



# Regulatory (Mal)Integration: Its Implications for Migrant Workers' Ability to Access Employment Rights in Indonesia

Wayne Palmer & Nicola Piper

To cite this article: Wayne Palmer & Nicola Piper (2023) Regulatory (Mal)Integration: Its Implications for Migrant Workers' Ability to Access Employment Rights in Indonesia, Journal of Immigrant & Refugee Studies, 21:2, 203-216, DOI: [10.1080/15562948.2022.2142349](https://doi.org/10.1080/15562948.2022.2142349)

To link to this article: <https://doi.org/10.1080/15562948.2022.2142349>



Published online: 28 Mar 2023.



Submit your article to this journal [↗](#)



Article views: 55



View related articles [↗](#)



View Crossmark data [↗](#)



# Regulatory (Mal)Integration: Its Implications for Migrant Workers' Ability to Access Employment Rights in Indonesia

Wayne Palmer<sup>a</sup>  and Nicola Piper<sup>b</sup> 

<sup>a</sup>Sociology of Transnationalization and Social Anthropology, Bielefeld University, Bielefeld, Germany; <sup>b</sup>Law School, Queen Mary University of London, London, UK

## ABSTRACT

This paper discusses the understudied situation of legally-resident migrants and their (in)ability to access employment rights that are otherwise available to Indonesians. In our analysis of the relevant institutional architecture and processes, we approach the issue of integration from a regulatory perspective. We used a combination of quantitative and qualitative methods to examine how migrants as high-income workers interface with the labor dispute resolution system in Indonesia. Our findings demonstrate the mal-integrated nature of Indonesia's regulatory system in relation to migration and employment and its consequences for migrant workers' ability to lodge grievances and avail themselves of their employment rights.

## KEYWORDS

Regulatory integration; legally-resident migrants; Indonesia; labor dispute settlement; high-income migrant workers; skilled worker migration

## Introduction

Indonesia is a well-studied country among scholars of labor migration but thus far, it has mostly been investigated as an origin country, i.e. with the focus of scholarly attention having been on Indonesians migrating abroad (for an example of humanitarian migration, see Missbach, 2011; skilled migration, see Ford & Kawashima, 2016). Much of this scholarship has concerned itself with lower skilled workers migrating intra-regionally within Asia and to the Persian Gulf (e.g. Chan, 2018; Killias, 2018; Lindquist, 2010; Palmer, 2016; Silvey, 2004). This is also reflected in the Indonesian government's migration policy, which is primarily designed around emigration, not *immigration*. The inattention paid to incoming migrants has also begun to be raised by civil society actors, such as at consultations held by the Migrant Worker Committee - the body which oversees the implementation of the 1990 UN Convention on the Rights of All Migrant Workers and Members of their Families, to which Indonesia is State Party. State Parties tend to report on outgoing migration, whilst tending to underreport the presence, and issues, of incoming migrants.<sup>1</sup>

The lack of policy attention in Indonesia is explained as institutional reactions to 'colonial rule, decolonization, and industrialization' (van Lottam, 2014). Scholarly studies have compensated for this oversight by highlighting the existence of asylum-seekers (e.g. Missbach, 2015) and trafficked fishers (e.g. Yusriza, 2020) in Indonesia. But there is still comparatively little research conducted about incoming worker mobility, including those in skilled or high-income categories.<sup>2</sup>

This paper shifts the focus to workers migrating to Indonesia, and more specifically to those who are already legal residents working in the country. We examine the role of institutions and their processes in the employment sphere, and particularly the experience of legal avenues in

the event of grievances. Such discussion is warranted in the context of Indonesia which, according to the United Nations Development Programme's annual report from 2019, has "broken into the high human development category group".<sup>3</sup> It is also relevant in terms of Sustainable Development Goal 16 which aims to promote inclusive societies through effective institutions.

Our approach to 'integration', hence, concerns the realm of institutions, and more specifically the level of coordination of the two central policy regimes, migration and employment. We explore the extent to which these two regimes hamper or facilitate skilled migrants' access to institutional channels in Indonesia in the event of employment rights' violations. We chose to focus on *skilled* migrants after one of the authors had heard anecdotally about the experiences of a number of such migrant workers during a three-year stint working at an Indonesian university in the Special Administrative Region of Jakarta. This prompted further research into this matter through which we established that the anecdotal experiences were not isolated cases. Rather, further empirical evidence showed that they were indicative of a systemic issue concerning rights enforcement.

This state of affairs led us to argue that migration and employment policies are mal-integrated, with the result of obstructing migrants' access to remedial channels that are otherwise available to Indonesian workers. We apply a regulatory perspective to our analysis of the avenues available for addressing employment grievances, based on our examination of the national labor dispute settlement system. Our cases involve skilled and high-income migrant workers because they are the only group of migrants the government legally admits so have access to its national labor dispute settlement system.

We start the paper with a conceptual discussion of 'regulatory integration', to then apply this analytical framework to the context of migration in non-western contexts in general, before providing the background to the Indonesian case. The section thereafter outlines our methods and data sources, as well as our detailed analysis of two specific migrants' experiences with the national labor dispute settlement system. In conclusion, we argue that a regulatory perspective reveals systemic disconnects that obstruct migrants from claiming legal employment rights in contexts with restrictive immigration policies.

## A Regulatory Perspective on Migrant Integration: The Employment Sphere

In general, most integration research focusses on 'immigrant' integration in a context where migrants have the option for long-term if not permanent stay and/or in the case of subsequent generations. The list of issues analyzed range from cultural to political and workplace integration typically revolving around concerns about diversity and multiculturalism (e.g. van Riemsdijk et al., 2016; van Riemsdijk & Basford, 2022). Our initial inquiry into how institutional systems and processes in Indonesia enable migrant workers' ability to avail themselves of legal employment rights has led us to a different approach to integration, deemed more appropriate to the analysis of the various procedures, processes and actors involved in two key legal and policy domains affecting foreign workers: migration and employment.

