



Thammasat Institute of Area Studies

WORKING PAPER SERIES 2018

*The Effect of Royal Decree on Managing the Work of
Aliens B.E. 2560 (2017) A.D. on Myanmar Migrant Workers*

Su Sandarr Than

December 2018

THAMMASAT UNIVERSITY

PAPER NO. 07 / 2018

Thammasat Institute of Area Studies, Thammasat University

Working Paper Series 2018

The Effect of Royal Decree on Managing the Work of Aliens B.E. 2560 (2017)

A.D. on Myanmar Migrant Workers

Su Sandarr Than

Thammasat Institute of Area Studies, Thammasat University

99 Moo 18 Khlongnueng Sub District, Khlong Luang District,

Pathum Thani, 12121, Thailand

This publication of Working Paper Series is part of Master of Arts in Asia-Pacific Studies Program, Thammasat Institute of Area Studies (TIARA), Thammasat University. The view expressed herein are those of the authors and do not necessarily reflect the view of the Institute.

For more information, please contact Academic Support Unit, Thammasat Institute of Area Studies (TIARA), Pathumthani, Thailand

Telephone: +02 696 6605

Fax: + 66 2 564-2849

Email: academic.tiara@gmail.com

Language Editors: Mr Mohammad Zaidul Anwar Bin Haji Mohamad Kasim
Ms. Thanyawee Chuanchuen

TIARA Working papers are circulated for discussion and comment purposes. Comments on this paper should be sent to the author of the paper,

Ms. Su Sandarr Than, Email: susandarthan@googlemail.com

Or Academic Support Unit (ASU), Thammasat Institute of Area Studies, Thammasat University

Abstract

This study assesses the impact of the Royal Decree on Managing the work of Aliens B.E. 2560 (2017) on Myanmar migrant workers (legal and illegal). There are a lot of Myanmar migrants in Thailand may it be through legal or illegal channels. Especially for the illegal migrants, despite being cheated and exploited by greedy job brokers, harsh employers, terrible experience of being traffic and numerous labor situations, these migrants have no choice but to endure it all. Due to the above mentioned issues, the military junta imposed this new law on 23rd June 2017 which came officially into force on 1st July 2018. As it come out almost suddenly, both government agreed to a grace period for the illegal migrants to get legal status. The case study for this research is Samut Sakhon province in Mahachai, Ekachai and Bang Bon district which has plenty of Myanmar migrants working there. The author started this field works from end of August to middle of September by using structured in-depth interview. During the session, the author interviewed various stakeholder to get a grasp of their perceptions and opinion of the issue. Based on the initial outcomes of the fieldwork, there are plenty of interesting developments related to this new law. In short, the Royal Decree in general is good but it needs simplification to make it more effective and efficient.

Keywords: Myanmar migrant workers (legal and illegal migrants), Royal Decree on Managing the work of Aliens B.E.2560 (2017), Government, Employer, Broker, MOU system, Sub-contractor

1. Introduction

Migration is a statement of an individual's needs and aspirations, global view, and respect for social norms (Brettell,2003).

Myanmar migrant workers' movement began in the 1970s following the dictatorship established in Myanmar in 1962 which resulted in an economic crisis due to the implementation of Burmese way to Socialism coupled with an ongoing civil conflict, natural disasters and rural poverty in Myanmar. As migrants wanted to avoid their problems, Illegally, they entered Thailand, the bordering country with a robust economy in the region. Most migrants are from ethnic minorities who live in the rural areas. They are unskilled or semi-skilled workers who seek to avoid poverty in their places. The Myanmar migrants could not afford to come here legally as the procedure are bureaucratic and it requires money and money. Therefore, Myanmar migrants come to Thailand to work in low skilled jobs in industries such as fishing and seafood firm, construction, garment and domestic services etc. (Ma, 2008).

Despite all difficulties, they still illegally enter Thailand to seek money for their family in Myanmar. As they are of illegal status, they face numerous challenges such as severe working conditions, and no labor status in Thailand. Most of them are exploited and become victims of various groups of people including dishonest job brokers, agents, and employers. (Hall, 2012)

To tackle and regulate the illegal worker issues, on 23rd June 2017 Thailand's military coup announced and adopted a Royal Decree on Management the Work of Foreigners B.E. 2560 (2017) or Thailand's new labor law. In this new law, it puts imprisonment and fines as panalties for both employer and employee at first (Tungsuwan, 2018). But on 23rd March 2018, the government has reduced the imprisonment panalties and fines to prevent labor market distortion.

