s duration under one employer. The recruitment system of domestic workers in Singapore is in contrary with the recruitment system of skilled migrant worker. The process of recruitment

---

45 Supra note, 43, p. 549, this article assumed that the presence of foreign domestic workers support Singaporeans particularly female citizens in contributing to the production of economic growth in order to achieve the main goal of Singapore to become a global hub in financial services, communications, and high-technology industries.
46 Ibid.
system for domestic workers is organized by non-government agencies. Meanwhile, the recruitment system of skilled migrant workers is organized by the government agency.\textsuperscript{48} The recruitment system of domestic workers is managed by private agencies which have agreement with employers who want to employ domestic workers or known as privatization of the recruitment system. The government has appointed to rely on the market force rather than regulations in imposing key labor concerns regarding domestic workers for instance fees imposed by the labour agencies, wages, weekly rest days and the duration of the contract.\textsuperscript{49} The government also regulates a policy for employers who want to employ domestic workers to pay levy. The government justified that the main aim of this levy is to monitor the behavior of domestic workers and as a guarantee that employers are financially able to employ domestic workers from the beginning of the contract until at the end of the contract.\textsuperscript{50} Singaporean government also regulates policy towards domestic workers that they are obliged to do regular medical examinations before arrive in Singapore to check that they are not infected by numerous diseases such as active tuberculosis infection and HIV or AIDS. Furthermore, domestic workers who are found to be pregnant will be repatriated or their work permit will be cancelled or rejected.\textsuperscript{51}

The high demands of domestic workers in Singapore coupled with the absence of government in monitoring the recruitment system of domestic led to the growing of private agencies that view migration of foreign domestic workers as potential business. Private agencies are deployed to fulfill the demands of domestic workers for employers since the state is not directly involved in the recruitment process of domestic workers. Similar to Malaysian government, Singaporean government justified that privatization in the recruitment system of domestic workers is beneficial since this system helps the government in reducing the social costs which occur from the process of migration because all the costs will be carried by the

\textsuperscript{48} Supra note, 40, p. 31, it is explained that the system of recruitment for skilled migrant workers is organized by the state agencies in order to attract talent skilled to migrate and work in Singapore and they are holding long term work permit. Meanwhile, the recruitment system of domestic workers are organized by private agencies and domestic workers hold short term work permit.

\textsuperscript{49} Maid to Order: Ending Abuses Against Migrant Domestic Workers in Singapore, Human Rights Watch Report, Vol. 17, No. 10 ©, December 2005, p. 2, this report pointed out the result regarding the government decision in preferring to rely on market forces rather than laws or regulations to regulate issues of domestic workers influences the way how employers treat their workers since they have absolute control over their workers.

\textsuperscript{50} Supra note, 40, p. 26.

\textsuperscript{51} Ibid, pp. 549-550.
recruitment agencies or employers. Moreover, this system enables unskilled migrant workers including domestic workers to be repatriated easily from the state mainly in times of economic recession. The enactment of this policy is problematic based on the human rights advocates because this policy leads into the infringement of domestic workers rights mainly prior to their arrival in Singapore. The private employment agents often fail to provide essential information about their working conditions, immigration requirements coupled with the fees, and their rights.

In regard to the entry dimension, Singaporean government regulates policy that limit the access of domestic workers to join the labour market and integrate into the society. In relation to the possibility in improving employment, domestic workers are restricted to join the labour market. They are allowed to work under a contract only with one employer and in the occupation as reflected in the work permit so they are prohibited to gain access to the local labour market. It means that the duration of domestic worker to stay and work in Singapore depends on the employer decision because it is only employer who is able to renew their contract and work permit. Singaporean government justified that the presence of unskilled migrant workers including domestic workers in the labour market is potentially disruptive to the society. Skilled migrant workers are able to gain access to the labour market since they hold long term work permit. It means that their presence in Singapore is not determined by the decision of the employers. It can be seen that there is a split of treatment in towards migrant workers in Singapore in which skilled migrant are viewed as the important capital in achieving stable economic growth so they deserve to treat equal like the local citizens. Meanwhile, unskilled migrant workers including domestic workers in particular are regarded as social problems and outsiders or aliens so they do not deserve to be protected and treated equal like the local people.

In relation to the settlement of migrant workers particularly unskilled migrant workers including domestic workers, Singaporean government regulates strict policy. Domestic workers in Singapore are prohibited to gain access in integrating into the society through numerous

---

52 Supra note, 24.
53 Supra note, 43, p. 549.
54 Supra note, 49, p. 18, this report further explained that the failure of private employment agents in providing information to domestic workers about their job in Singapore stimulates domestic workers at risk of exploitation, physical and mental abuse by unscrupulous employers and agents.
55 Supra note, 40.
56 Supra note, 43.
restrictions such as long settlement in Singapore through marriage with the local people and family reunification. The transnational domestic workers are restricted to grow roots in Singapore and are subjected to a dimension of legislative and regulatory frameworks which assures their transience. In relation to the policy regarding long settlement, the government limits the long presence of domestic workers by giving them short-term work permit which has one or two year duration of stay in Singapore. This policy not only effective in regulating the large number of domestic workers but also helps employers to maintain their economic condition mainly in the time of economic recession. This policy also limits the access of domestic workers in gaining permanent residence in Singapore since they have to leave Singapore within seven days after the expiration date of their work permit. Moreover, a marriage with local people for domestic workers is not a guarantee that they can gain residence permit in Singapore. It can be seen that this policy is aimed to limit the long presence of domestic workers and limit the access of domestic worker to integrate with the society in Singapore. In regard to the policy about family reunification, the government enforces strict regulations to limit the access of domestic workers in doing family reunification. Domestic workers are not allowed to bring their spouses and children with them. Domestic workers are obliged to do pregnancy examination and if they are found to be pregnant, they will be departed without exception.

57 Supra note, 43, p. 549.
58 Ibid, this article further explained that this policy enables government and employers to organize the labour pool because this policy makes domestic workers easily to be repatriated in the time of economic recession.
60 Supra note, 40, p. 29.
3 Theoretical Framework

3.1 Universality of Human Rights Theory

The present paper uses human rights theory based approach to describe the entitlement of human rights for domestic workers in Malaysia and Singapore. The human rights theory determines whether the policies of Malaysian and Singaporean governments regarding domestic workers and the actual conditions of domestic workers comply with the described human rights. Nickel argues that human rights can be divided into seven families of rights which are (1) security rights which deal with protecting against assault’s on one person such as torture, murder, and rape; (2) due process rights which concern about protecting against legal abuses such as imprisonment without trial, secret trials, and excessive punishment; (3) fundamental personal freedom rights which emphasize on protecting the freedom of belief, expression, individuals private life, association, assembly and movement; (4) rights of political participation which aim to provide individuals a democratic political process; (5) equality rights which concern about equality in all aspects of life and emphasize to eliminate all forms of discrimination; (6) social rights which ensure access to subsistence coupled with employment, healthcare, education; and (7) minority combined with group rights which are addressing the problems of distinctive groups by different forms or specific protections that go beyond the protections already offered by other rights such as rights in practising culture for minority group. The rights from number one up to number five can be classified as civil and political rights of human. Meanwhile, number six and seven can be regarded as economic, social and cultural rights of individuals. Contemporary advocates of human rights contributed to the interpretation of human rights by adding the notion of “universality” as an important concept in human rights. The basic idea of universality concerning human rights is that every human being –man or woman, rich or poor, adult or child, healthy or sick, educated or not—is entitled to hold human rights.

The universality of human rights theory is applied by the United Nations (UN) in numerous conventions, declarations and treaties. The author is narrowing down the concept of rights which are related to the topic of the present thesis for instance the right not to be held in

---

slavery of servitude, right to work and free choice of employment, right not to be subjected to arbitrary interference of private life, and right to gather with family. The article 8 of International Convention on Civil and Political Rights (ICCPR) is highlighting the right of all individuals not to be subjected to any forms of slavery or servitude. Meanwhile, articles 17 coupled with 23 of ICCPR highlight the right of individuals regarding their private life such as marriage and reunite with family. The rights of individuals to work and free choice of employment is being highlighted in article 6 of International Convention on Economic, Social and Cultural Rights (ICESCR). The universality of human rights theory is not only applied by the United Nations (UN). It is also applied by numerous organizations as the benchmark to determine the standard in protecting the rights of migrant worker. The labour standard of migrant workers including domestic workers will be explained further in chapter 5 particularly in section 5.1.