To do so, we draw on Regulation Theory (Drahoš & Krygier, 2017) and introduce the notion of 'regulatory integration', which allows us to capture the impediments migrants encounter in availing themselves of their employment rights and the limited avenues available to them in seeking redress. Our empirical focus is on the institutional mechanisms involved in dispute resolution in relation to unlawful dismissal. At the most general level, the concept of regulatory integration focusses our attention on institutional processes and procedures, which may at times or in certain contexts be out of sync or clash. Such mal-integration can have to do with institutional systems having formed a hierarchical relationship whereby one trumps another (Drahoš & Krygier, 2017). Such hierarchy can have detrimental effects on the individuals affected ('the regulated') (Weiss & Wilkinson, 2018).

Existing scholarship on immigrant integration has paid attention to institutional processes, including from a legal perspective. In fact, legal integration 'is often considered a precondition

for the integration of immigrants' (Waldrauch & Hofinger, 1997, p. 271). Legal dimensions of immigrant integration have typically been studied in relation to citizenship (e.g. Huddleston, 2020), including the issue of 'labor citizenship' (Gordon, 2007), but mostly in a western context. Furthermore, scholarly attention on regulatory aspects of integration has mostly discussed the barriers experienced by highly-qualified migrants and refugees in the global North (e.g. see the special issue guest edited by van Riemsdijk & Axelsson, 2021). By contrast, scholarly interest in the experience of skilled migrants from the global North living and working in the global South is still in a minority (for a few exceptions, see the special issue edited by Arnaut et al., 2020). The few studies that do exist have for instance focused on 'global competition for talent' (Ewers et al., 2022), racism (Augusto & King, 2020), bribery (Åkesson & Orjuela, 2019), and post-colonial relationships (Candeias et al., 2019). The latter two foci are the theme of a journal special issue that provides a nuanced discussion of racial hierarchies and power inequalities between skilled migrant workers and the local host population (for the introduction, see Fechter & Walsh, 2010).

Legal obstacles that hamper immigrant integration in general, and in relation to the world of work more specifically, have been acknowledged and discussed to some extent in existing studies. Indices have been developed and used to assess them across multiple dimensions, including access to, and mobility within, the labor market (Legal Obstacles to the Integration of Migrants, LOI-index; Migrant Integration Policy Index, MIPEX). Building on this scholarship, this paper focuses not only on the legal regulations that restrict the ability of migrants to claim legal labor rights, but also on the institutional barriers and practices that prevent them from securing those rights. In other words, our understanding of legal integration considers both access to as well as experience with 'the system', that is the state's labor dispute settlement machinery. We illustrate the way in which labor disputes between migrant workers and their local employers are resolved by way of two detailed vignettes: a marriage migrant-turned-foreign worker and a skilled migrant employed in Indonesia. In doing so, our examination of the interaction between migration and employment policy shifts the lens to a non-western institutional setting.

Specifically, we focus on the regulatory integration of the two policy areas from the viewpoint of their functioning to uphold migrants' legal employment rights. In doing so, we identify the legal, administrative and practical obstacles migrants encounter which as we will argue have to do with clashing regulatory frameworks of two systems: migration and employment. Our empirical focus on labor dispute settlement mechanisms contributes an analysis of regulatory integration via employment law.

## **Regulatory Integration: Labor Rights Protection for High-Income Migrant Workers in Non-Western Contexts**

In general, the ability of any migrant to integrate is profoundly determined by the host government's laws, policies and institutions that facilitate—or prevent—immigrant integration into society. Institutions and laws in non-western contexts are generally speaking less geared toward accommodation of their migrant population as has been shown in the case of marriage migration (Kim et al., 2017). Further, governments in countries that are net-senders of migrants tend to use their limited resources to design 'sending country policies' or policies that focus on connecting with their diaspora abroad (Østergaard-Nielsen, 2016). Integration of return migrants is another issue that they have tried to tackle and put resources toward (Spitzer & Piper, 2014). This means a typology of immigrant integration derived from the Western European experience (e.g. Heckmann, 2005) is bound to be inappropriate. Rather, as argued by Kunz (2022), the conceptualization of integration should be 'provincialized' to take into account 'how immigrant integration projects are formulated' in those countries. A rare study conducted on immigrant integration in a non-western context which focusses on Singapore identifies four models—differential exclusion, assimilation, pluralism and trans-state spaces—to describe and analyze immigrant integration processes and outcomes (Rahman & Kiong, 2013). Of particular use for our

case is the notion of ‘differential exclusion’, whereby law and policy impose ‘strict function and temporal limits’ on immigrants’ stay (Castles, 2004, p. 23).

Legally, differential exclusion is affected through refusal of ‘naturalization and sharp distinctions between the rights of citizens and noncitizens’ (Castles, 1995, p. 294). Generally, the motivation for such treatment is the ‘belief that admission of migrants is only a temporary expedient’ that will not be necessary in the future (Castles, 1995, p. 294). This is not to say that all other countries in the global South are immigration/integration-disapproving, and that countries in the global North tend to have laws and institutions that are more friendly toward migrants. Rather, it is more accurate to say that net migrant-sending countries in the global South tend to have migration policies that respond to rights issues of the larger number of outgoing migrants who are citizens rather than to those of the much smaller number of incoming migrants who are not. Relatedly, the immigration dimension to their migration policies is generally underdeveloped (Bal & Palmer, 2020, p. 8).<sup>4</sup> In practice and as a consequence, these countries generally have very restrictive immigration laws that offer not only limited pathways for naturalization but also circumscribed rights when foreigners shift from temporary to permanent categories as the below case study of Indonesia outlines.

Homing in on the “law and policy” approach, the Migrant Integration Policy Index provides a useful analytical tool that groups countries into four categories according to how legally-integrated migrants are (Gregurović & Župarić-Iljić, 2018). The 2020 Index draws on data from 52 countries, including Indonesia, and assesses regulatory integration based on 58 indicators across eight policy areas, including labor market mobility, anti-discrimination and permanent residence (Migration Policy Group, 2020a).<sup>5</sup> It then groups countries according to their approach to integration, ranging from 1) comprehensive integration, which ‘guarantees equal rights, opportunities and security for immigrants’, to 2) equality on paper, to 3) temporary integration, and to 4) immigration without integration (integration denied) (Migration Policy Group, 2020b). The latter approach is the most restrictive, with the study’s meaning that ‘immigrants are denied basic rights and equal opportunities, even if they are able to settle long-term’ (Migration Policy Group, 2020b). According to this classification, the ‘integration denied’ group includes Indonesia, which, for this study, provides the case for a more nuanced examination of the access of different types of migrants to legal employment rights.

