

Social Security: Case of Foreign Workers in Sabah, Malaysia

Mohd Safri Saiman^{a*}, and Salmie Jemon^{b*}

^a*Faculty of Business, Economics and Accountancy, Universiti Malaysia Sabah, Malaysia*

^b*Faculty of Humanities, Arts and Heritage, Universiti Malaysia Sabah, Malaysia*

Abstract

Social security programmes for migrant workers in ASEAN countries comprises of old age, invalidity, survivors, medical care, sickness and maternity (cash benefits) and employment injury. In the case of Malaysia, migrant workers in formal sectors are protected under the Workman Compensation Act 1952 which covers, among others, employment-related injury, medical benefit, old age and maternity benefit except for sickness benefit. Based on the findings, Malaysia has yet ratified neither the conventions nor the recommendations from International Labour Organization. The authors also found out that there are differences between local and migrant workers due to different sets of rules and regulations applied for both type of labour. Therefore this paper attempts to provide explanation of the above stated scenario based on case studies compiled regarding social security practised on migrant workers in Malaysia, particularly in the state of Sabah.

Keywords: social security, foreign workers, Malaysia

JEL classification: H55, J33, J61, N35

1 Introduction

The process of foreign workers² policy formation and implementation is a challenging obstacle for any nation in the world since it involves a consistency effort in order to cater the various and multi-faceted needs of a nation. Malaysia as in any other country is a foreign workers-employing nations took a unilateral approach seeing employed foreign workers in the allowed-industries as a national security issue. This explains the country's strict policies in foreign workers influx that is manifested in its law formations and amendments pertaining foreign labour employment especially with regards to Human Rights Declaration 1948 (22) in conjunction with social security for legally employed foreign workers. This paper is structured as follows. Sections 2, 3, 4, 5 and 6 respectively outline the problem statement, conceptual framework, objective and method of the study and discussion of the findings. This followed by concluding remarks as the final section of the paper.

* **Corresponding author** Tel: +60 88 320000; Ext. 1604 E-mail address: safri@ums.edu.my

²This paper focused only on foreign workers legally employed in Malaysia, particularly in the state of Sabah.

2 Problem Statement

Malaysia's dependency on foreign workers has been a long and distinctive phenomenon in its economic development endeavour. In the state of Sabah for example, the number of foreign workers in the labour market had increased from 3.5% (13,266) in the year 1970 alone to 55.8% (68,107) in 1996 (DayangSuriaHjMulia, 2000). In Sabah, the plantation sector relied heavily on foreign workers especially from Indonesia. For instance, up to year 2009, a total of 390,697 foreign workers are engaged in plantation and construction sector in Sabah (Utusan Online, 19 November 2009). The Federal Land Development Authority (FELDA) pointed out that it was due to local workers are not interested in the said sectors itself (New Sabah Times, 3 May 2011).

Why such study on the aspect of labour social security is crucial? In Maslow's theory of hierarchy of needs, he puts security aspect as one of the basic needs of human beings. Therefore, to ensure individual can contribute productively in the labour market, this basic attribute of security needs to be fulfilled first. Midgley (2008) argued that workers' social security can be seen as a contributor towards a nation economic development via development based on employment, to increase the quality of manpower and to protect workers from industrial contingencies. Also this is the very approach applied by Otto Von Bismarck in the development machinery industries in Germany by introducing workers social security protection such as insurance for disease (1883), accidents insurance (1884) and retirement insurance.

One of the Malaysian Government aspirations in its New Economic Model is to become a high-income nation. In pursuing such objective, economic transformation programmes would experience frictional unemployment. This is when social security fits into the picture taking the role as to facilitate labour transition during such period. However, Amirsham Abdul Aziz (2010) argued that the existing policies are not contributing to such role as it is more of work-related aspect rather than workers welfare.

In Malaysia, studies on the issue of social security are more focused on the dimension of social assistance to reduce incidence of poverty (Ragayah Hj Mat Zin et. al, 2002; Nik Mohamed Amin, 1980). Rashidah Merican Abdul Rahim Merican (2010) discussed on the aspect of local labour rights on social security while Ong Fong Sim and Aizan Hamid (2009) looked into the general scenario of social security loophole in Malaysia. All in all, previous studies are more concerned on social security of local workers but not specific on foreign workers.

Therefore, motivated by such scenario, this paper intended to look into what extent does a legal foreign worker is protected in terms of social security policy in Malaysia? Is the current policy is sufficient or does it need further overhaul in the light of protection and enforcement?

