

LACK OF ACCESS RIGHTS TO HIGHER EDUCATION FOR INDONESIA MIGRANT WORKERS: LESSON LEARNT FROM UNIVERSITAS TERBUKA

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Abstract

As part of social rights, the fulfillment and the protection of the rights to access higher education should be guaranteed by law. The State is responsible for developing and maintaining an education system and educational institutions for everyone without discrimination. The State need to ensure the fulfillment of the rights to education, including higher education, which must respond to students' needs with different social and cultural conditions. Migrant workers are one of the groups with special needs to access higher education due to their location and conditions. There is no conventional face to face higher education that could serve their needs. Migrant workers should have equal rights with other Indonesian citizens to pursue the rights to higher education This study discussed the efforts to fulfill the rights to higher education for Indonesian migrant workers in Hong Kong. Through a normative juridical approach, this research discussed the rights to higher education, the guarantee of the rights to higher education for migrant workers under international treaties, and the effort of Universitas Terbuka to fulfill their access to higher education through distance learning program provided by Universitas Terbuka.

Keywords: the rights to higher education; migrant workers; migrant worker's rights

1 INTRODUCTION

Nearly a portion of Indonesian migrant workers traveled abroad without going through official channels (non-procedural migrant workers). Based on data compiled by Bank Indonesia and BNP2TKI (The Indonesian National Body for the Placement and Protection of Indonesian Workers) in 2019, Indonesian Migrant Workers spreaded across ASEAN Countries, East Asia, the Middle East, Africa, America, and even Europe. Indonesian migrant workers made a significant contribution to the economy, in 2016 sending more than Rp 118 trillion (USD 8.9 billion) to Indonesia in the form of remittances. Procedural migrant workers contributed 56 percent of total remittances, while non-procedural workers contributed the remainder. Remittances make an essential contribution to the economy; the amount exceeds the total government expenditure on social assistance programs in 2016 - worth Rp 89 trillion (USD 6.7

billion) - and is equivalent to around 30 percent of Indonesia's total foreign direct investment in 2017 (Bank, 2017)

International labor migration is an important sector of the Indonesian economy in its own right, requiring commensurate efforts to improve its professionalism as a sector and instill modernization across its various components to maximize its potential for the benefit of all stakeholders. This report points towards the best policy mix for Indonesia's different international migrant worker groups who face widely differing risks and gain various economic benefits from migration. Following an introduction, Section 2 of the report looks at the significant profiles of Indonesian migrant workers and their reasons for migrating. Section 3 focuses on the discussion about female domestic workers. Section 4 delves into the issue of undocumented migration, including the government's efforts to encourage documented migration. Section 5 then looks at how best to sustain the benefits of migration, particularly to the third profile of migrant workers, namely those who work in the more developed countries of East Asia and who generally earn the highest wages (Bank, 2017).

Table 1
Distribution of Indonesian Migrant Workers (BNP2TKI, 2019)

Country	2017	2018	2019	Total per Country
Taiwan	4657	6792	7234	18683
Malaysia	8431	7528	5847	21806
Hong Kong	7836	6172	4666	18674
Singapore	1317	1701	2037	5055
Sudi Arabia	584	393	703	1680
Brunei Darussalam	494	544	420	1458
Italy	194	82	155	431
Poland	8	35	97	140
South Korea	97	155	70	322
Papua New Guinea	21	8	67	96
United Aras				
Emirates	106	51	60	217
Maldives	33	18	29	80
Kuwait	78	93	21	192
Russia	4	12	17	33
Oman	39	21	15	75
China	4	2	13	19
Qatar	44	20	12	76
Solomon Island	21	27	10	58
Sri Lanka	5	6	10	21
Zambia	10	13	10	33
Japan	12	24	8	44
Seychelles	8	4	8	20
Macao Sar	1	9	5	15

