

Forced Migration Governance in Southeast Asian Countries: 'Same but Different'?

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Abstract

This paper examines the governance of forced migration in Southeast Asia. The region hosts about 2.5 million of forcibly displaced migrants from a worldwide total of 70 million (2018). The migrants include intra- ASEAN and non-ASEAN refugees or asylum seekers, notably from the Middle East. Based on a review of recent literature, the paper investigates three main destination states in SEA that host the majority of the forced migrants; Indonesia, Malaysia, and Thailand. The paper examines (i) local policies in the governance of forced migrants and (2) the practice of non-refoulement principle. The findings reveal that in terms of forced migration governance, Indonesia, Malaysia, and Thailand are 'same but different'; meaning that despite being similar, each country produces different outcomes.

Keywords: Forced Migration; Refugees; Governance

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INTRODUCTION

Forced migration is not new to Southeast Asia. Its beginnings can be traced back to the colonial period. In her study on the most prominent commercial enterprise of the early colonial era, namely the Dutch East India Company (Vereenigde Oost-Indische Compagnie/VOC), Ward (2008) argues that forced migration in the form of forced-labors and slaves had existed through the "imperial networks" since the 16th century. During that time, convicts and exiles were banished from Indonesia (Batavia) to South Africa (Cape of Good Hope).

Unlike the colonial period, present day forced migration occurs due to different reasons but mainly because of (armed) conflict, warfare, persecution, and violence. In post-colonial Southeast Asia, we have witnessed different waves of forced migration triggered by events such as the Indochina wars and the Andaman Sea crisis of the 1970s and, more recently, the violence in Myanmar. Despite the differences, both colonial and post-colonial times demonstrate that the nature of migration was largely involuntary. This aspect is in accordance with the definition of forced migration set by the International Organization for Migration/IOM (2019, p. 75) as "a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion." The UNHCR (2019c) further classified forced migrants as refugees, refugee-like situations, asylum-seekers, internally displaced persons (IDPs), stateless people, and others of concern.

The UNHCR report (2019c) shows that in 2018, 70.8 million people were forcibly displaced around the world. This fact means that for every single minute in a year, 25 individuals are forcibly displaced. In 2009, the number of displaced people was almost half of 2018, amounting to 43.3 million. Southeast Asia alone was predicted to host 3.2 million dis-

placed people in 2020 (UNHCR, 2019b). This number excludes the millions of undocumented populations, some of whom fall under the category of forced-migrants.

Research on forced migration in Southeast Asia appears to be a relatively new field, beginning in the 1980s. The subject however received a growing interest thereafter (Stange, Sakdapolrak, Sasiwongsoroj, & Kourek, 2019). In studying 217 peer-reviewed English articles in the database Web of Science from January 2013 to September 2018, Stange et al found that the publications had increased from 20 to 67 in 2013 and 2017, respectively.

We observe that most research on forced migration in Southeast Asia can be classified into three broad categories with each representing a specific approach. The first is the regional approach, which examines the role of regional governance agency, namely the Association of Southeast Asian Nations (ASEAN) in relation to forced migration. Under this category, scholars studied different perspectives of ASEAN's handling of forced migration such as the collective perspective and human rights regime (Petcharamesree, 2016), regional integration efforts being exclusive (Wahab, 2017), cooperation with Australia (Nethery, 2014), comparison with the European Union (Cook, 2010), regional concept of refugees protection (Kneebone, 2014), response to regional affairs like the Indochina crisis (Ahmad, 1979; Indorf & Suhrke, 1981; Richardson, 1982) and the forcibly displaced Rohingyas (Jati, 2017; Shivakoti, 2017; Trihartono, 2018).

The second category of research on forced migration is examined from the national approach, where researchers draw case studies of forced migration at the national level of Southeast Asian countries. These works are mainly focused on individual countries that host forced migrants in Southeast Asia such as Indonesia (Hugo, 2002, 2006; Missbach,

2015, 2017a; Missbach, Adiputera, & Prabandari, 2018; Sampson, Gifford, & Taylor, 2016), Malaysia (Kaur, 2013; Muniandy, 2018; Nah, 2010), Myanmar (Ahsan Ullah, 2016; Lee & Ware, 2016; South & Jolliffe, 2015) and Thailand (H. J. Lang, 2002; Teclé et al., 2018; Zeus, 2011).