The following issues must be considered when studying immigrant integration in such restrictive legal contexts. First and foremost, the analysis of regulatory integration result in immigrants having circumscribed rights and/or access to rights not only because they are noncitizens but also due to the type of work they do (the labor market sector). Second, they cannot rely on the law alone to protect even the minimal rights that they are provided with. This situation means that there is a lot more to the immigrant experience than migrants’ interaction with *government* authorities, such as the migrants’ engagement with legal services. Our study uses this wider scope to understand how migrants achieve legal rights despite poor regulatory integration, which adds to our understanding of immigrant integration in restrictive contexts. As such, attention in the following sections is paid to the influence of national law and policy along with its administrative and institutional barriers that deny migrants greater integration into the labor market. Our data demonstrate that state authorities frustrate migrants’ attempts to access their employment rights. Before launching into our discussion of the Indonesian case, we outline our methodology in conducting this study.

## Regulatory Integration of Migration and Employment: The Case of Indonesia

### Methods and Data

We used a combination of quantitative and qualitative methods to examine how migrant workers interface with the labor dispute resolution system in Indonesia. Initially, we compiled a dataset in relation to 70 labor disputes, which comprises of 137 decisions from one of Indonesia’s 34

Table 1. Legal settlements by court tier.

Tier	Number
Court of First Instance	70
Court of Appeal	58
Review of Court of Appeal	9

Note: Court settlement statistics are based on the dataset.

industrial relations courts and the Supreme Court in the case disputants appealed (for a summary, see Table 1).<sup>6</sup> Then we extracted information on the claimant and respondent, nature of dispute, whether there was legal representation, and any details of the preceding mediation process. But at the final stage of dispute resolution most migrant-claimants had already left Indonesia, which immigration policy requires as hiring of foreign migrant workers takes place on a temporary contract basis. Such structural barriers to allow greater participation in the national labor dispute resolution system prompted this study’s inquiry into the regulatory integration of migrants in related processes as they sought to claim legal employment rights through it. The verdicts provided perspectives of migrant workers (n=70), their employers (n=66), and panels of judges (n=137). Based on that, we then selected two labor disputes concerning the most frequent issue in the verdicts (premature dismissal, which is discussed in more detail below) to interview the migrant workers (n=2), mediators (n=2), judge and lawyer (both n=1) about the settlement process.

The dataset on court settlements provided a list of issues for the interviews, creating a snapshot of the access and experience of migrants as their labor disputes are processed. In addition to this, we noticed a stark difference between interviewing high-wage migrants compared to low-wage migrants. It is much more difficult to convince high-wage migrants to participate in interviews because they tended to be reluctant and suspicious, which their high level of education and experience working alongside other professionals concerned about data protection has taught them. In part, such attitudes explain why, as Fechter (2016, p.1) observes, “expatriates have remained curiously absent from academic accounts”. For the migrants, discussion of settled labor disputes is a particularly difficult topic because they often returned to the topic of ‘who was right’. A further complicating factor was that they often tempered explanations with framing and statements geared more toward avoiding being sued for libel by their former employers. For the purpose of studying regulatory integration, however, working out ‘who was right’ was of lesser interest than commentary about how and why the migrants interacted with lawyers and government officials tasked with resolving their labor disputes. The following section begins by setting the scene and then presents one vignette from each stage for understanding migrants’ problematic access to the system.

**Indonesia’s Labor Dispute Resolution System and Cases Involving Migrant Workers**

Indonesia’s restrictive immigration rules ensure that incoming foreign labor migrants who completed the paperwork to obtain governmental permission to work are employed in jobs that have higher pay and provide better working conditions than the average national workforce (Manning, 2018). Indonesian law stipulates that these migrants must have much the same legal rights as Indonesian citizens (Law No. 23 of 2006 on Civil Administration, Article 1(2)), including access to the national industrial relations system to seek enforcement of their employment rights. However, they often lack effective legal protection when actual disputes arise (Palmer, 2018a; Palmer & Missbach, 2019). Hence, although these migrants earn higher pay and have better work conditions, they may still face problems if their terms of employment are breached. Despite reforms following the end of authoritarian rule by the New Order government (1967–1998),<sup>7</sup> using the legal system to seek enforcement of employment rights in Indonesia is still a challenging endeavor for any worker but is even more so for foreign labor migrants as the officials assume the system was intended to protect Indonesian citizens.<sup>8</sup>



**Table 2.** By nationality top four court settlements 2006–2021 and work permits (WP) 2017–2020.

Nationality	Settlements	WP-2017	WP-2018	WP-2019	WP-2020
Australia	13	2603	2600	2738	1962
India	7	6237	6895	7668	6381
Philippines	7	3174	2910	2897	4299
China	6	24804	32209	42624	38814

Note: Court settlement statistics are based on the dataset. Work permit statistics were provided following a Freedom of Information request on 17 June 2021.

From anecdotal evidence, it appears that most migrants cut their losses and do not pursue judicial recourse. It is only a very small number that seeks rights enforcement through Indonesia's industrial relations system. In addition to access being impeded by structural barriers, such as immigration rules, migrant experience with the system is also shaped by other mediating factors, such as seeking assistance from a lawyer as shown in this section. Perhaps for such reasons like being able to get access to legal representation, the nationality of foreign workers in the country and whose labor disputes are adjudicated at court differ each year (see Table 2). Our hypothesis here is that it is despite the law that even such a low number of migrant workers use the state's machinery to resolve their labor disputes.

Before contemplating the impact of involving lawyers in the process, it is necessary to consider legal access of immigrants to the state's labor dispute settlement machinery. Access to this machinery and other official systems is only granted if foreign workers hold a valid residence permit (Law No. 23 of 2006 on Civil Administration, Article 1(2); Palmer, 2018; Palmer & Missbach, 2019). In all places, the machinery is experienced differently according to migration status (temporary employer-tied worker or long-term/permanent resident due to marriage), not least because of immigration rules that govern their stay (Ford, 2019). But in Indonesia, the situation is much less complicated because permanent residence is limited. A sponsor is still needed to apply for visa extensions and legal migration status does not automatically guarantee work rights (Government Regulation No. 31 of 2013, Article 157).