3.2 Intersectionality Theory

The next theory that uses in the present thesis is intersectionality theory which is used to depict the influence of race coupled with ethnicity, class and gender intersection within the labour market in Malaysia and Singapore. This theory can be used to illustrate how employers in Malaysia and Singapore characterized domestic workers status in the society because it is a useful analytical tool in tracing how certain people can be positioned as different, troublesome and marginalized in a society.

There are numerous concepts that are created by scholars in describing the idea of intersectionality. Ritzer explains that intersectionality is ‘the view that women experience oppression in varying configurations and degrees of intensity’. The varying degrees and configurations of oppression which contain inherent power differences that women experience are socially constructed. These power differences are varied within every aspect of social life—from identities and self concepts, interpersonal interactions, operation of firms, organization of

64 International Convention on Civil and Political Rights (ICCPR) enacted by the United Nations can be found in http://www2.ohchr.org/english/law/ccpr.htm
economic and legal systems. Meanwhile, Collins argues that ‘cultural patterns of oppression are not only interrelated, but are bound together and influenced by the intersectional system of society such as race, gender, class and ethnicity’. 

Ethnicity and race are a set of socially constructed boundaries in political, economic, cultural and social contexts in which it can become the basis for segregation, conflict, stereotyping, inequality, prejudice and social hierarchy. Gender is a category that is socially constructed through social interaction to maintain social hierarchy. It emphasizes the differences between men and women that transcend any biological/psychological differences. Moreover, the social construction of gender in the society contains inherent power differences. Baca Zinn and Eitzen describe that external social forces or attributes (education, wealth, employment status and many more) of individuals or families in a society shape and construct a power and position in the society. It can be seen that discrimination and oppression on women are constructed by the various system of society such as race, ethnicity, gender and class. This theory will be used to depict the relation between employers and domestic workers in Malaysia coupled with Singapore. The relation where the existence of hierarchies of class, gender, race, ethnicity and nationality enable employers to discriminate and oppress domestic workers. In other words, this theory tries to illuminate the intersection of class, gender, race and ethnicity in shaping the opportunities and experiences of domestic workers in Malaysia and Singapore.

---


69 Ibid.


4 Method

The present thesis is a case study which is examined by analyzing numerous literatures regarding the working conditions of domestic workers in Malaysia and Singapore. The factual conditions of domestic workers in Malaysia and Singapore, namely the conditions and policies concerning the limitation of several rights of domestic workers will be described and analyzed under the human rights coupled with intersectionality perspectives. Torrance describes case study as an ‘approach’ for a research which has been supported by many different theoretical tributaries, some, deriving from social science, stressing social interaction and the social construction of meaning within individual units. Moreover, the relevant migration policies of both Singapore and Malaysia will be examined from human rights perspective under the international level by using relevant conventions of International Labour Organization (ILO) and the United Nations (UN), under regional level by using Association of Southeast Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of Migrant Workers and relevant laws of Malaysia and Singapore concerning the right of migrant workers. The present chapter not only provides the reader about the method that uses in this thesis but also gives short description regarding the selection of the case or the subject of the topic.

4.1 Case Selection

Malaysia and Singapore have the same experience in terms of migration and labour market since both countries demand large number of migrant workers. The economic development in Malaysia and Singapore has been stimulating high demand of workers mainly in un-skilled sector. Malaysian and Singaporean governments choose migrant workers as alternatives to fulfill the demand of labour market because local people are not interested to work in this sector for this sector being known as 3D (dirty, difficult and demeaning) work. In South East Asia, Malaysia and Singapore are known as the main destination countries for un-skilled migrant

---

74 Azizah Kasim, “Illegal alien Labour in Malaysia: Its influx, utilization, and ramifications”, in Indonesian and the Malay World, Vol. 25, No. 71, 1997, Routledge, p.53, Note that, it is highlighted that this sector does not attract the local people because it is a difficult job which requires long hours working, low status and low wage.
workers since they have steady and strong economic condition which requires large demand of un-skilled migrant workers labour market. In South East Asia, Singapore is recognized as the destination country with the highest percentage of migrant workers, mainly un-skilled workers, comprising approximately 30 per cent of its population. Meanwhile, Malaysia has the highest record of migrant workers in terms of number in this part of Asia\textsuperscript{75}. Moreover, un-skilled temporary migrant workers who form the majority of migrant labour in South East Asia including Malaysia and Singapore are more vulnerable to rights violations than skilled workers since they work in the informal sectors where labour standards are not applied\textsuperscript{76}.

### 4.2 Data Collection and Literature Review

The primary source of the data was gathered from secondary sources. Reading of relevant articles, text books, and reports combined with consulting some relevant websites to the study. The facts for this study are characterized by both a descriptive and explanatory outlook of the domestic workers in Malaysia and Singapore. The work of Blanca Garcés Mascareñas (2012) titled ‘Labour Migration in Malaysia and Spain: A Market Citizenship and Rights’ was particularly important in supporting the migration data of unskilled migrant workers including domestic workers coupled with the migration policies imposed to domestic workers in Malaysia. The factual condition of domestic workers regarding the violation of their rights are taken from the report of Amnesty International (2010) titled ‘Trapped: The Exploitation of Migrant Workers in Malaysia’ coupled with the report of Human Rights Watch (2006) titled ‘Swept under the Rug: Abuses against Domestic Workers around the World’. Meanwhile, in case of Singapore, the factual condition of domestic workers and migration policies of Singapore imposed to domestic workers are taken from the report of Human Rights Watch (2005) titled ‘Maid to Order: Ending Abuses against Domestic Workers in Singapore’. These sources provide relevant aspects of information regarding the topic of the present study. Moreover, these sources also


\textsuperscript{76} \textit{Supra note}, 13, p. 69.
depict the construction of negative stigmas which are addressed to domestic workers in Malaysia and Singapore.

Some written works pertaining to the factual condition coupled with the negative stigmas of domestic workers in Malaysia and Singapore was a great help to the study. Domestic workers are perceived as the threat for Malaysian and Singaporean society. The studies of domestic workers condition regarding the rights to join and form an association written by Junita Elias (2008) coupled with Christine B. Chin (1997) depicts the position of domestic workers in Malaysian society. Their access to join and form an association is limited by the government since the society in Malaysia perceives domestic workers as a threat for the society. Meanwhile, a research paper written by Brenda S. Yeoh (2006) pictures the bifurcation of treatment from the Singaporean society addressed to skilled migrant workers and unskilled migrant workers including domestic workers. The bifurcation of rights which can be regarded as the form of discrimination in the society where skilled migrant workers are granted to enjoy the numerous rights for instance rights to join and integrate into the labour market, rights to be protected by the domestic law and right to reunite with their family or relative in Singapore. In contrary, domestic workers are not granted to enjoy those rights and are not protected by the domestic law.

Furthermore, numerous studies written by Nicola Piper give an essential contribution for the present paper in analyzing the working condition of domestic workers in Malaysia and Singapore. For instance, the paper written by Nicola Piper (2006) titled ‘Migrant Workers Activism in Singapore and Malaysia: Freedom of Association and Role of the State’ describes the limitation for unskilled migrant workers including domestic workers to enjoy several rights particularly about the rights to join and integrate into the society and labour market in Malaysia combined with Singapore. The book written by Jean Grugel and Nicola Piper (2007) titled ‘Critical Perspective in Global Governance: Rights and Regulation in Governing Regimes’ shows the lack of attention and realization for receiving countries of migration in Asia including Malaysia and Singapore to protect, provide and respect the rights of unskilled migrant workers including domestic workers.
5 Analysis

5.1 Analysis of Migrant Labour Standard

Migrant workers are vulnerable to be a victim of human rights violation because of their status as an alien or a non-citizen of the state in the destination country. The vulnerability status occurs because of the fact that migrant workers do not share common nationality, understanding, and social status in general which consequently ends up with human rights violations of those migrants. As a human being, migrant workers (skilled and un-skilled) are entitled rights in many aspects of life and deserve to be treated equally regardless of their status as an alien or a non-citizen of a state. It is stated that ‘the human rights movement and the labour movement run on tracks that are sometimes parallel and rarely meet’. In order to protect the rights of migrant workers, mainly un-skilled workers since they are vulnerable to be the victim of human rights violation, labour standards promoting and protecting the rights of migrant workers are needed. The labour standards are required in order to clarify the standard protection for labour including migrant labour in international, regional and domestic level. The migrant labour standards in international, regional level and domestic level are important because these standards can be used as guidance in determining the rights of labour. The labour standards in the international and regional level are commonly formulated into treaties, conventions and declarations. Those instruments are essential in courts when a country has signed and ratified the relevant treaties. Even though a country has not signed and ratified the relevant treaties, that country is expected to least use those treaties as guidance in formulating and interpreting domestic laws. Standards under international level refer to the labour standards in the international arena which are enacted or adopted by international organizations or institutions. Standards under regional level refer to

the labour standards in the regional arena which are enforced or declared by regional organizations or institutions. Meanwhile, standards under domestic level refer to the labour standards which are enacted by a government of the receiving country.