3 Conceptual Framework

Esping-Andersen (1990) formed a typology of welfare regime that classifies social welfare of a nation into three aspects, namely, liberal, conservative and social democratic. Nevertheless, his typology formulation was based on the European communities context which is definitely differs significantly in comparison with most Asian countries, including Malaysia, in terms of cultural, political and economic settings. Kim (2005) argued that the application of Esping-Anderson typology to analyze the contextual welfare of Asians was a methodological mistake. Therefore, Aspalter (2006), Holliday (2000) and Kwon (2005) put forward an alternative explanation of the concept of Asian welfare state namely the Asian Welfare Regime which encompasses all aspects of social protection in a country. Since the scope of this particular paper is limited to foreign workers only, the appropriate conceptual framework to go about the matter is by using the standard International Labour Organisation (ILO) definition as pointed out in Convention 102 regarding workers' social security. Based on the ILO's definition as the conceptual framework, this paper discusses nine aspects of the foreign workers social security in Malaysia, i.e., medical treatment benefits, cash benefit for disease, unemployment benefits, pension benefits, job-related accident benefits, family benefits, maternity benefits, invalidity benefits and liabilities benefits.

4 Objective

This paper specifically discusses about social security policy regarding foreign workers in Malaysia which is still lacking. Therefore this paper aims to:

1. To scrutinise social security policies that protect legal foreign workers in Sabah, Malaysia.
2. To assess the extent of how existing policies are in line with the international labour standards.

5 Method of the Study

This study employed a qualitative approach in gathering data by referring to secondary sources like journals, legal policies and analysis of foreign workers compensation cases. Content analysis on documents pertaining Malaysian legal acts which among others, Work Compensation Act 1952, Employees Provident Fund Act 1991, Social Security

Act 1969 and Sabah Labour Ordinance) (2005 amendment). ILO's conventions and recommendations obtained via their website, ILOLEX, which provided a complete list of countries that ratified with the ILO's conventions and recommendations. An analysis was also conducted on selected case files regarding workers' compensation for the period of 2007 – 2009 as obtained from Foreign Workers Division of the Sabah Manpower Department, Malaysia.

6 Findings

In general, foreign labour refers to individual who works outside his or her motherland/ origin country. Nevertheless, the term used differs based on categorisation made whether on country of origin, skills or type of jobs. In Malaysia, foreign labour solely refers to only semi-skilled or non-skilled labour allowed to enter the country. In a broader definition, the International Labour Organization (ILO hereafter) defined foreign labour as:

“...a person who migrates from one country to another with a view to being employed otherwise than his own account and includes any person regularly admitted as a migrant for employment...”

Basically, such definition merely refers to cross border migration to seek for employment and it does not clearly stated the legality of the workers' status and as any working context a valid status of employment is an integral element in determining to what extent does a worker is protected by the existing laws and/or enactment. The importance to determine the legality status of a foreign labour is highlighted by Karim, et.al. (1999) which defined foreign labour as:

‘...a group of nationals who have legal right to work in a country where they have been officially recruited...’

This definition pointed out that a legitimate foreign labour refers to those formally recruited to work in a country and therefore their recruitment normally subject to the current policy and procedure practised by a country. By practice, foreign labours in Malaysia are recruited through registered job agencies in order to assist the government to monitor foreign inflow in the country.

In Sabah, as stipulated in the SLO, enacted under Section 1, Chapter 1(2) that:

‘...any worker whose passage to Sabah has been provided in consideration of a promise to perform work in Sabah...’

Clearly this ordinance explained that foreign workers recruited by employers to Sabah are solely for job-purpose only and that employers are responsible to bear

the travel expenses of recruited workers particularly those from the Philippines and Indonesia. Table 1 below is a summary of demand for foreign workers since 1997 which shows an upward trend. Regularization Programme in 1997 recorded a total of 21,455 licenses disbursed to employers which involved 85,071 foreign workers. Even though license disbursement dropped in 2002, the total recruited increased to 80,792 compared to only 24,556 in year 2000. High labour demand and dependency in various sectors especially in construction and plantation sectors explained the hike in foreign workers recruitment in Sabah.

Basically, in order to recruit foreign workers in Sabah, employers must obtain the official permission from the state’s Department of Manpower. Regularization Programme in 1997 recorded a total of 21,455 licenses disbursed to employers which involved 85,071 foreign workers. Even though license disbursement dropped in 2002, the total recruited increased to 80,792 compared to only 24,556 in year 2000.

Table 1 below is a summary of demand for foreign workers which shows an upward trend. High labour demand and dependency in various sectors especially in construction and plantation sectors explained the hike in foreign workers recruitment in Sabah.