Pathways to permanent residence are also limited. Only migrants on family-reunification visas sponsored by an Indonesian citizen, and migrants employed as company directors and commissioners can change their status from temporary to permanent (Government Regulation No. 31 of 2013). But for permanent residents as with temporary migrant workers, employers must apply for a work permit to hire a foreign national costing USD 1,200 per year (Government Regulation No. 34 of 2021, Article 23(1)). In this way, the immigration context for both temporary and permanent migrants who work in Indonesia is similar. Crucially too, Supreme Court policy dictates that legal protection of employment rights is only possible if the migrant holds such a work permit—regardless of their migration status (Circular Memorandum (Supreme Court) No. 1 of 2017).

Based on our sample, the overwhelming majority ( $n=68$ ) of labor rights disputes involved premature dismissal that may have been unfair, but included no claim for reinstatement. If workers are unable to resolve the dispute through bipartite negotiations with their employers, they can apply for government assistance at one of the 500 or so Manpower Offices. By involving government, the negotiation becomes a tripartite process, which for rights disputes in Indonesia is legally referred to as mediation. Labor law and industrial relations literature terms this stage 'alternative dispute resolution', which the below vignette about the premature dismissal of a migrant worker reflects. A structural barrier for his participation in this process is the fact that Indonesia's Directorate-General of Immigration does not have an established mechanism by which to allow migrants to remain in Indonesia to attend meetings and hearings in relation to their labor disputes, which should take around five months, but in reality often amount to one year to conclude.<sup>9</sup> In another labor dispute, the Immigration Office not only refused the migrant's request to remain in Indonesia for this purpose, but even required him to leave the country before the expiry date of his residence permit because his employer had withdrawn sponsorship of right to stay.<sup>10</sup> The following vignette describes another labor dispute

that was mediated at this stage, drawing attention to this and other factors that impacted meaningful participation.

### ***Alternative Dispute Resolution***

On 8 April 2019, Insurance Indonesia (a pseudonym) informed Eric Simmons (another pseudonym) that they would not be extending his work permit, which was set to expire a few weeks later, despite the fact that his employment contract was valid for another six months.<sup>11</sup> He had worked in Indonesia for one year, earning USD 50,000 and receiving USD 5,000 for the housing allowance each month. At first, he thought the salary package was low relative to what he had previously earned, but accepted it after the Human Resources Department explained that it was comparable to what other chief executive officers earned in Indonesia. For two months before informing Eric that they would not extend his work permit, the employer avoided answering his questions about whether they had started the extension process. Hence Eric turned to the Ministry of Manpower, which issued the permit, to get an answer, but officials there referred him back to his employer, who would have been the applicant. Eric complained that he was unable to find out, and was worried that his employer would use the work permit's validity to get out of paying his wages for the six months as promised in his employment contract, which he heard happened regularly to foreign workers.

Motivated by a belief in legal entitlement to the remaining salary, Eric approached the West Jakarta Manpower office to seek assistance along with a bilingual English/Indonesian-speaking lawyer from Law Office & Associates (another pseudonym) because he could not understand Indonesian and knew that Manpower officials did not communicate in English. Eric's lawyer outlined the issue, and the official then explained that the employment contract only was used as a basis to determine employment rights for Indonesian workers. But in the case of foreign workers, any attempt to do so needed to also consider the validity of the work permit. If the permit has expired, it does not matter that the employment contract is still valid because the permit is necessary to lawfully work in Indonesia. Eric's lawyer suspected strongly that the official was taking the employer's side, and asked the official whether employers would still be responsible if they had promised the extension, but for some reason had not followed through. The official admitted that would be a complex case that would probably end up being referred to the Industrial Relations Court for judicial determination.<sup>12</sup> Seeing an opportunity to present a winning argument if they had more time to work on it, Eric's lawyer told the official that they were not ready to submit a formal complaint then, but would do so on the next work day.<sup>13</sup>

On the following Monday, 22 April, Eric's lawyer submitted the complaint, but it was not formally processed until the end of the week. Over two weeks later Eric and his employer were requested to attend a meeting so that the head of the industrial relations section could seek clarification from both parties about the disputed issue. But by that time, Eric had left the country because his residence permit had expired. He returned to his country of origin, where he visited his elderly parents for a few weeks before going to Malaysia, where he had lived and worked previously and would eventually find a new job. He would have preferred to stay in Indonesia to attend the meeting, but the immigration office would not extend his residence permit, so he instructed his lawyer to represent him. At the meeting the official anticipated that the parties would not reach a compromise largely because Eric was not present. In the official's experience, meetings attended by the actual parties instead of their representatives tended to be more productive because it was faster to clarify relevant details like dates of events.<sup>14</sup> As expected, this meeting ended without reaching an agreement. On 14 May, over three weeks since submitting the complaint, the Office appointed two mediators to process the dispute within 30 days as required by Indonesian law. Following procedure, the officials invited the disputants to attend three mediation meetings. Eric's lawyer attended, but the employer was absent.

Over that time, Eric's lawyer developed a strong personal relationship with the mediator, who was frustrated that the employer had shown his office so little respect by ignoring their repeated



invitations to attend mediation meetings. In the official's opinion, even an invitation comes with an implicit expectation that the invitee would accept because it came from a government source.<sup>15</sup> It became clear that the official would not be able to resolve the dispute, and he was legally required to issue a written recommendation to conclude it. As the employer had not been present, the official had to base that recommendation on the facts made available to him, which had mostly been provided by Eric's lawyer.<sup>16</sup> As he did not expect the employer to comply, and because the recommendation primarily served as a 'ticket' for registering the dispute at the Industrial Relations Court, the official allowed Eric Simmons's lawyer to draft it for the head of the office to sign. Eric's lawyer gladly did so, seeing an opportunity to have arguments recommended by government, which his law firm used to support the claim.<sup>17</sup>

### **Judicial Determination**

As for mediation meetings, it is not compulsory for disputants to attend court hearings, but not appearing has consequences. If defendants do not appear, then judges can make determinations based on submitted facts. And if claimants do not appear for either the first or the second rescheduled hearing, then judges can dismiss the case (Law No. 2 of 2004, Article 94). For migrant workers who are not permitted to remain in Indonesia to attend at least the first hearing, it is effectively a requirement rather than a choice to have Indonesia-based representation. In our sample, 63 (or 93 per cent of) of migrant claimants used an Indonesian lawyer to represent them in court. The following vignette from Teresita Arellano's (a pseudonym) labor dispute case reveals that Indonesian legal representation also serves other purposes.