The author sees that the outcome of this study shall contribute to better protection the Migrants and ease of human trafficking in Thailand. Due to this reason, this research seeks to investigate how this law will affect Myanmar's migrant workers, especially the illegal ones.

2. Literature Review

This section includes three parts:

- (i) Definition of migration and migrants. The phenomenon of migration has various reasons including physical and psychological ones and is mostly associated with seeking a better life . The author deals with a handful of definition on migration to show various aspects of the concept of migration. Voluntary migrant, who works in a destination country, get better opportunities than in their source countries (Chatty,2013).
- (ii) Issues involving temporary illegal migrant workers. This part aims to observe the status of temporary illegal migrants in the destination and original countries, which face and handle the issues. Due to poor education background and a complicated procedure involved, they become illegals. As illegal migrants, they don't receive welfare and benefits and usually get 4D jobs (Dirty, Dangerous, Difficult and Devalued jobs), they cannot communicate well and sometimes they commit crime (Kazancigil, Carino, Chantavanich, & Castled, 1997). After being deported, some country gives them harsh punishment but some countries give a chance for them to settle down in their own country.
- (iii) Myanmar migrant workers in Thailand and a Royal Decree on Managing the work of Aliens B.E 2560 (2017). Due to the border area, Myanmar migrants enter to Thailand through illegal channels. Most Myanmar migrants are undocumented labors that face adversely situations in their jobs and without getting labor rights. Finally they become prey of human trafficking, force labor, violence and sexual exploitation and expulsion by authorities (Hall,

2012). On 23 June 2017, Thai military coup adopted the Royal Decree on Managing the Work of Aliens B.E 2560 (2017) but they gave grace period over a year for preparation processes. It was officially enforced on 1st July 2018. This law is very advensing because it combines of two enforcing laws: Royal Decree on Bringing Alien to work in Thailand B.E. 2559 (2016) and Alien's Work Act B.E.2551(2008). In this law, there is no sub contract and emphasizes the employer's responsibilities. However,it give penalties not only for employers but also employees can be sent back to their places. It protects workers because of labor governance law. In the literature, this law is considered good for verification of both migrants and destination country. However some migrants and Thai SMEs face a difficult time. During this grace period a lot of Myanmar illegals got legal status. Thai government is reducing some restrictions for migrant workers to give a chance for working. According to above mentioned situation, this research needs further exploration from various stakeholders for effecting this new labor law on Myanmar migrants especially illegal migrants.

It is noteworthy to mention that there is restricted knowledge on the number of illegal migrants in Thailand. Recently, data of the number of illegal migrants is severely limited.

3. Methodology

This study emphasizes fact findings and analysis on the outcomes from various stakeholders who were interviewed by the author in Thailand. In primary research, the qualitative study with systematically structured in-depth interviews will cover both administrative structures and the practices that were used by various stakeholders such as employees, employers and officers from NGO, ILO, Myanmar and Thai Labor Ministries. That includes the exploration of consequences of the Thai Royal Decree on Managing the Work of Aliens B.E.2560 (2017) upon people. These survey outcomes focused on that various stakeholders have different perceptions and understandings in

accordance with their own field. If there is no detailed conception of these various stakeholder trust relied on their own activities, it could be tough for authority concerns to adopt more realistic policies to create available, manageable and safe migration processes. According to (Marshall & Rossman,2006), this method, descriptive and value context, is core activity if the researcher understands the participants' perspective in-depth in social and economic setting.

According to the primary research, the above-mentioned qualitative method will be used as an informative exploration of these stakeholders, since it is too risky to contact directly to illegal migrants. This is crucial because of the moral ethics as well as of the incredibly high risk for them to get arrested by Thai police at anytime and anywhere. So, it has got the facts and figures from various stake holders especially ILO's and NGO's officers.

This interview guide to be used during interview with different stakeholders is as follows:

After adoption of Thailand's new labor law, how does Thailand's new labor law impact on Myanmar's migrant workers.