5.1.1 International Level

The international standard of labour is an instrument which can be used by workers to claim their rights in the international level. This instrument has the function of promoting and protecting a basic set of entitlements for workers such as standardization of minimum wage, safe working environment including insurance, employer treatment and the existence of bargaining power between employers and employees. In other words, the international standard of labour is a tool for migrant workers to claim and complain about the infringement of their rights since the aim of this law is to promote and protect the right of workers. International standard of labour mainly concern about the components of labour right such as freedom from slavery or any kinds of servitude, freedom from forced or compulsory labour, non-discrimination coupled with equity regarding treatment, right to seek better opportunities concerning work, freedom of association and entering the labour market.

International Labour Organization (ILO) is an international organization established in 1919 and became a specialized agency of United Nations in 1946. It currently has 183 member states. It has the purpose of protecting and promoting opportunities for everyone without distinction to race, religion, nationality, language, color, age or other status to attain decent and productive work in conditions of freedom, equity, security and dignity. Furthermore, it also has a function to secure the interests or rights of workers who are employed in outside of their origin country. In promoting and protecting the basic purpose of the organization concerning the right of labour, ILO enacted international labour standards as their legal instruments in promoting and protecting the right of labour which are conventions and recommendations

---

80 Supra note, 78, p. 62.
83 Ibid, p. 7.
Other forms of international instruments that can be used to promote and protect the rights of labour are international human right laws which are enacted by the United Nations (UN). ILO Declaration of Philadelphia in 1944 gave essential contribution to the recognition of labour rights as a part of international human right law\(^85\). This declaration promoted labour rights, mainly rights of migrant workers, to be included as basic rights of human that needs to be protected by international human rights institutions or UN since migrant workers are vulnerable to be the victim of actions that degrade human dignity. UN concerns about the rights of migrants, in particular migrant workers, by upholding several conventions that can be used as legal instruments to promote and protect the right of migrant workers. The examples of such conventions are International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICSECR), International Convention Against Torture and Other Cruel, Inhuman Treatment or Punishment (CAT) and the Convention on Migrant Workers (CMW) which is in particular more focused on the protection of migrant workers rights compared to other conventions. These treaties are basically the representation of Universal Declaration of Human Rights (UDHR) that have been translated and formulated as binding instruments to promote and protect the right of labour. ICCPR, ICSECR and CAT conventions provide basic protection for migrant workers.

ICCPR provides ‘everyone’ including migrant workers freedom from abuses and torture (this provision is similar to protection under CAT), slavery, forced labour, unfair trial, and invasions to privacy. ICSECR provides the right to progressive realization of social, economic, cultural rights including right to health, housing, education, and several other rights relating to labour rights such as collective bargaining, wages, social security coupled with favorable working conditions\(^86\). Meanwhile, CMW provides additional rights to regular migrants which are not mentioned in ICCPR, ICSECR and CAT. An example of such additional right is the right of family reunification for migrant workers which applies to all migrants including irregular migrant workers. Convention on Migrant Workers defines irregular migrant workers as those who are not authorised to enter, stay and engage in a remunerated activity in the State of

\(^{85}\) Ibid, p. 70.
\(^{86}\) Supra note 77, pp. 18-19.
employment. CMW, Art 5(1). Furthermore, CMW is a new treaty which was adopted in 1990 and came into force in 2003\(^7\).

In international level, Malaysia and Singapore are members of both ILO and UN. Malaysia and Singapore also signed and ratified several conventions which are enacted by those international organizations in promoting and protecting human rights. Malaysia as the state member of ILO signed and ratified 14 conventions\(^8\). Meanwhile, Singapore as the state member of ILO signed and ratified 22 conventions which were enacted by ILO\(^9\). As the state member of UN, Malaysia and Singapore surprisingly have not signed and ratified the several conventions enacted by UN regarding the promotion and protection of human rights particularly concerning the right of migrant workers\(^0\). The treaties that are ratified by Malaysian and Singaporean governments could provide useful guidance in depicting duties of Malaysia and Singapore in relation to migrant workers. These treaties could be also used as a tool to recommend Malaysia and Singapore in enforcing policies or regulations aimed in respecting, providing and protecting the rights of domestic workers.

5.1.2 Regional Level

International standards of labour which are created by international organizations are not sufficient in protecting, providing and respecting the rights of workers due to several reasons. One of the ultimate reasons is concerning the large number of member states of the organization. It is not easy for an international organization to assure that all states provide, protect and respect the human rights for individuals including worker rights in an ethnical diverse society rather than in a more homogenous society\(^1\). Moreover, through regional process it is possible to offer

---

\(^7\) Ibid, pp. 19-20, it is further explained that the main purpose of this convention is as an additional treaties which is dedicated to protect the rights of migrant worker.

\(^8\) The conventions under ILO which are ratified by Malaysia can be seen in [http://www.ilo.org/ilolex/english/newratframeE.htm](http://www.ilo.org/ilolex/english/newratframeE.htm)

\(^9\) Ibid

\(^0\) The Conventions under ILO that ratified by Singapore can be seen in [http://www.ilo.org/ilolex/english/newratframeE.htm](http://www.ilo.org/ilolex/english/newratframeE.htm)

additional mechanism or alternative steps to achieve and maximize the benefits of protective standards for migrant workers. The fact that the state members of an international organization are from different continents with different cultural, ideological and political history makes the task of the international organization even more challenging. This problem stimulated the establishment of organizations in the regional level which is pioneered by European institutions. The movement made by the European council at that time was not fully supported by the international organization. From 1977 the General Assembly of the UN started to acknowledge publicly the benefit of regional organizations. Contemporarily, there are several regional organizations or regional unions which help to fulfill the task of international organization to promote and respect human rights for individuals. The examples of such regional organizations are Council of Europe, the Organization of American States, the African Union, the Commonwealth of Independent States, the Arab League and Association of Southeast Asian Nations (ASEAN). All of those regional organizations include the issues of human rights in their working. The state members of regional organizations consider that being a member of such regional organizations will give them several advantages comparing to their international counterparts. The advantages of joining the regional organizations are: it is easier for the members to draft and adopt texts because most of the members share common linguistic, religious and cultural traditions; it is also easy to arrange a meeting to discuss the current issues within the organization because regional distance is more accessible, cheaper and easier; and in term of enforceability, regional systems seem to be easier to enforce.

Malaysia and Singapore are state members of ASEAN. Together with the other state members of ASEAN, they declared their concern about the issues of migrant workers in South East Asia region in the declaration adopted in 2007 which is about the protection of migrant worker rights. This can be used as an example to show the concern of ASEAN about the issues of human rights within its region. This declaration does not have legal binding sanctions or remedies because ASEAN does not have legal judiciary system. Although the declaration does not have legal binding sanctions or remedies, it can still be used as a tool to promote the rights of

92 Supra note, 13, p. 56.
93 Rhona Smith, Textbook on International Human Rights, 2010, Oxford University Press, Newyork., p. 84 it is mentioned that the UN started to recognize the benefit of regional organizations to promote the entitlement of human rights for individuals.
94 Ibid, pp. 85-86.
migrant workers including domestic workers. Albeit this declaration lack of legal sanctions or remedies due to the absence of legal judiciary system, this declaration can be used as a guidance for the state members of ASEAN in determining the migrant labour standards concerning their basic rights. It means that the state members of ASEAN are obliged to respect the rights of migrant workers as the realization of their commitment that they agreed for within the declaration. The non binding nature of the declaration does not and must not mean that initiative to protect the right of migrant workers within ASEAN is limited.