Bahrain	5	23	3	31
Cyprus	1	1	2	4
Other	244	208	41	493

Table 1 showed the places of Indonesian migrant workers dominated by South East Asia Countries (Malaysia, Singapore, Brunei Darussalam), Middle east countries and East Asia Countries. However, the significant contribution made by migrant workers to Indonesia is not parallel with the protection of the rights (Bank, 2017) of migrant workers. As citizens who live in other countries, their rights tend to be discriminated against and violated. They are facing exploitation, abuse, and alienation, and exploitation (Rawson, 2019). Therefore it is crucial to guarantee and ensure the fulfillment of the rights of migrant workers, not only rights relating to decent wages or other fundamental rights. One of the rights that stakeholders may not realize is the right of migrant workers to obtain tertiary and higher education.

Table 2
Education Level Between Indonesian Migrant Workers and Former Indonesian Migrant Workers (Bank, 2017)

Grade of Education	Migrant workers	Ex migrant workers
Elementary school	60%	48%
Middle School	22%	30%
High School or above	18%	20%

The 2014 International Migration and Remittance Survey conducted by the World Bank showed that migrant workers mainly were poorly educated, although gradually they became more educated than before. More than three-quarters (78 percent) of migrant workers graduate from junior high school or lower, with half only completing elementary school (Bank, 2017). Migrant workers from urban areas are generally better educated than rural, one percent higher high school graduates. When compared with post-migrant workers, there is a marked improvement in the current level of education of Indonesian migrant workers, with junior or senior high school graduates about 12 percentage points higher among current migrant workers (51 percent) compared with post-migrant workers (39 percent). The data is not surprising because two-thirds of migrant workers come from relatively more impoverished regions, where the average poverty rate is higher than the national poverty rate.

Besides that, The Indonesian National Body for the Placement and Protection of Indonesian Workers has compiled data on migrant workers' education level in three periods from 2017-2019.

Table 3
Grade of Education Indonesian Migrant Workers (BNP2TKI, 2019)

Education Grade	2017	2018	2019	Total Per Grade
Elementary School	10.025	7.972	6.260	24.257
Junior High School	7.965	9.264	8.299	25.528
Senior High School	5.741	6.353	6.671	18.765
Diploma	412	286	208	906
Under Graduate	109	82	117	308
Post Graduate	2	3	5	10
Total Per Year	24.254	23.960	21.560	

The low level of education is undoubtedly worrying, not only causes a lack of quality and capacity of migrant workers (French, 2012). Whereas, if the workforce is better educated and the modern sector grows, workers will be better. Nevertheless, it also correlates with migrant workers' understanding of their rights and obligations, especially when they are overseas. Strengthening education is an essential avenue for economic integration. It may also change their perceptions of migrants' abilities, which helps promote social inclusion (International Labour Organizations, 2017). Therefore stakeholders and migrant workers need to understand the right to education which often goes unnoticed. Universitas Terbuka, in this case, has made substantial efforts by providing services to migrant workers in almost all destination countries. Through this paper, the author wants to discuss two things first, guaranteeing the right to higher education for migrant workers in international treaties. Second, fulfillment the higher education through distance learning for Indonesian migrant workers in Hong Kong.

2 METHOD

Data collection was carried out through a literature study, observation, and interviews with Indonesia Universitas Terbuka's students in Hong Kong. The data analysis technique used is deductive analysis, looking for a legal basis for guaranteeing the right to higher education for every person, then analyzing within the framework of the right to higher education for migrant workers normatively. After that, the author will explain how the higher education scheme chosen by migrant workers through distance learning is a solution to the limited access they face, based on learning and Indonesian Migrant Workers In Hong Kong.

3 RESULTS AND DISCUSSION

A. Guarantee Of Right To Higher Education For Migrant Workers In International Treaties

International legal sources in the form of international treaties were quite comprehensive in regulating the right to education for everyone, including the right to higher education. However, only a few of these international agreements explicitly recognize that migrant workers have the right to education, significantly higher education, which must not be ignored.