In general, there are two types of legislative policies which directly related with social security protection in Sabah. Firstly, policies that involved terms and conditions for protection and pension which is governed by two relevant acts namely, Employees Provident Fund Act (1991), EPF hereafter, and Sabah Labour Ordinance (SLO). The main objective of EPF is to provide financial protection for pensioners via monthly salary deduction of a certain proportion of their earnings. Meanwhile, the SLO protects foreign workers in job terms and conditions like job contract, wage payment, working hours and on-leave entitlement. All workers are subjected to both EPF and SLO Act including those of foreign workers. Secondly, policies regarding protection against accidents and job-related diseases. Both local and foreign workers are protected with two different set of acts. Social Security Act 1969 is meant to protect local workers whilst foreign workers protection falls under the Workman Compensation Act 1952. In line with this paper’s objective, the authors focused mainly on the Workman Compensation Act 1952.

Table 1 License disbursement for Foreign Workers Recruitment 2004 – 2010

Year	2004	2005	2006	2007	2008	2009	2010	
Total License disbursed to employee		33,756	22,405	22,221	7,685	8,721	10,383	16,794
Total workers recruited		95,506	79,270	177,228	122,663	188,860	90,825	149,201

Source: Manpower Department, Kota Kinabalu, Sabah Malaysia, March 2011

6.1 Compensation for Workers – Aspect in the Pillar of Social Security

Why do we need security? Maslow's Basic Needs theory stressed on the aspect of safety as one of its human basic needs theory and this includes men and women in any employment they engaged in. Midgley (2008) argued that workers' social security seen as a factor that contributed towards nations economic progress through employment developmental strategies, advancement of the quality of employment pool and protection from industrialization consequences. In the same token, Otto Von Bismarck applied the social security approach to bring upon development in German machinery industries with the introduction of social security protection for workers in the forms of disease insurance (1883), industrial accidents (1884) and pension insurance (1889).

In Malaysia, literatures pertaining social security issues focused on the dimension of how it helps in poverty alleviation (Ragayah Hj Mat Zin et. al., 2002; Nik Mohamed Amin, 1980). Those studies undoubtedly provided a quasi-complete reference on the current status of poverty among locals not involved in formal employment. Nevertheless, studies by Rashidah Merican Abdul Rahim Merican (2010), Ong Fon Sim and Aizan Hamid (2009) and Soh Chee Seng (2009) discussed exclusively on social security among local workers under the Social Security Act 1969 jurisdiction without any specific reference to foreign workers. At present, Jemon & Saiman (2011) explored the less-sought issue by providing case study on the practice of social security for foreign workers in Malaysia, particularly in the state of Sabah.

One of the current Malaysian Government key aspiration as pointed out in its New Economic Model is to become a high-income nation. In order to materialized such objective there will be trade-off and one inevitable effect is frictional unemployment. Therefore, to provide a counter-cyclical effect over such trade-off is to secure a labour social security network to ensure smooth transition should such frictional unemployment takes place. Clearly, this is a valid and crucial role of social security to complement and assist such transition. This transition should be carried out with careful consideration in mind that if such social policy is to be implemented it is bound without a negative re-countercyclical effect of dole mentality among workers.

Esping-Andersen (1990) welfare regime typology's classified a nation's social welfare institution as liberal, conservative and social democratic which is based on European context. Clearly, such classification is entirely different in comparison with most Asian countries including Malaysia in terms of cultural, political dan economic scenario. Kim (2005) pointed out that it is a methodological mistake to totally apply Esping-Andersen's classification in analysing welfare in Asian countries. As a consequence, Asplater (2006), Holliday (2000) and Kwon (2005)

provided an alternative welfare state explanation through what is known as Asian Welfare Regime that took a general approach on welfare analysis in the said countries. As for the objective of this paper, both authors will solely focus on a conceptual framework that takes only foreign workers legally employed in Malaysia as the subject matter. For this purpose, authors are bound with the conceptual definition set upon by the International Labour Organization (ILO) Convention 102 on workers' social security. With such definition at hand, nine aspects of social security of ILO's, namely medical care protection, cash benefits, unemployment benefits, pension benefits, work-related accident benefits, family benefits, maternity benefits, invalidity benefits and liabilities benefits.

6.1.2 Compensation for Foreign Workers' in Sabah, Malaysia

Prior to year 2011, foreign workers recruitment in the state of Sabah allowed only workers from the Phillipines and Indonesia to legally work in selected productive sectors namely, services, estates, manufacturing, constructions, fisheries, loggings, mining and domestic helpers. The scenario has changed when the Chief Minister State of Sabah given a green-light to take on male foreign workers from Bangladesh, Nepal, Myanmar and Vietnam to work in constructions, estates, agriculture and forestry sectors. Based on Table 2, out of seven aspects of social security in Malaysia, only Disease Benefits that does not cover foreign workers employed legally. This is due to the fact that the Workmen Compensation Act 1952 only disburse benefits if it is work-related diseases. Details for each elements will be discussed further in the following sections.