There are plenty regional organizations that support the international organizations in providing, protecting and respecting human rights for all individuals regardless to their nationality, race, gender and other statuses. Each organization has its own characteristics and systems in helping the task of international organization concerning the labour standards for migrant workers. The systems applied by regional organizations are different compared to the systems which are applied by the international organization. The difference is regarding the scope of the instruments that adopted and enacted by both organizations. International organizations can be said have more instruments to determine the labour standards of migrant workers compared to regional organizations. Meanwhile, the instruments of regional organizations regarding the standard of labour to protect the right of migrant workers have limited scope of application. Instruments that are adopted by regional organizations do not focus only on economical aspects of migrant workers but they can also be used as a guideline for state members of regional organization in determining the standards to protect the right of migrant workers and especially to eradicate all kinds of slavery of servitude. The existence of regional organizations shows that the concerns of migrant worker rights do not exist only in the international level, but also in regional level.

### 5.1.3 Domestic Level

The domestic law of the receiving countries as an instrument in determining the labour standards is basically essential because it can be said as win-win relation between the host country and the migrant workers. It is win-win relation because host countries need migrant workers to fulfill the demand of labour market meanwhile migrant workers are working in the host countries to
improve their economic condition. In the domestic level, the forms of instrument that have function in determining the labour standards are the laws and implementation and enforcement of those laws. As a state, the receiving state is obliged to protect and respect rights of migrant workers by providing rule of law, security of property and inviolable contracts, a competent judicial system and a fair trial for all people within its territory. The enforcement of laws coupled with regulations in receiving countries is crucial because these laws and regulations can be used not only to minimize the infringement of human rights but also eradicate the existence of modern slavery or servitude.

Status of migrant workers as a non-citizen in the receiving state creates the occurrence of unequal treatment and unequal opportunities in many aspects of social life in the host country. In order to decrease or even eradicate the unequal treatment or opportunities, the host state is obliged to enact laws or regulations. A state may restraint political participation for migrant workers but they must not draw distinctions between citizens and non citizens in regard to fundamental rights. Meanwhile, providing migrant workers with bundle of rights might be problematic for a state. There are numerous problems that may occur when a state provides bundle of rights to non citizens. One of the main problems is that by granting certain rights to non citizens including migrant workers may simply infringe upon the existing rights of citizen. For instance, conferring the free movement and right to join the labour market for migrant workers may limit or even eliminate a citizen’s right to access the national labour market.

The issue of un-skilled migrant workers as the most vulnerable group is particularly widespread in Asia including Malaysia and Singapore. Malaysia and Singapore are also concerned about the protection of migrant worker rights. They enact rules and regulations that can be regarded as an instrument to protect rights of migrant workers. Malaysia enacted a regulation which can be used as a labour standard for migrant workers which is named as Employment Act of 1955. Meanwhile Singapore enacted a regulation to protect and provide the

---

96 *Supra note*, 77, p. 16.
97 *Supra note*, 24, p. 73.
rights of migrant workers which is known as Immigration Act of Singapore\textsuperscript{99}. The problem of those instruments is their scope of applicability. In principle, the governments of Malaysia and Singapore provide protection of migrant worker rights through their employment laws. In practice, the lack of effective enforcement coupled with the dependence of migrant workers on their employer and recruitment agents make migrant workers, mainly domestic workers, vulnerable for abuses\textsuperscript{100}. The instruments that are enforced by the Malaysian and Singaporean government are mainly dedicated to skilled migrant workers because they are working under a legal permit system on a long-term\textsuperscript{101}. Meanwhile, un-skilled migrant workers are commonly excluded from adequate and legal rights protection which makes un-skilled migrant workers known as the most vulnerable group of migrants. The exclusion of domestic worker will be discussed in the next chapter of the present paper.

5.2 Rights of Domestic Workers in Relation to the Migration Policies of Malaysia

The present chapter will discuss about the exclusion of basic rights of domestic workers in relation to the policies that are enforced by Malaysian government. The policies that are focused on the ‘departure and entry’ dimensions of migration and designed to limit labour migration, limit the duration of migration, and integration of unskilled migrant workers including domestic worker.

The first policy that is criticized by numerous domestic and international NGOs is the policy regarding the recruitment system of unskilled migrant workers including domestic workers. This policy is criticized by numerous NGOs because the entire migration process composes a situation in which defamation and rights infringement delivered by agents and/or employers are common\textsuperscript{102}. Furthermore, numerous advocates of human rights argues that this policy have not yet to extend to guarantee basic conditions regarding domestic workers such as

\textsuperscript{99} Immigration Act of Singapore, further information available in \url{http://www.aseanhrmech.org/statements/index.html}

\textsuperscript{100} Supra note, 19, p. 7.

\textsuperscript{101} Supra note 3, p. 78, it is stated that skilled migrant workers are protected under the domestic law and under their work permit, they are able to do family reunification which unskilled migrant workers are not allowed to bring their family to do family reunification.

\textsuperscript{102} Supra note 13, p. 66.
minimum wage, working hours, days off, safety in the work place, freedom to seek better wages/employers and to form associations. This situation occurs due to the absence of direct involvement of Malaysian government in the recruitment process for domestic workers. Malaysian government does not directly involve in the recruitment process because the process is organized by the cooperation between private agencies and employers. The lack of monitoring system in regard to this policy shows how the government characterized the status of domestic workers as ‘needed but not wanted’.

The policy regarding recruitment system requires domestic workers to sign a contract only with one employer. This policy limits the possibility of domestic workers to join the labour market in Malaysia in order to seek better opportunities or employment. In case of terminating or discontinuing the contract with employers due to abuse or exploitative work conditions and seek better opportunities, the work permit will be cancelled by the employer in which the status of domestic workers as legal worker will be changed into illegal worker. It can be said that under the recruitment system policy, it is easy for domestic workers in losing their legal status as migrant worker into illegal migrant worker.

The policy about recruitment system also contains the omission of basic rights for domestic worker rights since this system leads to the occurrence of ‘debt-bondage’ between domestic workers and the recruitment agencies. The ‘debt-bondage’ leads to forced labour, under payment of wages, exploitation of working condition such as unregulated working hours coupled with the absence of day off, ill treatment, physical assault, unfair dismissal, precarious working conditions, and withholding of passport. The ‘debt-bondage’ occurs in the process of recruitment due to the role of the agency as the manager of domestic workers. This situation is commonly happened for domestic workers since the agency pays in advance all the costs of migration in Malaysia. In this case, the agency tends to deduct the salary of domestic workers in order to pay migration costs of domestic workers. Domestic workers are obliged to pay the debt which is monthly deducted from their salary. In order to guarantee that domestic workers are not running away from their responsibility to pay the debt, employers tend to retain their passport or

103 Ibid., p.69.
105 Supra note, 77, p. 12.
Due to this policy, it can be said that the government, employers and recruitment agency characterized domestic workers as commodity of the labour market.

In term of settlement, Malaysian government imposes policy that prohibits domestic workers to establish permanent residence, reunite with their family members and integrate with the local society through marriage. The enactment of these policies excludes the entitlement of domestic workers rights regarding the rights of family reunification, the natural right of domestic worker as women and private right of domestic worker in regard to marriage. Basically, domestic workers are the only migrant workers who are not required to leave after five, seven or ten years. But it does not mean that they can officially settle in the state and gain a permanent residence. Domestic workers can be departed from the state if they found to be pregnant or the employers cancel their contract. It can be said that these policies strictly limits the basic and private rights of domestic workers as human and women in particular. The enactment of those policies are not following the international and regional standards of labour which highlighted universality or equality among workers regardless to their status, race, language, culture and other markers. Those policies construct the presence of bifurcation within labour market in relation to the treatment and protection of rights between domestic workers and skilled migrant workers. Moreover, these policies also create the presence of intersection of race, gender and class which construct social character of domestic workers in Malaysia. The stigmas of domestic workers stimulates inequality and discrimination for domestic workers within the society. The enforcement of those policies in relation to the international standards of labour coupled with the intersection of race, gender and class will be discussed further in the next chapter.

5.2.1 Analysis of Domestic Workers Rights in Malaysia

The present chapter tries to elaborate the rights of domestic workers in Malaysia by using two approaches which are universality of human rights theory and intersectionality of race coupled with ethnicity, gender and status in Malaysia. The first approach tries to elaborate the impacts

---

106 Supra note, 6, p. 70, where it is illustrated that domestic workers are highly dependent to their employers since employers are withholding the passport of domestic workers as a guaranty that domestic workers will not escape from their responsibility to pay their debt.