On 7 November 2018, the local International School (another pseudonym) informed Teresita Arellano that they had terminated her employment as an English teacher after giving her three written warnings about tardiness as required under Indonesian labor law (Law No. 13 of 2003, Article 161).<sup>18</sup> She had worked there for over three years, and was paid IDR 25 million (USD 1,740) each month, which was much lower than what her colleagues from Europe and North America earned. Each year the School paid USD 1,200 to the Indonesian government to extend her work permit. But upon receiving the termination letter, she felt confused and angry because the School had not given her any warnings and she could not recall ever being late. Each morning she recorded her attendance using the fingerprint machine, and the School had never reprimanded her like they do to her colleagues. But after thinking about it, she started to feel queasy because this had happened to some of her friends in the past, and they ended up cutting their losses and going back to the Philippines instead of challenging the decision to fire them in Indonesia. But giving up was not an option for Teresita because she had settled in Jakarta with her Indonesian husband, who had a good-paying job, which meant that they could financially support her widowed sister and two nieces back in Manila.

At first, Teresita went to the Human Resources Department to ask about the termination letter, assuming that they had made a mistake and the letter was meant for someone else. To her amazement, none of the usually friendly staff would talk to her. The secretary told her to wait because the Head of Department was out of the office. But Teresita only had 15 minutes left on her lunch break so told the secretary that she would come back after class. For the rest of the afternoon Teresita taught English and History to high-school students, but felt even more anxious about the upcoming meeting because of how she had just been treated. After class, she went to their office, but the Department Head had gone home. Teresita was about to leave when one of the office staff apologized, but confirmed that Teresita's employment had indeed been terminated. Teresita explained that it must be a mistake because she has never received any warnings. But the office staff said that the warnings were sent by email, and that no mistake had been made. Teresita started to object, but the office staff interrupted her to end the conversation and left Teresita alone in the office. Later that evening at home, Teresita told her husband about what had happened and he immediately called friends who were lawyers at a local law firm for legal advice about what to do next.

That week Teresita and her lawyer went to the South Jakarta Manpower Office to dispute the School's plans to terminate her employment. As the termination date was fast approaching, the Manpower Office arranged an emergency 'clarification' meeting so that Teresita and the School's representative could resolve the dispute. But at the meeting, the School had sent a junior staff member who was under strict instructions to only present evidence that the School had given him. This meant that when Teresita questioned the authenticity of the warning letters, which she alleged had been created and backdated for the purpose of the meeting, the School's representative was unable to respond.<sup>19</sup> At subsequent mediation meetings, the same junior staff attended so the mediator ended them after only 15 minutes, explaining that there were no new facts to discuss. At the third and final meeting, the mediator informed the disputants that he would make a recommendation based on the facts submitted to him. Citing the contested warning letters, the official confirmed that the School had followed the correct procedure to prematurely terminate Teresita's employment, so she was not legally entitled to financial compensation for the remaining period of her employment contract. The School accepted the recommendation, but Teresita objected and then registered the dispute at the Central Jakarta Industrial Relations Court for judicial determination with the help of a lawyer.

In court, Teresita attended a number of hearings with the same lawyer, who was bilingual speaking both English and Indonesian. At first, she was disillusioned because the process reminded her a lot of being in the Philippines. The judges did not seem to care that she and so many other workers had to wait hours for their hearings. But Teresita felt lucky that her lawyer had accompanied her because he could interpret the judges' rulings. Not being able to speak Indonesian very well, she could not follow the proceedings. The School sent the same junior staff to represent them at the trials, and the judge chairing the hearing became annoyed because the School could not present any proof to refute Teresita's claims that she had neither 1) been late nor 2) received any warning letters. Finally, the judges decided that the School could not disprove those facts and asked Teresita if she would like to be reinstated there. Teresita explained that even though it would be very hard to convince another employer to pay both wages and the work permit fee, she did not feel that she would be welcome back at the School. Instead, Teresita asked the Court to rule that the School unlawfully terminated their employment contract and so require them to pay financial compensation for doing so according to labor law. The court made the award, which, according to Teresita, the School has still not paid.

### **Avenues to Accessing Employment Rights**

Unlike Teresita, Eric did not end up registering his dispute at the Industrial Relations Court in Jakarta. Instead, he used the written recommendation from the Manpower Office to support his claim for financial compensation from Insurance Indonesia, which the company paid. His employer offered to engage Eric as a consultant for his incoming replacement instead of reinstatement. But whether Eric or Insurance Indonesia fell afoul of Indonesian labor law is not key to better understanding regulatory integration in Indonesia with respect to how the state's systems handle labor disputes. Neither is working out whether the local International School had followed procedure when terminating Teresita's employment. Rather, their experiences interacting and relationships with individuals from the state (officials) and society (employer, lawyer) provide useful information for engaging with existing debates concerning the participation of immigrants in national labor dispute settlement systems.