Table 2 Comparison of social Security for local and foreign workers in Malaysia

Social security benefits	Local workers	Foreign workers
Pension	Employee Provident Fund Act (Compulsory)	Employee Provident Fund Act (Voluntary)
Invalidity	Social Security Act 1969	Workman Compensation Act 1952
Liabilities	Social Security Act 1969	Workman Compensation Act 1952
Medical	Social Security Act 1969	Workman Compensation Act 1952
Disease	Social Security Act 1969	-
Maternity	Employment Act 1955/ Sabah Labour Ordinance 1967	Employment Act 1955/ Sabah Labour Ordinance 1967
Employment injury	Social Security Act 1969	Workman Compensation Act 1952

6.1.3 Pension Benefits – Employees Provident Fund (EPF)

EPF is an employee social security institution that is established under the Malaysian Employees Provident Fund Act 1991 (Act 452) which provides pension benefits to its members through old age savings scheme. EPF Act made it compulsory for all employers to fulfill their lawful and moral obligation to act on their employees in saving a portion of their salary. Unlike public and private sector workers, savings made by legally employed foreign workers in Malaysia is voluntary in nature.

Table 3 Comparison between members* aged 55 and less

Shares	Savings rate until 55 years old (Section A, Table III)	Savings rate after 55 to 75 years old (Section C, Table III)
Employers share	12%	6%
Employees share	11%	5.5%
Total	23%	11.5%

Source: Employee Provident Fund, 2011

Note: *Foreign workers' savings before 1 August 1998, saving rates equivalent to local workers

According to Table 3 above, foreign workers that opted to save before 1st August 1998 would have the equivalent rate of saving with local workers with saving rates for those aged under 55 is twenty-three percent (a combination of 12% by an employer and the remaining by a worker). Whenever they reached the age of 55, they are subject to half of the rate previously stated.

For those foreign workers opted to save after 1st August 1998, they are entitled to the same rate with the locals and for employers they are obligated with a RM5 flat-rate. The purpose of such rate is to cut-cost borne by employers and beginning from 1st September 2007, all EPF savings by foreign workers will ceased two months prior to their working permit duration. In terms of EPF withdrawals among foreign workers, those registered as active members are eligible to apply for all types of withdrawals like local workers entitled to. Conversely, if a foreign worker is registered as an EPF member on or after 1st August 1998, he or she is entitled to apply for Withdrawal Upon Leaving Host Country, disabled or death (application done by his or her heir).

6.1.4 Invalidity, Liabilities, Medical Treatment and Job Accident Benefits

All these benefits are guaranteed through Foreign Workers Compensation Act governed by Manpower Department under the jurisdiction of the Ministry of Human Resource of Malaysia. The 1952 Workmen Compensation Act protects foreign workers with valid and legal working permit liabilities (family members under his or her care) should he or she involved in job-related accident or death during the working period. Below are those foreign workers subject to protections:

- received less than RM500 a month
- manual labour job without salary limit and involved in job-related accident while working
- not involved in working as domestic helpers (domestic workers)

The Manpower Department of Malaysia defined compensation as a payment to workers as a result of loss in income should the said workers involved in job-related tasks. Compensation insurance provides financial support to such unfortunate workers in order for them to cover for their medical, rehabilitation and miscellaneous costs. All foreign workers have the rights to be compensated by making a formal application and report to the relevant department.

Section 4 (1) (a) pointed out the obligation of employers to disburse any compensation, medical and rehabilitation costs (as allocated in Section 15) for any occurrence of job-related accidents. Employers must obtained insurance policy coverage from 24 panel insurance companies which is certified by the Malaysian government. Employers failure to abide such ruling will void any compensation procedures and will be deemed invalid and obstruct Workman Compensation Act 1952, Section 26.