1. Guarantee of Right to Higher Education for Every Person

Recognition and respect for the dignity and rights of every person are first stated in The Universal Declaration of Human Rights(UNDHR). UNDHR remains as relevant today as it was in 1948 that it was proclaimed and adopted by the United Nations General Assembly. It provides a foundation for a just and decent future for all. It has given people everywhere a powerful tool in the fight against oppression, impunity, and affronts to human dignity. All human rights, civil, political, economic, social, and cultural, are recognized as a universal, inherent, inalienable, indivisible, and interdependent body of rights. UNDHR promises all the economic, social, political, cultural, and civic rights that underpin a life free from want and fear. They are not country-specific or particular to a specific era or social group. They are the inalienable entitlements of all people, at all times, and in all places, people of every color, from every race and ethnic group; whether or not they are disabled; citizens or migrants; no matter their sex, their class, their caste, their creed, their age or sexual orientation.

Based on Article 25 (1) UNDHR, remains two crucial things. Firstly, education should be oriented as much as possible towards the development of personality or human capacities. This responsibility rests with educational institutions and the authorities responsible for their functions. Second, the full realization of these human capacities includes the mandate to educate about human rights and fundamental freedoms. In other words, not only do the institutions bear the costs of developing human capacities, but they must also educate to highlight the moral obligation to improve in the context of recognizing the rights and freedoms of others (Dhillon, 2011). Article 26, UNDHR, guarantees fair access to education for all people. Technical and professional education must be generally available, and higher education must be equally accessible to everyone based on merit.

The right to education is a part of social and cultural rights regulated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on

Economic, Social, and Cultural Rights (ICESCR). Article 13 (4) give responsibilities to every States Parties to the present Covenant recognize that, to achieve the full realization of this right: Higher education shall be made equally accessible to all, based on capacity, by every appropriate means, and in particular by the progressive introduction of free education. United Nations Educational, Scientific and Cultural Organizations adopted Convention Against Discrimination in Education on 14 December 1960. Its promote equality of opportunity and treatment for all in education, including access to education, the standard and quality of education, and the conditions it is given. Term 'discrimination' includes any distinction, exclusion, limitation, or preference which, being based on race, colour, sex, language, religion, political or another opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education. In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake: (a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; (b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions; (c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries; (d) Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group; (e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals. State parties shall make higher education equally accessible to all based on individual capacity.

2. Guarantee Right to Higher Education for Migrant Workers

One of the objectives of the International Labour Organisation (ILO), as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own. So, in 1990 they adopted International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In this Convention, Migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to: (a) Access to educational institutions and services subject to the admission requirements and other regulations of the institutions and services concerned (Article 43 (1)).

Furthermore, in ILO Convention 189 Convention Concerning Decent Work for Domestic Workers Each Member (State) shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training (Article 4(2)). Based on ILO Recommendation 201 Recommendation Concerning Decent Work for Domestic Workers, "When regulating the working and living conditions of domestic workers, Members should give special attention to the needs of domestic workers who are under the age of 18 and above the minimum age of employment as defined by national laws and regulations, and take measures to protect them, including by: (a) strictly limiting their hours of work to ensure adequate time for rest, education and training, leisure activities and family contacts" (Article 5(1)). Thereafter, member states should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education. (article 26(3)).

International treaties ensure respecting, protecting and fulfillment rights of migrant workers, especially in right to higher education. Moreover sending State and receiving State need to give access and facilities for migrant workers to reach higher education using various systems, method and media.

As an empowerment right, education is the most important means by which adults and children can get out of poverty from an economic and social point of view and get the means to fully participate in their community (Rabin, 2016). Other rights and freedoms cannot be released without education. Freedom of expression, the right to be officially approved and the right to be supported by the right to education. Education is also an acceleration right: allows people to go to work, determine in the life of the community and become productive members of the community (Fredman, 2018).