107 Ibid, p. 73.
that occur from the implementation of Malaysian policies in regard to domestic workers. As aforementioned that the implementation of these policies construct the occurrence of bifurcation in term of inequality treatment and protection of rights between domestic workers as unskilled migrant workers and professional or skilled migrant workers in Malaysia. The bifurcation of rights in Malaysia will be analyzed by using universality of human rights theory which are adopted as the international labour standards. Meanwhile, intersection of gender, race and status will be used to elaborate the impacts that occur from the policies that enact by the government in regard to domestic workers. The enactment of policies in regard to domestic workers helps the society in establishing the construction of negative characters of domestic workers. It can be seen from the influence of race coupled with ethnicity, gender and class intersection in Malaysia toward domestic workers.

5.2.1.1 Universality of Human Rights

The implementation of migration policy regarding the recruitment system for unskilled migrant workers including domestic workers is problematic according to theory of human rights since this policy omits the entitlement of rights for domestic workers. The stipulation of this policy in prohibiting unskilled migrant workers including domestic workers to join the labour market is in contrast with the idea of universality of human rights theory. This restriction is problematic because it is a form of discrimination based on occupation status. Furthermore, it is problematic since the theory of human rights describes that all human beings are entitled to enjoy certain basic rights regardless to their status, age, gender, nationality, race and other statutes\textsuperscript{108}. This policy also stimulates the occurrence of defamation and violation delivered by agencies or employers because theoretically the agencies coupled with employers are obliged to provide and protect the rights of domestic workers. In practice, agencies and employers tend to infringe the rights of domestic workers since they perceive domestic workers as commodity within the labour

\textsuperscript{108} Seyla Benhabib, \textit{The Claims of Culture: Equality and Diversity in the Global Era}, 2002, Princeton University Press, United Kingdom, p. 27, \textit{states that}, ‘Universalism has a moral and may have a legal meaning. Moral meaning in term of all human beings regardless of their race, gender, sexual preference, ethnic, cultural etc. are to be considered moral equals and therefore to be treated as equally entitled to moral respect. In term of legal meaning all human beings are entitled to certain basic rights including rights to life, security under the process of law, rights to works, health care etc....’.
market instead of as worker. The local workers and skilled migrant workers are allowed to enter the labour market.

Discrimination and inequality treatment which are stipulated towards Malaysian migration policies in regard to domestic workers are not only occurred in term of mobility to join the labour market but also in term of settlement and integration of migrant workers in the society. In term of settlement, Malaysian government prohibits domestic workers to bring their relatives or to do family reunion in Malaysia. The policy also restricts employers to employ domestic workers that are pregnant. Domestic workers will depart within twenty four hours if they found to be pregnant\textsuperscript{109}. The government justified that family reunion of domestic workers will creates social problems for the society mainly in economic sectors and distribution of social welfare\textsuperscript{110}. Moreover, this policy also prohibits domestic workers to integrate into the society through marriage. In other words, unskilled migrant workers including domestic workers will not get permanent residence or citizenship status even though they are marrying with the local people. This policy is aimed only for unskilled migrant workers including domestic workers. Skilled migrant workers are not affected by this policy since they are allowed to bring their family or to do family reunion in Malaysia. Skilled migrant workers are granted with permanent residence and able to change their citizenship status as Malaysia citizen\textsuperscript{111}. The exclusion of rights to settle and integrate into the society for domestic workers is problematic based on the idea of universality of human rights. It is problematic because this policy contains of discrimination and inequality in which this policy provide privilege for skilled migrant workers to integrate and settle into the society. Discrimination and inequality of rights are in contrary with the concept of universality based on the human rights theory, since universality of human rights highlight equality to enjoy human rights. Furthermore, universality of human rights tries to eliminate all forms of discrimination in regard to human rights. The bifurcation of rights between skilled migrant workers and domestic workers which is stimulated by the migration policies can be regarded as the form of modern slavery or servitude since those policies portray domestic workers as the commodity of the labour market.

\textsuperscript{109} Supra note, 13, p. 75.
\textsuperscript{110} Supra note, 6, p. 64.
\textsuperscript{111} Supra note 77, p. 3.
It can be seen that Malaysian migration policies imposed to domestic workers infringe the entitlement of rights according to the United Nations (UN) conventions. The limitation for domestic workers to marry with the local people and the repatriation of domestic workers when they are found to be pregnant is problematic according to the International Convention on Civil and Political Rights (ICCPR) particularly about the rights of private life. The prohibition for domestic workers to integrate into society, labour market and reunite with their family are also problematic according to International Convention on Economic, Social and Cultural Rights (ICESCR) concerning equality to access employment and social rights. Moreover, migration policies that are enacted by Malaysian government are problematic with the Convention concerning Forced of Compulsory Labour coupled with Equal Remuneration Convention which they ratify under International Labour Organization (ILO) as the special agent of the United Nations\textsuperscript{112}. It is problematic because those migration policies stimulate the occurrence of modern slavery, servitude or forced labour which is prohibited in the conventions that are ratified by Malaysian government.

\subsection*{5.2.1.2 Intersection of Race, Ethnicity, Gender and Class}

This part tries to elaborate the images of domestic workers that are portrayed by employers and agencies in the society from the idea of intersectionality. The image that stimulates the occurrence of infringement of human rights coupled with oppression and discrimination in Malaysia. In other words intersectionality theory will be used as a tool to examine how the society perceives and constructs the images of domestic workers based on their race coupled with ethnicity, gender and status in the society which influence how the society treat domestic workers. In a society, race, ethnicity, gender and class are socially constructed in which the construction of these identities able to produce and maintain social stratification among people within the society\textsuperscript{113}. Domestic workers are in the lowest level of social stratification in Malaysia because of numerous reasons such as race coupled with ethnicity, gender and status which are constructed by the employers and agencies. The images of domestic workers which are

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{112} Supra note 88, it can be seen that as a member of the UN, Malaysia ratified Convention concerning Forced or Compulsory Labour coupled with Equal Renumeration Convention.
\item \textsuperscript{113} Irene Browne and Joya Misra, “The intersection of Gender and Race in the Labor Market”, \textit{Annual Review of Sociology}, Vol. 23, 2003, p. 490.
\end{itemize}
\end{footnotesize}
constructed by the intersection of race coupled with ethnicity, gender and status stimulate the occurrence of oppression, rights violation coupled with discrimination in the society.

Race and ethnicity play a big role in characterizing domestic workers as lower employment sector because this work has been performed by ethnic minorities, alien workers or unskilled migrant workers from countries that have less develop economic growth. The presence of ethnic minorities and alien workers or unskilled migrant workers from different racial-ethnic backgrounds or nationalities in occupying this job creates an idea of domestic workers as ‘others’114. The stigma of domestic workers as others not only influences the occurrence social hierarchy but also in equality treatment based on ethnicity and race. It can be seen from the exclusion of migrant domestic workers from the local labour law. Meanwhile, local people who are working as domestic workers, they are protected by the local labour law or other national legislations coupled with laws since they have the status as the citizen of Malaysia. Another example that can be seen is from the difference of wage and working hours among domestic workers. Domestic workers from Philippines earn more compared to domestic workers from Indonesia, Bangladesh and Myanmar115. Moreover, employers and agencies tend to employ domestic workers from Indonesia, Bangladesh and Myanmar instead of domestic workers from Philippines since domestic workers from those countries are less educated, cheap and more docile compared to domestic workers from Philippines116. Furthermore, different racial coupled with ethnical backgrounds of domestic workers in Malaysia stimulate oppression and infringement rights of domestic workers since they are portrayed as ‘others’ or ‘outsiders’ by the society. The image of domestic workers as ‘others’ or ‘outsiders’ creates an assumption that domestic workers are lazy and unintelligent therefore they do not qualify for rights and benefits117. It can be said that the racial and ethnical status of domestic workers create negative images of domestic workers in which these images stimulates the occurrence of oppression coupled with violation of domestic worker rights. These images construct the status of domestic

114 Ibid, p. 502, this article explained that people who are working in this employment sector do not deserve better pay or working conditions.
115 Supra note, 3 p. 77, this article stated that the government of Philippines is able to make an agreement or Memoranda of Understanding (MoU) with Malaysian government regarding the protection of domestic workers
116 Ibid
workers as ‘others’ or ‘outsiders’ that limit their access to enshrined in national legislation\textsuperscript{118}. It can be assumed that the stigma of domestic workers as an outsider of the society is a matter of race and ethnicity since the negative images of domestic workers which stimulate inequality and discrimination treatment in Malaysia are only applied to the migrant domestic workers instead of the local people who are working in the domestic sector.