Table 4 Employers obligations under Workman Compensation Act 1952*

Law	Type of offences	Fines/Penalties
Section 13	Failure to report injuries First offence Second offence	Fine RM5,000 Fine RM10,000
Section 23	Failure to provide report/info	Fine RM5,000
Section 26(1)	Failure to purchase insurance	Fine RM20,000 or 2 years jail or both
Section 26 (5)	Deducts foreign workers salary to cover for insurance premium	Fine RM5,000 or 1 year jail or both

Source: *Workman Compensation Act 1952*

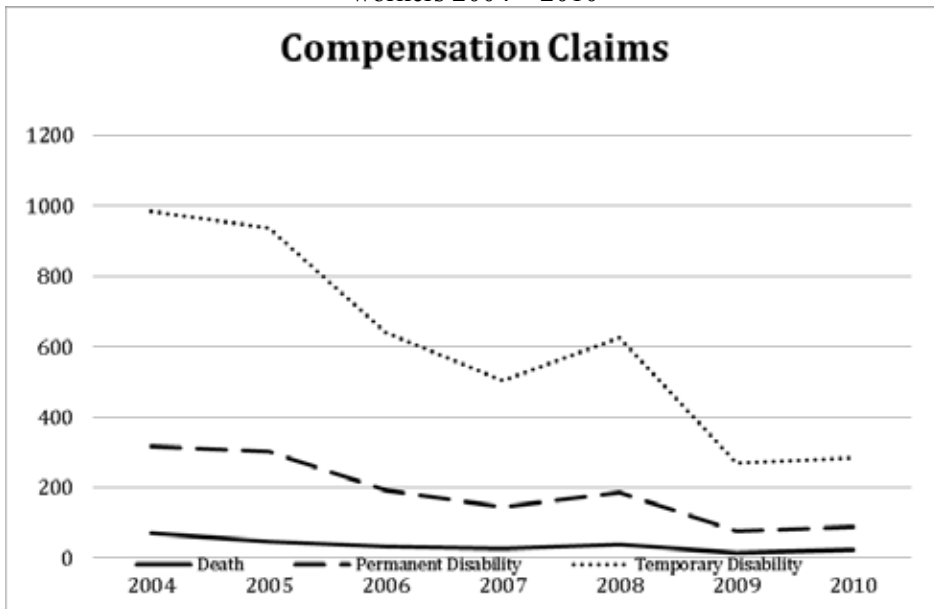
Note: *Workman Compensation Act 1952 is applicable to foreign workers beginning from 1 April 1993*

The jurisdiction provided under the Workman Compensation Act 1952 clearly stated the role of employers to protect the interest of foreign workers (see Table 4 above). For example, employers are obligated to report job-related accident incidence to the Manpower Department within 10 days. Failure to do so will have employers to be fined RM5000 for first offence and RM10000 for any subsequence offences. Any employers that failed to provide necessary document report needed by the department are also liable for RM5000 penalty. Clearly that insurance for accidents are liabilities for employers if their employee mostly if not all are foreigners. Each employer bearroughly around RM60-80 per head annually for insurance premiums. If any employer caught

taking a portion of their workers salary to cover the insurance costs will be subjected to a RM5000 fine or one-year jail or both.

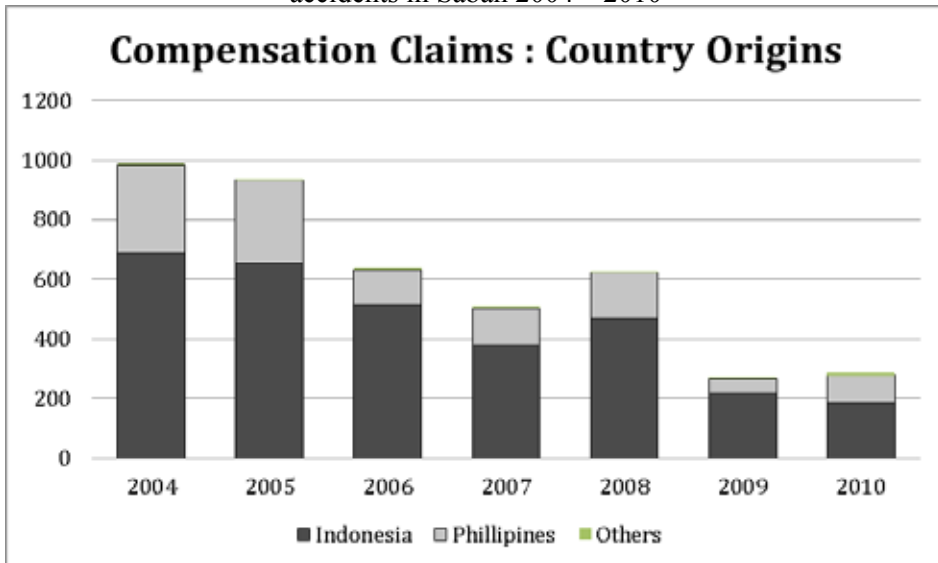
Data obtained from Manpower Department of Sabah (see Table 5) shows a decrease in compensation claims by foreign workers in each categories from year 2004 to 2010. There are three types of compensation for eligible foreign workers to claim, namely Temporary Disablement (TD), Permanent Disablement (PD) dan Death. TD recorded 68 to 70 per cent claims on yearly basis and accorded as the the highest among all categories. Unlike the hike in total compensation claimed, overall total compensation had decreased drastically from 986 claims in year 2004 to merely 286 claims in year 2010. Table 6 highlighted that 50% compensation was claimed by Indonesian workers.