Main questions

1). What difficulties have Myanmar migrants/ employers/ NGO faced and what impacts have they got? (asking all stakeholders)

2). What is your opinion on the effect of the new labor law to the foreign migrant workers especially Myanmar migrants? (asking Thai official and Myanmar officials)

Supporting questions

- Do you get compensation from employer? (asking employee)
- Do you cover by yourself or paid by your employer? (asking employee)
- In your opinion, does this new law affect to Myanmar illegal migrant workers? How much does it affect to them? (asking employee)

- What are the differences before and after adoption this new law? (asking employee, employer)
- Do you take the responsibility for the migrants to change to legal status? (asking employer)
- What are the strengths and weaknesses of the new law in Thailand? (asking NGO, ILO)
- Who will be the victim in future? (asking employer, NGO, ILO, officers from Myanmar and Thai Labor Ministries)
- Why was the new law adopted? (asking Thai officials)
- What are the difficulties on your side in implementation of the new law and how will you overcome? (asking Myanmar and Thai officials)
- Is there any other focus of this new law apart from migrant workers, if yes please explain in detail? (asking Myanmar and Thai officials)

Sub questions

- How much does this law impact the migrant workers in general?
- What will happen to those illegal migrants after the introductions of the new law?
- Will this law help Thailand to curb illegal or undocumented migrant workers?

Secondary research includes documentary analysis, archival research and literature analysis. From this research, some facts or points that could not gotten from field work, were useful to get good results for my study.

4. Findings, Analysis and Discussion

4.1 Introduction

The chapter contains findings, which illustrate how the new labor law impact Myanmar migrant workers by exploring the attitudes of employees and different stakeholders.

4.2 Major findings from the surveys

4.2.1 Migrants abroad: informal movement

Nowadays, many people from the whole country of Myanmar enter illegally into Thailand because they cannot afford to enter legally. They enter into Thailand continuously due to lack of job opportunities, low socio-economic conditions, brokers and migrant network between home and host communities. They paid upon time to time variously. Their main intention is to get a better job that enables them to support their families at home in Myanmar. They plan to go back when they have sufficient money to do their own business one day.

4.2.2 Findings from the Conception of Myanmar Migrant Workers upon Thai Royal Decree

According to my field work, most migrant workers agree this law for protection of their lives. They know more about the MOU system due to this law. Actually, they don't know much about the rules and regulations of the law. Some migrants have been applying the Social Security even though they have been worked this job. Some got Certificate of Identity or temporary passport during the grace period. Now they have confidence for holding CI instead of pink card, so they can go everywhere, and they don't have confined places. Their lives are more freedom than pink card time.

4.2.3 Findings from the Views of Various Stakeholders upon Thai Royal Decree

4.2.3.1 Findings from the Conception of Assistant General Manager, Human Resource Manager, Department Manager, Production Manager and Department Manager (employers)

Although nearly all employers' sides which I interviewed agree this law, some expect a long process that takes time and brings higher cost than Tor etc. Some told it is good for Thailand and its national enterprises, but it is no good for foreign companies. They agree high penalties, but some disagrees for not expressing of employee's absence. They changed procedures in the documentation part. They believe MOU is the protection of employees' rights.

4.2.3.2 Findings from the Perception of Chairman of Migrant Worker Rights Network and National Project Coordinator for Thailand in ILO

According to the Migrant Worker Rights Network, there are still illegal migrants and entering into Thailand because of the lack of both governments' information systems. This law is good for employee that are enabled to live with official documents and it emphasizes the employer's responsibilities. To prevent human smuggling, the main leading actors are government and employer. It is needed that the government enforces the employer's handling to safe his employees' rights and requirement of employees' awareness. This issue needs attention not only in the destination country but also in the original country to support migrants with educating training before contact with relevant stakeholders.

In accordance with ILO, it is the labor migration governance and needs simplification to be understood by the public. It is consolidated for combination of two enforcing laws: Bringing Alien to work in Thailand (2016) and Alien Working Acts (2008). Fairness and different penalties are given

for reacting each other including both issues when they break the law. SMEs sides are in the worst situation for avoiding the high fines of employees. It needs to be discussed thoroughly concerning with penalties because it can affect badly upon the people including this issue especially SMEs. Migrants coming to Thailand with broker has already broken the law for smuggling. Only when the involved officers have skilled abilities and sensibility, the law can run efficiently and effectively. Migrants have to formally express complaints about their exploitation. In enforcing with law, it is needed to adapt policies and rights affecting this law. It has no regulation for migration costs and fees even though there is a law 0 fee policy adopted.

4.2.3.3 Findings from the Perspective of Myanmar Labor Attaché and Thai Labor Officer

There is no sub contract in this new law according to Myanmar Labor Attache'. So there is no human trafficking and exploitation due to non-subcontract role. Earlier time, Myanmar migrants entered illegally but now they are making MOU or U- turn way. According to this law, there are three types of migrants: those having no documents at all, those having incomplete documents and others with wrong documents. Only the first ones have to go back but the other two can make proper processes concerning with their issues. The employer is most responsible person for his employees to send them to the right place. As long as employer and employee depend on broker, they will become a victim forever.