In term of gender, the society also constructed negative images of domestic workers which stimulate discrimination and infringement of their rights as human being. The society identifies that domestic work is naturally performed by female worker\textsuperscript{119}. This identification occurs because domestic workers are working in informal sector or in a private house in which they are perpetuated by the image as household helpers and as member of the family\textsuperscript{120}. The society not only portrays domestic workers as household helper which is naturally performed by female workers but also as the left hand of the wife. The female employer has direct supervision of domestic workers compared to male employer since domestic workers are portrayed as the assistant of the wife. The position of female employer in maintaining power to supervise domestic workers creates superiority of female employer over domestic worker. Female employer deploys her position as superior, meanwhile domestic workers as inferior in which they do not deserve to be treated with respect as an autonomous and adult employee\textsuperscript{121}. In Malaysia, the society and female employers in particular not only perceive domestic workers as the helper or the left hand of the wife but also as husband stealers and sexually promiscuous\textsuperscript{122}. The negative stigmas of domestic workers which are constructed by the society create gender hierarchy which leads into discrimination, oppression and exploitative regime of employment control within household. Moreover, those stigmas stimulate the enactment of strict migration policies by Malaysian government in limiting the number of domestic workers in particular. It can be said that gender hierarchy plays a big role for the construction of negative stigmas which lead into oppression, discrimination and exploitation of domestic workers.


\textsuperscript{119} \textit{Supra note} 113, p. 502.

\textsuperscript{120} \textit{Supra note} 117, p. 292.


\textsuperscript{122} \textit{Supra note}, 117, p. 292.
Oppression, discrimination and infringement of rights address to domestic workers by employers are not only influenced by the hierarchy of race and gender but also by the hierarchy of class in the society. The society deploys domestic work as low status of employment because this kind of job is known as 3D (difficult, dirty and demeaning). In Malaysia, the presence of class hierarchy not only occurs between local people with migrant workers but also within migrant workers. This hierarchy is constructed based on the status of employment in the society. Migrant workers are shaped into two social classes in the society which are skilled worker that is viewed as high class employment and un-skilled migrant worker that is perceived as lower class job. Domestic work is viewed as the lowest class of employment which belongs to the bottom level of the stratification. Domestic work is portrayed as unskilled labour which is commonly not viewed as real work because this employment is performed in the informal sector or household. Domestic work tends to be performed by ethnic minorities that have low economic condition coupled with migrant workers from neighbouring countries that migrate to improve their economic condition. Furthermore, skilled migrant workers in Malaysia are viewed as one of the actors behind the economic growth enable them to have privilege in enjoying numerous rights same as the local people or in other words skilled migrant workers belong to the high class of social stratification in the society\textsuperscript{123}. Meanwhile, the society and middle class employers in particular characterize domestic workers as material items that symbolize achievement to maintain and improve their position in the social stratification\textsuperscript{124}. The presence of class hierarchy based on the employment status stimulates the occurrence of oppression, discrimination and violation of rights toward domestic workers because they are deployed as material items by the society.

The violations of rights by the society (employers coupled with employment agencies) in Malaysia are influenced by intersection of race coupled with ethnicity, gender and class. This intersection constructs negative stigmas or images that stimulate the occurrence of oppression, discrimination and infringement of domestic workers rights. This intersection also creates the occurrence of social hierarchy within the society in which domestic workers are in the

\textsuperscript{123} Supra note 77, p. 9.
\textsuperscript{124} Martin Ruhs and Ha-Joon, Chang, “The Ethics of Labor Immigration Policy”, \textit{International Organization}, Vol. 58, No. 1, 2004, The MIT Press, p. 72., this article clarified that hiring domestic worker is similar to possessing or owning material items that symbolize an achievement to maintain higher social status in the society as middle class family.
lowest level because of this intersection. It can be said that the intersection of race, gender and class that set domestic workers in the lowest position of the social stratification make them vulnerable to be the victim of human rights infringement. Moreover, the stigma of domestic workers as the commodity of the labour market coupled with material items that employers purchased from employment agencies lead domestic workers into the form of modern servitude or slavery.

5.3 Rights of Domestic Workers in Relation to the Migration Policies of Singapore

The present chapter discusses about the rights of domestic workers in regard to the policies which are enacted by Singaporean government. The government imposes policies that focus on the departure and entry coupled with settlement dimensions of domestic workers. The strict policies which are enforced by the government are problematic because those policies exclude the entitlement of basic rights for domestic workers. The policy in relation to departure’s dimension is focused on the recruitment system of domestic workers by the private agencies. The enactment of this policy is problematic due to the perspective of human right advocates because this policy limits domestic workers to enjoy the right to join the labour market. Furthermore, the enactment of migration policy regarding the recruitment process of domestic workers stimulates the occurrence of exploitation, debt bondage between domestic workers with employers combined with labour agents, poor working condition and many more. All of these conditions lead to debt bondage which directs domestic workers into the form of modern slavery or servitude. The recruitment system that organized by private agencies limit and violate the access of domestic workers in enjoying the rights that they are supposed to have such as right to be pregnant for female, right to be treated equal, the right to be treated as human being, and many more. Furthermore, different system of recruitment between skilled migrant workers and domestic workers creates a bifurcation of rights among them. Skilled migrant workers are viewed as an exclusive worker meanwhile domestic workers are perceived as a threat for the society. Furthermore, the recruitment system of domestic workers creates asymmetrical power relations in which domestic workers are the inferior and employment agents coupled with
employers are the superior in this power relation. This policy also requires employers to pay security deposit in employing domestic workers. The security deposit leads into strict regulations or tightening control create by employers toward domestic workers in order maintain the risk of forfeiting the security deposit. It shows that domestic workers face restrictions to enjoy their basic rights as human being since migration policies that are enacted by the government limit their access to enjoy those rights.

In relation to the entry’s dimension, Singaporean government imposes strict policies to domestic workers in order to avoid the long presence of domestic workers since a large number of domestic workers in the society might create social problems. The policy restricts domestic workers to gain access in joining labour market and integrating into the society through family reunion coupled with marriage. This policy limits the access of domestic workers to join the labour market because in order to work in Singapore, domestic workers need to sign a contract with maximum duration of stay for two years. Domestic workers have to go back to their country immediately after their work permit expired. Meanwhile, skilled migrant workers are recruited by the government agencies and they are not only protected by domestic law but also able to join the labour market to find better opportunity to improve their economic situation because they are viewed as exclusive worker. Based on the policy regarding entry and settlement dimensions, domestic workers are restricted to bring their spouses and children with them to stay in Singapore. It means that this policy tries to limit the access of domestic workers to integrate into the society through family reunification or long settlement of their family. In contrast, skilled migrant workers are able to bring their spouses and children with them.

In regard to the settlement’s dimension, the government enacts policy that restricts the access of domestic workers to settle and integrate into Singapore society through marriage. In

---

125 Supra note, 43, p. 550, this article explained that this recruitment lead into social hierarchy which consists of gap between domestic workers as employee and employment agencies coupled with employers as their superior. Moreover, this relation also leads into abusive treatment from employment agents and employers toward domestic workers.

126 Ibid, this article described that in order to minimize the risk in losing the deposit security, employers prohibit domestic workers do not allow domestic workers to venture into public space on their own and even locking them in the house.

127 Supra note, 40, pp. 30-31, this article depicted that the split in regard to the right of family reunification between skilled and domestic workers is basically based on the occupation coupled with work permits. The differences of employment and duration of work permits create social hierarchy and social status which lead to discrimination of treatment from employers.
relation to marriage, it can be said that marriage with local people will not guarantee domestic workers in gaining residence permit or citizenship. The access for domestic workers in gaining permanent residence or citizenship is quiet limited. Furthermore, the policy in relation to the settlement of domestic workers also regulates that domestic workers are obliged to do medical examinations every six months including pregnancy combined with human immunodeficiency (HIV) tests. Domestic workers who are found to be pregnant will be expatriated and their contract will be terminated immediately. The government justified that pregnancy of domestic workers creates a condition that the state is obliged to admit the status of domestic workers by granting residence permit for them. Moreover, pregnancy will be used as an alternative for domestic workers to gain residence permit or citizenship status if the government does not enact this policy. Based on this policy, domestic workers are restricted to grow root in the Singaporean society. The government towards this policy limits the possibility of domestic workers to settle in Singapore because the long presence of domestic workers in Singapore will create numerous social problems mainly in the time of economic downturn mainly concerning the social welfare.