While immigration law especially prevents integration of immigrants in Indonesia, the examples of Eric and Teresita illustrate a common way in which immigrants negotiate structural barriers as they use the state's labor dispute resolution machinery. Both immigrants hired lawyers to 'clarify' the disputed issues to government mediators, but the unique immigration arrangement that permitted them to live and work in the country impacted their involvement in the dispute resolution process. The sponsor for Eric's visa was his employer, who did not extend his residence permit. In Eric's case, he paid his lawyer to represent him in his absence, which was

**Table 3.** Factors that influenced their participation.

Factor	Marriage migrant (Teresita)	Labor migrant (Eric)
Channels for legal recourse	+	+
Bilingual legal counsel	+	+
Residential rights	+	–

required by immigration law. For Teresita, the immigration situation was different, as she was not dependent on her employer for an extension: her residence was not tied to employment at the School. Being on a family-reunification visa, her husband was the sponsor. This meant that Teresita could remain in Indonesia beyond the duration of her work permit, which was not the case for Eric. Despite the differences, both Eric and Teresita used the paid services of lawyers to overcome these obstacles, which was possible because of their social class and income. Neither of these examples is a “perfect” example for positive integration, and the following table summarizes the factors that positively or negatively influenced their experience (Table 3).

Attention to the migration of high-income migrants like Eric and Teresita reveals valuable insights for the study of labor migration. As their cases show, it is immediately apparent that immigration policy places limitations on their attempts to seek assistance from the state to help enforce their employment rights. It is imaginable that immigration policy also impacted relations at their workplaces. In Eric’s case, he felt highly dependent on his employer, who he relied on to extend the residence permit, so claims to have acquiesced to treatment he would not have otherwise tolerated.<sup>20</sup> In his case, the employment relationship had a deep immigration dimension that must be considered alongside other typical factors that define power dynamics in the workplace, such as labor-capital relations. Of course, high-income migrants like Eric can mitigate against the negative impact that immigration policy can have on the employment relationship through the power that accrues to them because of their relatively greater resources. However, the situation was different for Teresita, as it is for the small number of marriage migrants who have employment as it is understood under Indonesian labor law. In cases such as hers, employers are not able to use their role as visa sponsor to easily evade legal obligations under labor law. But the legal requirement that even marriage migrants need a work permit, and knowledge that organizing one is very difficult, would reasonably have the effect that they also acquiesce in abusive and exploitative situations.

Nevertheless, the question remains: why should governments in middle-income countries like Indonesia use limited resources to address instances of poor regulatory integration as we have analyzed here in relation to high-earning foreign workers. They are not citizens after all, and the governments are recognized to have limited institutional capacity to implement law. We argue that the answer is twofold. First, concerning migrant rights, doing so is a matter of equality between local and foreign workers. If greater regulatory integration of migration and employment policy was achieved, foreign workers would face the same legal barriers as local workers. Second, there is an economic development imperative. The problems caused by the current regulatory system will most likely undermine the Indonesian government’s objective to attract greater numbers of foreign workers to fill skill gaps. Failure to address the mal-integration is known to cause damage to the reputation of destination countries (Harvey et al., 2018). For Indonesia then, not doing so has potential to undermine the 2020–2024 development plan (Presidential Regulation No. 18 of 2020), which sees attracting ‘global talent’, whilst boosting investment into improving its own education system,<sup>21</sup> as a key ingredient for transforming the national economy.

## Conclusion

This paper approached the topic of immigrant integration from a regulatory perspective by asking what the experience of legally-resident migrants who work in high-income jobs is with accessing dispute resolution mechanisms. This was applied to the case of Indonesia, a middle-income country in the global South that has primarily been researched thus far as a

sender of migrants. Accessing labor law and avenues for dispute resolution is a vital concern for migrant workers but obstructed by the temporality of their stay (as in Eric's case) and the mal-integrated system regulating their work and residence permits. As permanent settlement is not an option for migrant workers like Eric, labor law assumes great importance if not priority for them. Teresita's case also reminds migration scholars that foreigners and locals share common experiences as workers, such as government siding with employers when mediating disputes, or its failure to enforce legal settlements that award workers compensation. Her ability to protect her labor rights was effectively circumscribed by the design of the government's dispute resolution processes (e.g. not providing an interpreter) and restrictive immigration rules (e.g. requiring work permits regardless of their migration status).

As it stands, restrictive immigration policy in countries such as Indonesia results in migrant workers' inability to fully access the state's labor dispute resolution system. When foreign workers find themselves in need to participate in the state's labor dispute settlement processes, they face severe barriers. Their limited ability to make use of the system at all is only made possible by drawing on their ability to earn high incomes: by hiring lawyers, legal representation enables them to not only lodge their case but also to continue engaging with the system and its processes. It is largely due to their high income that they were able to find an "institutional fix" to continue engaging with the national dispute settlement system.

Our paper opens up new lines of inquiry to better understand different immigration trajectories from those typically studied in contexts where integration into legal systems on the basis of permanent residency, naturalization and acquisition of citizenship is an available option. Our discussion departs from immigrant integration in the sense of permanent residence and pathways to citizenship by demonstrating the importance of migrant workers' integration into labor market institutions in relation to accessing legal services to avail themselves of employment rights. It is this area of regulatory integration which remains, however, highly under-researched in various regards. More research is required to build a robust empirical base about the functioning of labor law and dispute resolution in relation to various labor market sectors, types of jobs and importantly from a gender and intersectional perspective.

## Notes

1. One of the authors has attended several of those consultations, at one of which this issue was raised in relation to Sri Lanka's report and as a general observation that the current State Parties' identification as source countries of migration only is reflected in their reporting which does, however, not reflect reality.
2. Exceptions include research on corporate expatriates (Fechter, 2016), and the *Xinyimin* (lit. new migrants) from China (Suryadinata, 2020).
3. See <https://www.undp.org/indonesia/press-releases/indonesia-breaks-high-human-development-category-group> (accessed 7 October 2022).
4. This is also evident from the reports to the UN by State Parties to the 1990 UN Convention on the Rights of All Migrant Workers and their Families which tend to ignore the rights of incoming migrants by focusing exclusively on outgoing migrants, reflecting State Parties' identity as "migrant senders", not "receivers" (observation by one of the authors who participated in various Migrant Worker Committee meetings).
5. The countries covered are a mix in geographic and regulatory terms. Initially, the index started in 2004 by looking at a limited range of countries, mainly from the European Union. Since then, the index has been expanded, and the 2020 iteration includes Indonesia.
6. These settlements were gathered using a combination of official database searches and drawing on personal connections because not all legal decisions have been published ([www.direktoriputusan.mahkamahagung.go.id](http://www.direktoriputusan.mahkamahagung.go.id)). Our method ensured that the dataset includes all lower-level settlements. But publicly available systems do not enable confirmation that a lower-level settlement was final or appealed so we cannot guarantee that our dataset is complete.
7. The Indonesian government effectively rebuilt the labor law system following regime change and with support of the International Labour Organization. This reconstruction entailed passing new laws on trade unions, labor standards and processes for settling industrial relations disputes (Ford, 2009; Hadiz, 1997; Tjandra, 2016).
8. Interview with Sub-directorate Head of Industrial Relations Dispute Resolution, Ministry of Manpower, Jakarta, 15 January 2020.