According to the Thai Labor Officer, Thailand needed to change management of migrant labors, so they adopted it to manage, protect and encourage. Objectives are to safeguard workers and cooperate to work legally as an international norm. It includes employer's responsibilities: sending back home after contract and making report them resign letters to the Thai government. Employers must register and guarantee to protect migrants from human trafficking.

4.3 Analysis and Discussion

In making analysis from the above major findings, I recognize that this new law is good for employees because it is adopted for labor migration governance and imposes employer's admin responsibilities: making register, protecting from human trafficking's victim and joining with official matters. No sub-contractor and 0 fee for recruitment are free from victim of human smuggling. The law is very advancing for combination of two enforcing laws concerning with recruitment practice and employment acts.

Within the grace period, over 4 lakhs of Myanmar illegals got legal status. Nowadays, it is still providing for migrants those having incomplete documents and another with wrong documents. But migrants those having no documents have to be prosecuted. It is a different description for using legal migrants in this new law. It means that both governments and employer need to verify for migrants in accordance with the ILO's convention. So, it is very secure for them.

Although SMEs sectors are facing adverse situation, Thai government is now adjusting for fulfilling their requirements. Now both governments are making concerted efforts to the fishery sectors' labors to get legal status. It is needed to simplify the law instructions for dos and don'ts to the public and make well-publicized the information. Due to this law, MOU is more understood than before among them because it does not allow the wrong particulars with the facts which are in the work permit.

5. Conclusion and Policy Recommendation

5.1 Conclusion

According to the completion of the survey addressing the effectiveness and the lack of enforcement of the Royal Decree on Managing the Work of Aliens B.E.1560 (2017), the author has gained the following understandings:

- Royal Decree on Managing the work of Aliens B.E. 2560 (2017) has upgraded Myanmar migrants' status such as illegal to legal, pink card to ordinary passport (or) Certificate of Identity (CI).
- They can be free from human trafficking and human smuggling for putting employer's accountabilities, no sub-contractor and zero fee policy in this new law.
- This law becomes MOU more significant than before.
- This law is labor migration governance, so it can protect the migrants' lives.
- This law needs to simplify for understanding of concerning people.
- This law cannot change illegal migrant after enforcing it.

This law is very advancing which has been adopted in accordance with ILO Convention, so it is good upon legal issue and labor migration governance. But it is needed to enforce effectively among employer, migrant workers, recruitment agency and government officials.

5.2 Policy Recommendation

This law is good for adoption of ILO Conventions' norm. It is consolidation for combination of two enforcing laws concerning with recruitment management and employment practice. As putting the employer's responsibilities, no subcontractor role and zero fee policy, it can protect

employees' life safety. According to the upgrading of Thailand's TIP by US, it can prevent the human trafficking. Some procedures in MOU should be used online in both countries. It needs to enforce the law effectively, efficiently and rapidly.

5.3 Limitation

This research brings about my field works limitation and literature reviews. However, I mentioned this limitation by being time constraint, place and participants (legal migrants) those who were telling the expressions are real or not. For my security, I could not make interview with illegal migrants.

According to the methodological limitation, the survey contains limitations in sampling and recruitment. As a qualitative research, the research is not enough to get sufficient data for all migrants and it could get data inside the research topic, as guided by (Descombe, 2007, as cited in Ko Ko Si Thu, 2016). This research is based on only (21) participants from different stakeholders who have their own conception. So, the outcomes from this research can be a valuable prediction for future result.

Bibliography

Brettell,C.(2003). Anthropology and migration: Lanham: AltaMira Press.

Chatty,D. (2013). Forced migration.

Ma, A. (2008). Labor Migration from Myanmar: Remittances, Reforms, and Challenges, migration policy. org.Migration Policy Institute.

Marshall,C.,& Rossman, G.B. (2006). Designing qualitative research. Thousand Oaks, Calif.; Sage Publications.

Hall,A. (2012). Myanmar and Migrant workers: Briefing and Recommendations. 4.

Kazancigil,D.A., Carino,P.B.,Chantavanich,A.P.S.,& Castles, P.S. (1997). Migration issues in the Asia Pacific.University of Wollongong, Australia, Australia.

Tungsuwan, S. (2018). New Law on Foreign Employees and Migrant Workers.

Anna, C. (2016). Penalties for being caught working without a permit in Phuket. Phuket News.

Thu, K.K.S.(2016). *Myth Reality in Irregular Migration*. (Master's thesis), Victoria University of Wellington