In conclusion, the policies that are enacted by Singaporean government limit the access of domestic workers to settle and integrate into the society combined with the labour market. In relation to the departure dimension’s policy, it can be seen that this policy stimulates the occurrence of working class hierarchy between skilled migrant workers and domestic workers coupled with the social class hierarchy between domestic workers and employers. The result of working class combined with social class hierarchy is the occurrence of discrimination and the limitation for domestic workers in enjoying several rights. In relation to the policy about entry and settlement dimension, it can be seen that the enactment of this policy limit the access of domestic workers to integrate and settle into the society. This policy also blocks the possibility for domestic workers to be independent and make their own choices about their personal live regarding family reunite, marriage and pregnancy.

---

128 Supra note, 49, pp. 89-90, this report described that domestic workers are facing difficulty in gaining permanent resident coupled with citizenship status even though they marry with the local people. They are unable to exercise their right to marry Singaporean unless they move into another country. The government justified that this policy is aimed to control the unemployment number in Singapore mainly unskilled migrant workers from sinking roots in Singapore.

129 Ibid
5.3.1 Analysis of Domestic Workers Rights in Singapore

The present chapter tries to analyze the rights of domestic workers in Singapore by using two approaches which are universality as the form of universal human rights based approach and intersectionality of race coupled with ethnicity, gender and status in Singapore. The first approach tries to elaborate the impacts that occur from the implementation of Singaporean policies in regard to domestic workers. As aforementioned, the implementation of these policies construct the occurrence of discrimination in relation to the inequality treatment and protection of rights between domestic workers as unskilled migrant workers and professional or skilled migrant workers in Singapore. The split of rights in Singapore will be analyzed by using universality of human rights theory which is adopted as the international labour standards. Meanwhile, intersection of race coupled with ethnicity, gender and status will be used to elaborate the impacts that occur from the policies that enact by the government in regard to domestic workers. The enactment of migration policies impose to domestic workers helps the society in establishing the construction of negative stigmas of domestic workers.

5.3.1.1 Universality of Human Rights

The enactment of migration policies in regard to domestic workers in Singapore is problematic according to the theory of human rights. It is problematic because those policies contain discrimination or inequality and bifurcation of rights between local workers, skilled migrant workers and unskilled migrant workers including domestic workers. The discrimination and inequality treatment appear not only between local workers and migrant workers but also within domestic workers who are working in Singapore. The government and employers treat skilled migrant workers as exclusive workers since they are perceived as an essential asset in achieving stable economic growth. The government not only provides but also protects the rights of skilled migrant workers since their presence in the labour market is needed. The government also encourages skilled migrant workers to change their citizenship to become Singaporean citizen. Skilled migrant workers are able to join the labour market, integrate into the society through family reunification and marriage. Moreover, the recruitment system of skilled migrant workers is organized by the government agencies. Meanwhile, the recruitment system of domestic
workers which is organized by the private agencies and this system limit the possibility of domestic workers to join the labour market. They are also restricted to gain access to integrate and settle into the society through marriage and family reunification. Furthermore, they are not fully protected and covered by the domestic labour law since the government tended to rely on market forces rather than laws to regulate labour issues for domestic workers\textsuperscript{130}.

Migration policy in relation to the departure’s dimension which focused on the recruitment system is problematic based on the idea of universality of human rights because this policy contains of discrimination coupled with inequality of treatment which lead to the form of modern servitude or slavery. The recruitment system of domestic workers which is arranged by private agencies stimulates the occurrence of exploitation, debt bondage between domestic workers with labour agents, and poor working condition. This system also constructs negative stigma of domestic workers as commodity of the labour market which perceives domestic workers as an item instead of as a worker. Meanwhile, the recruitment system of skilled migrant workers is organized by the government agency. The recruitment system of skilled migrant workers is not complex and complicated compared to the regulations that are addressed to domestic workers. Skilled migrant workers also have to do health examination but they are not going to be departed from Malaysia if they are found to be pregnant because the government granted them residence permit to stay in Singapore\textsuperscript{131}. Moreover, the company grants the recruitment fees for skilled migrant workers in order to attract them to come and work in Singapore. It can be seen that there is discrimination or inequality treatment in relation to the recruitment system of migrant workers based on the employment status. The split of treatment and right in relation to the recruitment system between domestic workers and skilled migrant workers is in contrast with the idea of universality. This policy consists of discrimination and inequality of treatment from employer based on the employment status which is contrary to the idea of universality of human rights.

The policy regarding entry combined with settlement dimensions in Singapore are also problematic according to the concept of universality of human rights. This policy cleaves the entitlement of rights between skilled migrant workers and domestic workers. Through this

\textsuperscript{130} Ibid, p. 2.
\textsuperscript{131} Supra note, 40, p. 31.
policy, the government allows skilled migrant workers to gain access to join the labour market, integrate to the society through marriage coupled with family reunification. Skilled migrant workers are able to enjoy those privileges because they have long term work permits. Long term work permit also enables skilled migrant workers to gain access in getting permanent residence and citizenship. The government justified that this approach is used to attract skilled migrant workers to come and work in Singapore because their presence in the labour market is essential to achieve steady economic growth of Singapore. Meanwhile, domestic workers are not only restricted to join the labour market but also to integrate into the society through marriage and family reunification. They are not allowed to bring their spouse and children into Singapore. They also not easily get permanent residence or citizenship by marrying the local people. They hold short term work permits since they work under a contract with two years as the maximum duration of time. The bifurcation of treatment between skilled migrant workers and domestic workers which are occurred in Singapore are problematic based on universality of human rights because that policy constructs inequality and discrimination of rights among migrant workers based on the occupation status.

Those are numerous evidences in which migration policies of Singapore constitute a breach of entitlement of human rights to all human kinds. Singaporean migration policies are problematic due to the conventions which are enacted by the United Nations such as International Convention on Civil and Political Rights (ICCPR) because Singaporean migration policies interfere the rights of domestic workers private life regarding marriage and inequality treatment. The policies are also problematic due to the International Convention on Economic, Social and Cultural Rights (ICESCR) because those policies limit the access of domestic workers to join the labour market. Moreover, as the member of the United Nations, Singapore is not following and respecting the treaties that they ratify which are Convention concerning Forced or Compulsory Labour, Equal Remuneration Convention and Abolition of Forced Labour Convention\textsuperscript{132}. Singapore is not following and respecting those conventions since their migration policies stimulate the occurrence of modern slavery or servitude which can be regarded as the form of forced labour.

\textsuperscript{132} Supra note, 90.
5.3.1.2 Intersection of Race, Ethnicity, Gender and Class

This part tries to examine the occurrence of negative stigmas of domestic workers which influence how the society (employers and agencies) treat domestic workers. As afore mentioned that the actors behind the issues of human rights infringement towards domestic workers are mostly done by the employment agencies and employers. The theory of intersectionality will be utilized to see how the society constructs the negative stigmas of domestic workers which strongly influence the way society treat them. The negative stigmas of domestic workers are constructed by the intersection of race coupled with ethnicity, gender and class in which the construction of these identities able to produce and maintain social stratification among people within the society. In relation to domestic workers in Singapore, they are perceived as the lowest class in the social stratification in Singapore because of numerous reasons such as race combined with ethnicity, gender and status which are constructed by the employers and agencies. The images of domestic workers which are constructed by the intersection of race, gender and status stimulate the occurrence of oppression, rights violation and discrimination in the society.

In Singapore, domestic workers are portrayed as the lowest class in the society because of many reasons. This social stratification is influenced by the intersection of race coupled with ethnicity, gender and status of employment. Race and ethnicity plays significant role in constructing the image of domestic workers as the inferior or the lowest status in the society. They play a big role in characterizing domestic workers as lower employment sector because this work has been performed by ethnic minorities, alien workers or unskilled migrant workers from countries that have less develop economic growth. The presence of ethnic minorities and alien workers or unskilled migrant workers from different racial-ethnic backgrounds or nationalities in occupying this job constructs an idea of domestic workers as ‘others’ or ‘alien’ in the society. The local people who are working as domestic worker are protected by the local legislation and law. Meanwhile, as an outsider of the society based on their race coupled with ethnicity, foreign domestic workers are not deserve to be treated equal in regard to the rights like the local people have and enjoy. The image of domestic workers as an outsider of the Singaporean society also

\[^{133}\text{Supra note, 113.}\]
\[^{134}\text{Ibid, this article described that race, gender and status are socially constructed in which the result of this construction constitutes the occurrence of social hierarchy or social stratification.}\]
\[^{135}\text{Ibid.}\]
constructs a stigma that domestic workers are needed but unwanted. It can be seen that the intersection of race coupled with ethnicity in regard to domestic workers constructs the occurrence of social hierarchy which leads to discrimination and inequality treatment from the society (government, employers and agencies).