9. This arrangement contrasts starkly with states like Hong Kong, where the Immigration Department routinely provides visitor visas to migrant workers who can show evidence of an appointment with another government authority in relation to a wide range of matters, including primarily labor disputes (Palmer, 2020; Palmer & Tan, 2022).
10. For an in-depth scholarly discussion of this case, see our forthcoming publication on how labor market institutions fail high-wage migrants in Indonesia.
11. All statements refer to Interview with Eric Simmons, 19 October 2021 unless indicated.
12. Interview with mediator, Jakarta, 21 January 2021.
13. Interview with lawyer, Jakarta, 26 January 2021.
14. Interview with mediator, Jakarta, 21 January 2021.
15. Interview with mediator, Jakarta, 21 January 2021.
16. Interview with mediator, Jakarta, 21 January 2021.
17. Interview with lawyer, Jakarta, 26 January 2021.
18. All statements refer to Interview with Teresita Arellano, 21 April 2021 unless indicated.
19. Interview with mediator, Jakarta, 13 January 2021.
20. Interview with Eric Simmons, 19 April 2021.
21. As per the UNDP report referenced in footnote 3, Indonesia has made major advances in improving its education system.

## ORCID

Wayne Palmer  <http://orcid.org/0000-0001-5203-7110>

Nicola Piper  <http://orcid.org/0000-0003-3993-8699>

## References

- Åkesson, L., & Orjuela, C. (2019). North–South migration and the corrupt other: Practices of bribery among Portuguese migrants in Angola. *Geopolitics*, 24(1), 230–250. <https://doi.org/10.1080/14650045.2017.1379510>
- Arnaut, K., Lafleur, J.-M., Fadil, N., Mandin, J., & Alloul, J. (2020). Leaving Europe: New crises, entrenched inequalities and alternative routes of social mobility. *Journal of Immigrant & Refugee Studies*, 18(3), 261–269. <https://doi.org/10.1080/15562948.2020.1759751>
- Augusto, A., & King, R. (2020). “Skilled white bodies”: Portuguese workers in Angola as a case of North–South migration. *The Geographical Journal*, 186(1), 116–127. <https://doi.org/10.1111/geoj.12334>
- Bal, C. S., & Palmer, W. (2020). Indonesia and circular labor migration: Governance, remittances and multi-directional flows. *Asian and Pacific Migration Journal*, 29(1), 3–11. <https://doi.org/10.1177/0117196820925729>
- Candeias, P., Malheiros, J., Marques, J. C., & Liberato, E. (2019). Portuguese emigration to Angola (2000–2015): Strengthening a specific postcolonial relationship in a new global framework? In C. Pereira & J. Azevedo (Eds.), *New and old routes of portuguese emigration* (pp. 209–235). Springer International Publishing.
- Castles, S. (1995). How nation-states respond to immigration and ethnic diversity. *Journal of Ethnic and Migration Studies*, 21(3), 293–308. <https://doi.org/10.1080/1369183X.1995.9976493>
- Castles, S. (2004). The myth of the controllability of difference: Labour migration, transnational communities and state strategies in the Asia-Pacific region. In K. Willis & B. S. A. Yeoh (Eds.), *State/nation/transnation perspectives on transnationalism in the Asia Pacific* (pp. 16–36). Routledge.
- Chan, C. (2018). *In sickness and in wealth: Migration, gendered morality, and Central Java*. Indiana University Press.
- Drahos, P., & Krygier, M. (2017). Regulation, institutions and networks. In P. Drahos (Ed.), *Regulatory theory: Foundations and applications* (pp. 1–22). Australian National University Press.
- Ewers, M. C., Khattab, N., Babar, Z., & Madeeha, M. (2022). Skilled migration to emerging economies: The global competition for talent beyond the west. *Globalizations*, 9(2), 268–284. <https://doi.org/10.1080/14747731.2021.1882816>
- Fechter, A.-M. (2016). *Transnational lives: Expatriates in Indonesia*. Routledge.
- Fechter, A.-M., & Walsh, K. (2010). Examining ‘expatriate’ continuities: Postcolonial approaches to mobile professionals. *Journal of Ethnic and Migration Studies*, 36(8), 1197–1210. <https://doi.org/10.1080/13691831003687667>
- Ford, M. (2009). *Workers and intellectuals: NGOs, trade unions and the Indonesian labour movement*. University of Hawai’i Press.
- Ford, M. (2019). *From migrant to worker: Global unions and temporary labor migration in Asia*. Cornell University Press.
- Ford, M., & Kawashima, K. (2016). Regulatory approaches to managing skilled migration: Indonesian nurses in Japan. *The Economic and Labour Relations Review*, 27(2), 231–247. <https://doi.org/10.1177/1035304616629580>
- Gordon, J. (2007). Transnational labor citizenship. *Southern California Law Review*, 80, 503–588.