Table 5 Total compensation claims industrial injury by foreign workers 2004 – 2010



Source: Manpower Department of Sabah, 2011

Table 6 Foreign workers country origin involved in industrial accidents in Sabah 2004 – 2010



Source: Manpower Department of Sabah, 2011

Table 7 Selected cases on foreign workers death compensation claims 2007 – 2009

Case	Sector	Category	Total Compensation	Duration settled
1	Agriculture	Death Accident	RM25,000	14 months
2	Construction	Death Accident	RM25,000	17 months
3	Services	Death Accident	RM25,000	23 months
4	Construction	Death Accident	RM25,000	n.a.
5	Agriculture	Death Disease	Non-eligible	Case closed

Source: Foreign Workers Compensation Claims (2007 – 2009), Manpower Department, Sabah March 2011
 note: n.a. (not available)

Survivor’s Benefit is one of the element under social protection for workers. Whenever a foreign worker died due to job-related tasks his or her heir will receives a maximum RM18000 which comprised of one month salary times 60 (in months). Whereas RM7000 served as an *ex-gratia* payment to the heir of the unfortunate worker. Based on findings of the case files (see Table 7) for Death categories, it took between 14 to 23 months for compensation claim to be fully settled. Such long settlement is due to the difficulty of employers to identify the worker’s heir, delayed in securing compensation chequesand incomplete compensation documentation necessary for a claim to be carried out. In other category involving death caused by diseases are not covered under the prescribed act

6.1.5 Compensation and Social Security Policy in International Context

International labour policy for foreign workers are one of the instruments that protects them in a global scene. Nevertheless, adoption of conventions and recommendations put forward by international bodies and organizations are subjected and limited to countries that have fully ratified with the relevant conventions. Multi-policies that we have at the moment are by-products of migrational phenomena and problems faced by countries where those workers are originated from, host countries and foreign workers itself. Most of the obstacles faced by illegal foreign workers are obstruction of human rights and rights as workers, whereas for host countries the problems are more on economic and social in nature (Wickramasekera, 2002).

There are several conventions that are closely related with foreign workers and in that particular matter, the Migration for Employment Convention 66 (1939) focused on equal treatment for foreign workers recruitment, their settlement and working conditions. Furthermore, there are conventions that protects foreign workers against any sort of mistreatment behaviour or unjust, inhuman punishment and acts of tarnishing workers reputation. All those types of protection encompasses of medical services, viable and sound working condition and protection against discriminations. Currently there are six general conventions with regards to social security of which each is one of the social security aspects as pointed out earlier in this article:

- i. Social Security Convention (Minimum Standard), 1952 (No. 102);
- ii. Convention on Occupational Injuries Benefits 1964 (No. 121);
- iii. Convention on Invalidity, Old-age Benefits and *Faedah Orang Tanggungan*, (No. 128);
- iv. Convention on Medical Care and Disease Benefits, 1969 (No. 130);
- v. Convention on Job Promotion and Unemployment Benefit, 1988 (No. 168);
- vi. Convention on Maternity Benefits 2000 (No. 183).

Meanwhile there exist specific standards set forth by ILO that included foreign workers' rights that ensure them to receives social protection in their originated country as stipulated in Convention of Equal Treatment (Compensation Injury), 1925 (No. 19). This particular convention specifically stated that equal treatment to all foreign workers that originated from their countries that have ratified such convention, especially on compensation due to employment injuries. The scope of this particular convention is wider since it covered the nine aspects of social security. For any accepted social security aspects, each country as member of the conventions are binded to it and should give equal treatment to foreign workers as those received by local workers. But such equality does not necessary applicable especially when it comes to benefits that are sourced out from public funds. Among ASEAN country members, only the Phillipines that have fully ratified with Convention No. 118.

Declaration on Promotion of Foreign Workers’ Rights and Protection [ASEAN 2007] recognized the very curical role and contribution of foreign workers towards both receiving and sending host countries. And what matters are the commitment of ASEAN countries hand in hand to protect foreign workers’ rights. Although Cuddy et al., (2006) expressed concern over lack of social protection in ASEAN countries towards foreign workers especially in terms of access to public social services, such scenario is not a phenomenon exclusively occurs in ASEAN communities. Elsewhere in the global scenario it is happening and what differentiate among others are the level of resistance and form that took place.