State responsibility for the right to education implies the need to promote standard-setting action, which aims to strengthen its foundations of the national legal system (Singh, 2010). Another way to analyse fulfilment of State obligations is by using the AAAQ framework availability, accessibility, adequacy and quality (Programme on Women's Economic, & Social and Cultural Rights, 2015) The right to education contributes towards building a more peaceful world is to be realized. Consequently, education must be made universally available

and equally accessible to all (UNESCO, 2000). Elaborating Right to Education using 3AQ framework:

- a. Availability: Services, material, infrastructure available are working and functional. Eg. functioning educational institutions and programs.
- b. Accessibility: Educational institutions and programs have to be accessible to everyone, especially the most vulnerable groups, in law and fact, without discrimination. Economic (Affordability), education has to be affordable to all. Whereas primary education shall be available "free to all", States parties are required to progressively introduce free secondary and higher education. Physical (non-discrimination), education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g., a neighborhood school) or via modern technology (e.g., access to a "distance learning" program). Information, awareness must be ensured and information should be accessible to all.
- c. Adequacy: Refers to the adequate quantity in terms of services. e.g. education facilities available in sufficient quantity, right proportion of students and teachers.
- d. Quality: This is culture and circumstances specific. An ongoing process which is crucial from the perception of the rights holders. the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g., relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

B. Universitas Terbuka's Effort to Fulfil Right to Higher Education for Indonesian Migrant Workers

Unlike the legal basis that is not yet comprehensive, the practice of higher education services for migrant workers through distance learning is actually already running even though there are still some shortcomings that need to be fixed. In order to give right to higher education for migrant workers, Universitas Terbuka cooperates with BNP2TKI (The Indonesian National Body for the Placement and Protection of Indonesian Workers). This cooperation aims to increase the dissemination of information to all Indonesian citizens abroad and in particular to future Indonesian migrant workers so that more Indonesian citizens abroad receive high quality education so that their skills increase and that they are ready to compete on the world market (Universitas Terbuka, 2018)

Furthermore, Universitas Terbuka established collaboration with Indonesia Foreign Ministries as institutions that provide services to Indonesian citizens abroad. This collaboration aims to improve access to higher education. Moreover, purpose those

collaboration, it is hoped that distance education services abroad can be optimized (Universitas Terbuka, 2019). All of cooperation to improve the facilitation of formal higher education for Indonesian migrant workers.

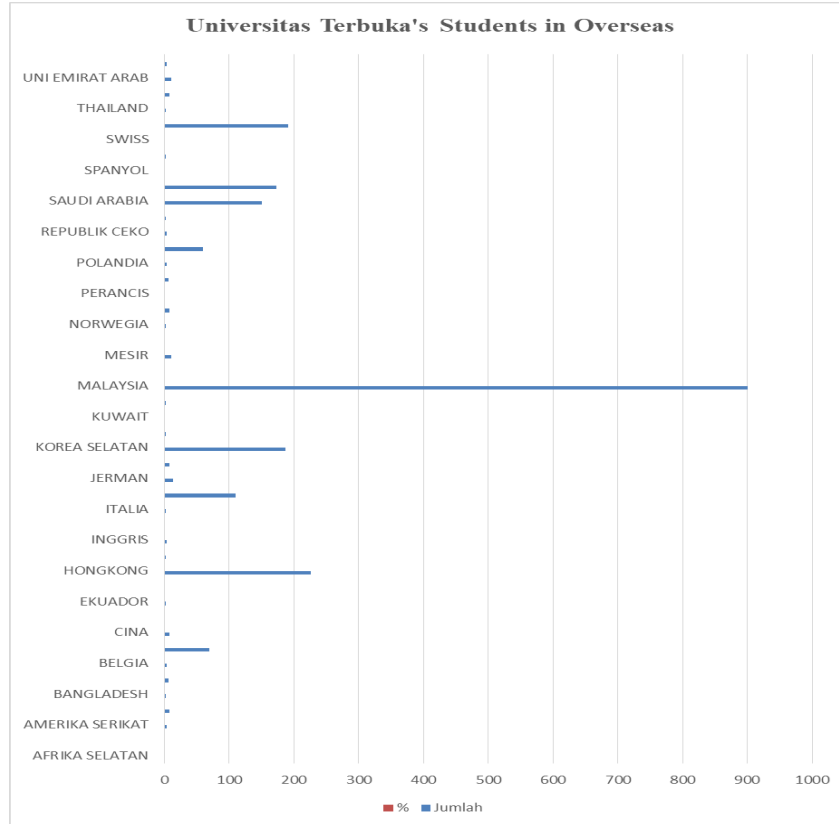


Figure 1

Distribution of Universitas Terbuka’s Student in Overseas (‘UT Dalam Angka’, 2021)