- Gregurović, S., & Župarić-Iljić, D. (2018). Comparing the incomparable? Migrant integration policies and complexities of comparison. *International Migration*, 56(3), 105–122. <https://doi.org/10.1111/imig.12435>
- Hadiz, V. R. (1997). *Workers and the state in new order Indonesia*. Routledge.
- Harvey, W. S., Groutsis, D., & van den Broek, D. (2018). Intermediaries and destination reputations: Explaining flows of skilled migration. *Journal of Ethnic and Migration Studies*, 44(4), 644–662. <https://doi.org/10.1080/1369183X.2017.1315518>
- Heckmann, F. (2005). National modes of immigrant integration. In W. Bosswick & C. Husband (Eds.), *Comparative European research in migration, diversity and identities* (pp. 99–110). University of Deusto.
- Huddleston, T. (2020). Naturalisation in context: How nationality laws and procedures shape immigrants' interest and ability to acquire nationality in six European countries. *Comparative Migration Studies*, 8(1), 18. <https://doi.org/10.1186/s40878-020-00176-3>
- Killias, O. (2018). *Follow the maid: Domestic worker migration from Indonesia*. NIAS Press.
- Kim, M. et al. (2017). Returning home: Marriage migrants' legal precarity and the experience of divorce. *Critical Asian Studies*, 49(1), 38–53. <https://doi.org/10.1080/14672715.2016.1266679>
- Kunz, S. (2022). Provincializing “immigrant integration”: Privileged migration to Nairobi and the problem of integration. *Ethnic and Racial Studies*, 45(10), 1896–1917. <https://doi.org/10.1080/01419870.2021.1980222>
- Lindquist, J. (2010). Labour recruitment, circuits of capital and gendered mobility: Reconceptualizing the Indonesian migration industry. *Pacific Affairs*, 83(1), 115–132. <https://doi.org/10.5509/2010831115>
- Manning, C. (2018, July 31). Two steps forward in Indonesia's foreign worker policy? *East Asia Forum*.
- Migration Policy Group. (2020a). *Migrant Integration Index*. <https://www.mipix.eu>
- Migration Policy Group. (2020b). *Policy indicators: Main findings*. Migrant Integration Policy Index. <https://www.mipix.eu>
- Missbach, A. (2011). *Separatist conflict in Indonesia: The log-distance politics of the Acehnese Diaspora*. Routledge.
- Missbach, A. (2015). *Troubled transit: Asylum seekers stuck in Indonesia*. ISEAS-Yusof Ishak Institute.
- Østergaard-Nielsen, E. (2016). Sending country policies. In B. Garcés-Masareñas & R. Penninx (Eds.), *Integration processes and policies in Europe* (pp. 147–165). Springer International Publishing.
- Palmer, W. (2016). *Indonesia's overseas labour migration programme, 1969–2010*. Brill.
- Palmer, W. (2018). Back pay for trafficked migrant workers: An Indonesian case study. *International Migration*, 56(2), 56–67. <https://doi.org/10.1111/imig.12376>
- Palmer, W. (2020). International migration and stereotype formation: Indonesian migrants in Hong Kong. *Journal of International Migration and Integration*, 21(3), 731–744. <https://doi.org/10.1007/s12134-019-00680-1>
- Palmer, W., & Missbach, A. (2019). Enforcing labour rights of irregular migrants in Indonesia. *Third World Quarterly*, 40(5), 908–925. <https://doi.org/10.1080/01436597.2018.1522586>
- Palmer, W., & Tan, C. S. (2022). I'm keeping my baby: Migrant domestic worker rights at the intersection of labour and immigration laws. *TRANS: Trans -Regional and -National Studies of Southeast Asia*, 1–11. <https://doi.org/10.1017/trn.2022.1>
- Rahman, M. M., & Kiong, T. C. (2013). Integration policy in Singapore: A transnational inclusion approach. *Asian Ethnicity*, 14(1), 80–98. <https://doi.org/10.1080/14631369.2012.710403>
- Silvey, R. (2004). Transnational domestication: State power and Indonesian migrant women in Saudi Arabia. *Political Geography*, 23(3), 245–264. <https://doi.org/10.1016/j.polgeo.2003.12.015>
- Spitzer, D., & Piper, N. (2014). Retrenched and returned: Filipino migrant workers during times of crisis. *Sociology*, 48(5), 1007–1023. <https://doi.org/10.1177/0038038514540579>
- Suryadinata, L. (2020). *New Chinese migrants in Indonesia: An emerging community that faces new challenges*. ISEAS-Yusof Ishak Institute.
- Tjandra, S. (2016). *Labour law and development in Indonesia* [PhD dissertation, Universiteit Leiden].
- van Lottam, J. (2014). Migration in an age of change: The migration effect of decolonization and industrialization in Indonesia, c. 1900–2000. In J. Lucassen & L. Lucassen (Eds.), *Globalising migration history: The Eurasian experience (16th–21st centuries)* (pp. 247–277). Brill.
- van Riemsdijk, M., & Axelsson, L. (2021). Introduction to special issue: Labour market integration of highly skilled refugees in Sweden, Germany and the Netherlands. *International Migration*, 59(4), 3–12. <https://doi.org/10.1111/imig.12883>
- van Riemsdijk, M., & Basford, S. (2022). Integration of highly skilled migrants in the workplace: A multi-level framework. *Journal of International Migration and Integration*, 23(2), 633–654. <https://doi.org/10.1007/s12134-021-00845-x>
- van Riemsdijk, M., Basford, S., & Burnham, A. (2016). Socio-cultural incorporation of skilled migrants at work: Employer and migrant perspectives. *International Migration*, 54(3), 20–34. <https://doi.org/10.1111/imig.12221>
- Waldrauch, H., & Hofinger, C. (1997). An index to measure the legal obstacles to the integration of migrants. *Journal of Ethnic and Migration Studies*, 23(2), 271–285. <https://doi.org/10.1080/1369183X.1997.9976590>
- Weiss, T., & Wilkinson, R. (2018). The globally governed - everyday global governance. *Global Governance: A Review of Multilateralism and International Organizations*, 24(2), 193–210. <https://doi.org/10.1163/19426720-02402003>
- Yusrizza, B. (2020). The political economy of unfree labor and the state: An Indonesian case study. *Asian and Pacific Migration Journal*, 29(1), 55–78. <https://doi.org/10.1177/0117196820925656>



## Indonesian Government Sources

Circular Memorandum (Supreme Court) No. 1 of 2017 on Implementation Plenary Meeting Results.

Government Regulation No. 34 of 2021 on Use of Foreign Migrant Workers.

Government Regulation No. 31 of 2013 on Immigration.

Law No. 23 of 2006 on Civil Administration.

Law No. 13 of 2003 on Manpower.

Law No. 2 of 2004 on Industrial Relations Dispute Resolution.

Presidential Regulation No. 18 of 2020 on National Medium-term Economic Plan (2020–2024).