The negative images of domestic workers which are constructed by the intersection of gender also occur in Singapore. These images stimulate the occurrence of discrimination and infringement of domestic worker rights. The society perceives that employment in the domestic sector as a house maid is associated with one gender (women). Moreover, this employment sector is being seen as natural for women in occupying this sector\textsuperscript{136}. The significant progress in regard to the improvement of status for local female Singaporeans is not followed by the improvement status for domestic workers. The absolute gap differences of status between local female domestic workers coupled with employers and migrant domestic workers can be seen clearly in Singapore. The female employers in Singapore perceive domestic workers as their assistance, house hold helper, left hand of the wife and their inferior. Moreover, the members of Singaporean society (employers, agencies and government officials) portray domestic workers as a group of worker that pose a sexual and social threat to Singaporean families\textsuperscript{137}. Moreover, these negative stigmas are only dedicated to migrant domestic workers. Those negative stigmas lead to the occurrence of discrimination, oppression and exploitative regime of employment control within household by the female employers. It can be said that the intersection of gender which construct gender hierarchy plays essential role for the construction of stigmas which lead into oppression, discrimination and exploitation of domestic workers.

Last but not the least, is regarding the intersection of class or status of employment in Singapore. The intersection of class or status of employment not only construct negative images of domestic workers but also stimulate the occurrence of discrimination, inequality, abusive or degrading treatment that can be regarded as the form of modern servitude or slavery in the society. In other words, oppression, discrimination and infringement of rights address to domestic workers by the society (employers and employment agencies) are not only influenced by the hierarchy of race and gender but also by the hierarchy of class or status in the society. The

\textsuperscript{136} ibid.
\textsuperscript{137} Supra note, 49, p. 90.
society deploys domestic work as low status of employment because this kind of job is known as 3D (difficult, dirty and demeaning). In Singapore, the presence of class hierarchy not only occurs between local people with migrant workers but also within migrant workers. This hierarchy is constructed based on the status of employment in the society. Migrant workers are bifurcated into two social classes in the society which are skilled worker which is viewed as high class employment and un-skilled migrant worker that is perceived as lower class job. Domestic work is viewed as the lowest class of employment which belongs to the bottom level of the stratification. Domestic work is portrayed as unskilled labour because it is not viewed as real work since this employment is performed in the informal sector or private sector. The presence of domestic workers in the labour marker is needed but their existence in the society is not wanted. Meanwhile, skilled migrant workers in Singapore are viewed as one of the actors behind the economic growth enable them to have privilege in enjoying numerous rights same as the local people or in other words skilled migrant workers belong to the high class of social stratification in the society.\(^{138}\).

In conclusion, it can be said that the intersection of race coupled with ethnicity, gender and class construct the negative images of domestic workers in Singapore. These intersections create the occurrence of social hierarchy within the society in which domestic workers are belong to the lowest level. It can be concluded that these intersections put domestic workers in the lowest position of the social stratification and make them vulnerable to be the victim of human rights infringement. Moreover, these intersection construct a stigma of domestic workers as the commodity of the labour market coupled with material item that employers purchase from employment agencies lead them into the modern form of servitude or slavery.

\(^{138}\) Supra note 40, p. 31.
6 Conclusion

Overall, it can be concluded that migration policies which are enacted by Malaysian and Singaporean governments are problematic since those policies constitute breaches of internationally recognized human rights. Furthermore, Malaysian and Singaporean migration policies impose to domestic workers can be justified as modern form of servitude or slavery. Malaysian and Singaporean migration policies impose to domestic workers constitute breaches the internationally recognized of human rights because those policies consist of discrimination and inequality treatment of rights. The omission and restriction for domestic workers in enjoying several basic rights such as family reunification, access to join the labour market, right to integrate into the society through marriage, and protection of rights under the domestic labour law are the form where Malaysian and Singaporean migration policies are problematic coupled with constitute breaches of internationally recognized human rights which are applied by the United Nations into their conventions, treaties and declarations. International recognized human rights try to eradicate and eliminate all kinds of discrimination and inequality of treatment which lead into modern form of slavery and servitude. Moreover, internationally recognized human rights describes that all human being are entitled to enjoy several basic rights regardless to their race, language, colour, sex, gender, occupation, religion and other statutes. The bifurcation of rights between skilled migrant workers and unskilled migrant workers in Malaysia and Singapore which are occur because of the enactment of migration polices are the example that those policies are problematic and in contrast with the idea of universality of human rights.

The stigma that domestic workers are material items that can be bought from employment agencies creates the occurrence of exploitation, abusive treatment and atrocious working conditions. The recruitment system of domestic workers which is organized by private agencies without direct involvement or monitoring system from the governments support the presence of this stigma. The recruitment system of domestic workers supports the construction of negative image of domestic workers since this system perceives domestic workers as the commodity of labour market instead of a worker. Besides, the exclusion of domestic workers from the local labour law makes them more vulnerable to be the victim of human rights violation. Furthermore, the intersection of race coupled with ethnicity, gender and status or class
also influence the way how the society (employers, employment agencies and government) portray domestic workers. The images that are constructed by the intersection of race coupled with ethnicity, gender and status or class lead domestic workers into modern form of slavery or servitude. The employment system of domestic workers and intersection of race coupled with ethnicity, gender and class or status in Malaysia and Singapore can be regarded as the modern form of slavery or servitude due to the absence of protection from the local labour law combined with the occurrence of exploitation, abusive treatment and atrocious working conditions.

Numerous pressures are given by human rights advocates regarding the impact of migration policies impose to domestic workers which are problematic based on the idea of universality and lead domestic workers into modern slavery or servitude. Malaysian government tries to rectify the situation by strengthening and reshuffling their policies in order to decrease and eradicate the number of human rights violation mainly for domestic workers. One of approach that Malaysian government uses to protect the rights of domestic workers by stipulating policy regarding wages where employers coupled with employment agencies are prohibited to deduct more than fifty percent of the worker’s salary per month. But the realization of this policy will be useless if Malaysian government do not involve directly in implementing this policy. Meanwhile, Singaporean government responds the pressures that are given by the human rights advocates by enacting new policy regarding weekly day of rest. The decision of Singapore’s Manpower Ministry in enacting this policy is one step ahead of Singaporean government in eradicating discrimination, violation of human rights and all forms of servitude or slavery. It is one step ahead because domestic workers are still excluded from other key labour protections in Singapore’s Employment Act.

However, the responsibility to protect, provide and respect the rights of domestic workers are not merely address to the receiving countries but also to the sending countries. The sending countries are also obliged to protect, provide and respect the rights of their people who decide to migrate and work in other countries including domestic workers. The realizations of sending

140 Human Rights Watch, “Singapore: Domestic Workers to get Weekly Day of Rest”, Available in http://www.hrw.org/news/2012/03/05/singapore-domestic-workers-get-weekly-day-rest it is mentioned that Singapore’s Manpower Ministry announced the changes on 3 March 2012 and go into effect only for new contracts in the beginning of January 2013.
countries to protect, provide and respect the rights of domestic workers such as arranging diplomatic negotiation or agreement with the host countries regarding the protection of rights of domestic workers; involve directly in the recruitment system of domestic workers by cooperating with private agencies, and many more. The pressures from human rights defenders regarding infringement of domestic workers rights are commonly addressed to the host countries without examining further the numerous aspects in the sending countries which might lead to the occurrence of violation and exploitation of domestic workers in the receiving countries. The issues regarding the obligation of the sending countries to protect, provide and respect the rights of their people who are migrate and work abroad is a suggestion for the future research about international migration in particularly about domestic worker rights.
Bibliography

Books


**Chapters in Books**


Journal Articles


Reports


International Monetary Fund (IMF), “Singapore, GDP per capita, current prices USD”, 2007, IMF World Economic Outlook and EconStats,

http://www.econstats.com/weo/C141V015.htm


Internet Sources


Ratifications of International Human Rights Treaties, Available in