Tamagno (2008) put forward a recommendation to widened foreign workers social security in ASEAN countries with a reciprocal notion through social security agreement among countries. The objective of such international agreement is to protect foreign workers and their families’ rights. With such agreement it coordinates national social security between two or more countries so that a cooperation would be more meaningful and fruitful especially for foreign workers as far as their rights are concerned. This is not a process of harmonization but rather a unification of social security protection between two countries involved. Table 8 indicates that only seven (7) out of nine (9) aspects defined by ILO are practised by ASEAN countries. Two aspects have yet existed in this region up to year 2007 are Unemployment Benefits and Family Benefits.

Table 8 Formal social security programmes in ASEAN countries

Benefits	BN	KH	ID	LA	MY	MM	PH	SG	TH	VN
Pension	√		√	√	√		√	√	√	√
Invalidity	√		√	√	√		√	√	√	√
Families	√		√	√	√		√	√	√	√
Medical Expenses	√		√	√	√	√	√	√	√	√
Disease				√	*	√	√	√	√	√
Maternity				√	*	√	√	√	√	√
Employment Injury	√		√	√	√	√	√	√	√	√

Source: SSA (2007), Data adapted from Tamagno (2008: 31)

Note: Abbreviations are as follows: Brunei (BN), Cambodia (KH), Indonesia (ID), Laos (LA) Malaysia (MY), Myanmar (MM), Phillipines (PH), Singapore (SG), Thailand (TH) Vietnam (VN). Up to year 2006, social security programme has not been formally implemented in Cambodia.

Based on SSA (2007) Laos, Phillipines, Singapore, Thailand and Vietnam have all seven (7) social security programmes whilst Brunei, Indonesia and Malaysia only five (5) programmes. Due to the fact that ratification of ILO’s conventions and recommendations of social security programmes are voluntary in nature this explained why there were no obligations among countries to fully comply with all nine aspects mentioned thereof. This also gave insight of why SSA reported that Malaysia do not

have have protection pertaining Disease and Maternity Benefits. Nonetheless, in Malaysia's context, Disease Benefits is readily available for foreign workers so long as it is a directly job-related disease. In terms of Maternity Benefits, the common practice in Malaysia applies for both local and foreign workers, for example, both type of workers are entitled for and have the rights to get a 60-day maternity leave based on SLO.

7 Conclusion

The focal premise of this article is to scrutinize issues pertaining workers' welfare, particularly from the perspective of social security policy applied to legal foreign workers in Malaysia and to what extent it had protected them as it should. By using ILO's definition of social security as the main crucial framework, it was found out that social security does exist to foreign workers' in Malaysia even though such protection is not as complete and specific as it may seem. Why is it so? Firstly, coverage of such social security is not widespread as far as foreign workers are concerned due to the fact that social security policy does not equally spread between foreign and local workers.

This non-realization of policy can be explained by the fact that both local and foreign workers are governed by two sets of different rules and regulations. In conjunction with different governance of policy, type of protection and rate of compensation claims received by both foreign and local workers are undeniably differ. Secondly, Workman Compensation Act 1952 allocated that such social security does not apply to less-mentioned category of workers throughout this article i.e., domestic helpers (workers). However, non-coverage of such workers is countered by the mandatory regulation that employers must provide insurance for these domestic helpers and is indeed a justified indirect policy in protecting foreign domestic helpers in Malaysia.

The authors also found out that almost all ASEAN countries have not ratified ILO's conventions and recommendations pertaining workers' social security which made things difficult to create a sound social security policy that can be enforced as a unitarily joint-effort among countries in the ASEAN region. Finally, issue regarding minimum wage should also be incorporated since it is closely related with workers' social security. However, there is currently no minimum wage policy nationally in Malaysia that covers local workers and that effectively brings us to nowhere when it comes to minimum wage for foreign workers. Nonetheless, this minimum wage issue could be a milestone towards further research regarding foreign workers' welfare in future.

As noted earlier in this paper, the process of labour migration both directly or indirectly, had at least caused political, social and economical changes in a country. Policy initiation based upon the notion that influx of foreign labour as a supportive mechanism towards the instability of local labour market is undeniably not materialized or realized. Quoting Max Frisch: 'We invited guest workers, and got human beings' (ILO, 2004: 111). As human, of course we would treat foreign labour as human and as workers and it is the authorities' responsibility to make sure that their rights are taken cared of. Therefore, willingly or unwillingly, the current and existing policies should take into account their rights as well. A sound policy on foreign workers will ensure a long lasting effort to identify a long-term policy that will not only protect and benefit the locals but will also provide foreign workers with rights as workers. This in turn will ensure a policy that is not just effective but it will also preserve the importance of both local and foreign workers' rights.