From those collaboration, Universitas Terbuka has many students from overseas. Number of Student of Universitas Terbuka in overseas is 2021, almost 40,82% work in Malaysia, 10,24% live in Hongkong as migrant workers, and 10,98% Works in middle east. Most of them work in informal ares, such as domestic workers 43%, farming workers (19%), construction workers (18%), industrial workers (8%), elderly caregiver (6%), and hospitality workers (4.5%).

The final form of the collaboration aims to create quality Indonesian migrant workers who have knowledge, competence, and professionalism. The following is a distance learning implementation scheme for Indonesian migrant workers.

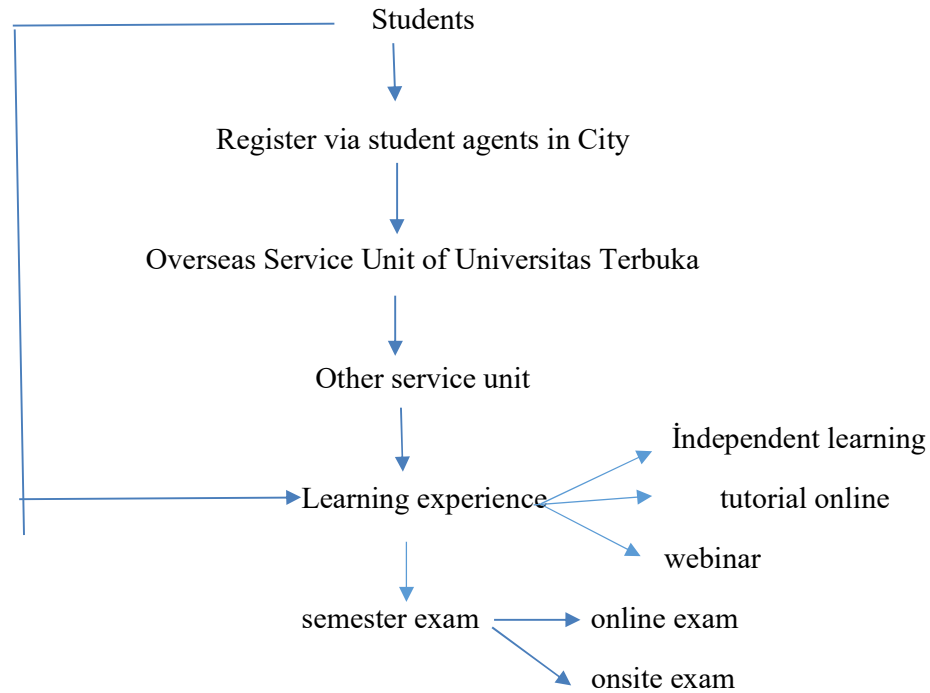


Figure 2
Distance Learning Scheme for Indonesian Migrants Workers

4 CONCLUSION

International treaties have not specifically regulated the rights of migrant workers to higher education. Nevertheless, in general, the right to higher education has been recognized and respected within the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976, Convention Against Discrimination 1960, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, also in ILO Convention on Domestic Workers.

Lack of guarantee of the right to higher education of migrant workers is reflected in the low quality and capacity of migrant workers. Whereas the right to education is a positive right. The State must be present to guarantee the respect, to fulfill and to protect right to higher education with various instruments. Universitas Terbuka as a public university commits to give access to higher education, widely, without discrimination, include Indonesian Migrant Workers. In addition to providing higher education services to Indonesian migrant workers is a form of realization of the right to higher education for all.

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