The presence of foreign labour has in many ways affected local workers' rights. Therefore, a social consensus can be further strengthened by the formation of a tripartite body to assist the government in planning, developing and implementing policies regarding foreign workers. All parties should work hand in hand to identify the current and dire needs of labour market and determine the best and effective possible way in managing issues arise with foreign labour. With this atmosphere at hand, an integrated and flexible policy is within reach and can be formulated to address current and future issues regarding foreign workers in Sabah particularly and Malaysia in general.

References

- Abdul Karim, Z., Mohd Asri, A., & Mohd Isa, B. (1999). *Foreign Workers in Malaysia: Issues and Implication*. Utusan Publication & Distribution Sdn Bhd: Kuala Lumpur.
- Amirsham Abdul Aziz. (2010). *Labour Safety Net Under The New Economic Model EPF International Seminar on Social Security*, 13 July 2010.
- Aspalter, Christian. (2006). The east Asian welfare model. *International Journal of Social Welfare*, 15, 290 – 301.
- Cuddy, Michael, Edi Suharto, Juni Thamrin, & Eamonn Moran. (2006). *The European Union's Programme for ASEAN: Strengthening Social Protection Systems in ASEAN. Final Report*. [Unpublished].
- Dayang Suria Hj Mulia. (2000). Pekerja asing di Sabah: Isu dan perspektif In Dzurizah Ibrahim (eds.). *Hubungan industri dan sumber manusia: Isu dan perspektif*. Penerbit Universiti Malaysia Sabah: Kota Kinabalu.
- Holliday, Ian. (2000). Productivist welfare capitalism: Social policy in east Asia. *Political Studies*, 48, 706 – 723.
- Humblet, Martine, & Silva, Rosinda. (2002). *Social security: Standards for the XXIst century*. Geneva: International Labour Office, International Labour Standards.
- Kulke, Ursula. (2006). *The Role of social security in protecting migrant workers: The ILO approach*. ISSA Regional Conference for Asia and the Pacific, New Delhi, India, 21 – 23 November 2006.

- Kwon, Huck-ju. (2005). Transforming the developmental welfare state in east Asia. *Development and Change*, 36, 477 – 497.
- Malaysia National Employment Return 2009.
- Midgley, J., & Tang, K. L. (Eds). (2008). *Social security, the economy and development*. New York: Palgrave Macmillan.
- Nik Mohamad Amin. (1980). Social Security Protection of 2007 the rural population – Approaches in Malaysia, *International Social Security Review*, 33, (2), 165 – 175.
- Ong Fong Sim & Aizan Hamid. (2009). Social Protection in Malaysia – Current State and Challenges, *Towards Practical and Sustainable Social Protection in East Asia: A Compassionate Community*. ERIA Research Project Report.
- Wickramasekera, Piyasiri (2002). *Asian Labour Migration: Issues and Challenges in an Era of Globalization*. International Labour Office. International Migration Program. Geneva.
- Ragayah Haji Mat Zin, Hwok Aun Lee, & Saaidah Abdul Rahman. (2002). Social protection In Malaysia. In Erfried Adam, Michael von Hauff, & Marei John (eds.). *Social protection in Southeast Asia and East Asia*, pp. 119 – 169. Singapore: Friedrich Ebert Stiftung.
- Rashidah Merican Abdul Rahim Merican. (2010). Employees Rights under the Malaysia Social Security Organisation. *Journal of Politics and Law*, 3, accesible at <http://www.ccsenet.org/jpl>
- Salmie Jemon. (2005). Pengurusan buruh asing di Sabah. In Azizah Kassim (ed.). *State responses to the presence and employment of foreign workers in Sabah*. Penerbit Universiti Malaysia Sabah, Kota Kinabalu.
- Soh Chee Seng. (2007). Social security: Concept and reality with reference to Malaysia. *Malaysia Labour Review*, 1 (1), Institut Sumber Manusia Kebangsaan, Kementerian Sumber Manusia Malaysia.
- Tamagno, E. (2008). *Strengthening Social Protection for ASEAN migrant workers through social security agreements International Labour Office*; ILO Regional Office for Asia and the Pacific, Asian Regional Programme on Governance of Labour Migration. Bangkok: ILO.