The last category is the comparative approach, where the study on forced migration involves two or more Southeast Asian countries. The examples are on Indonesia and Malaysia (Prabandari & Adiputera, 2019), Thailand, and Malaysia (Hedman, 2008; Lego, 2018) and Thailand and Myanmar (Grundy-Warr & Yin, 2002). These studies mostly viewed forced migration from the perspective of border protection and the proximity of these countries as neighbors. We find the last category, the least studied, compared to the regional and national categories.

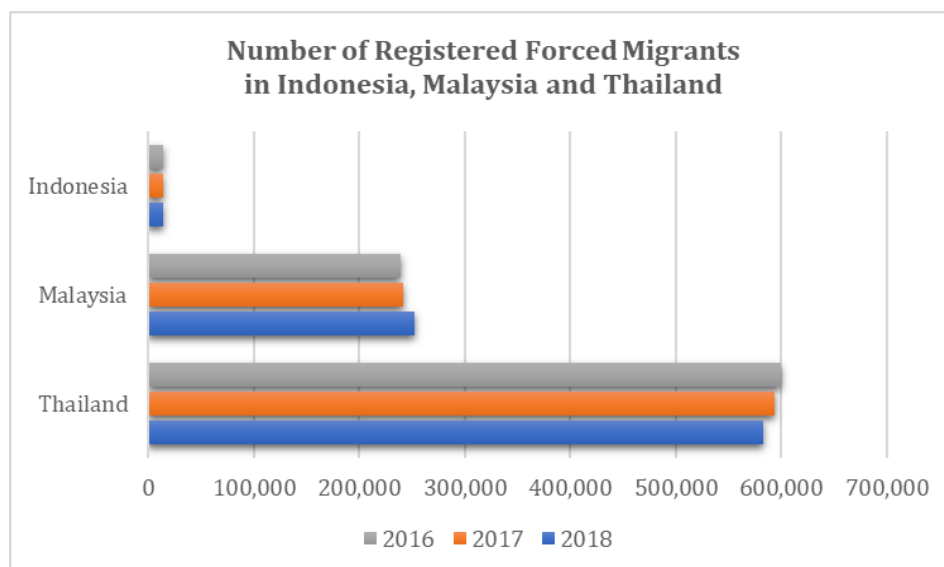
Noting the lack of multi country comparisons, the present study aims to examine the governance of forced migration comparatively in three Southeast Asian countries, namely Indonesia, Malaysia, and Thailand. These countries were chosen for two reasons. Firstly, Indonesia, Malaysia and Thailand, to some extent,

share similar characteristics, which will be discussed shortly. Secondly, although Malaysia and Thailand are well discussed case studies on forced migration in the region (Stange et al., 2019), most of the works investigated both countries separately, thus limiting a comprehensive depiction of the similarities as well as differences between the two countries.

Indeed, Indonesia, Malaysia, and Thailand have become major destinations for refugees in Southeast Asia. Since the 1970s, millions of forcibly displaced people fled their countries and made either Indonesia, Malaysia, or Thailand as transit points. People from foreign countries could travel to Jakarta, Kuala Lumpur, or Bangkok at "short notice and with relatively easy visa requirements" (Jones, 2019). Some of them have stayed long, spanning a few generations. Based on 2019 data, the three countries collectively were the largest host for forced migrants in Southeast Asia (European Commission, 2019) These three countries combined accommodate almost a million forced migrants in the region, as shown in figure 1.

Additionally, these countries are not state parties to the 1951 Convention and

Figure 1. Forced migrants in Indonesia, Malaysia, and Thailand



Source: UNHCR (2019b) and Compiled by the Authors

its Protocol Relating to the Status of Refugees. As a result, all three nations gave the mandate to the UNHCR to deal with forced migrants. The mandate includes "reception, registration, documentation and refugee status determination of asylum-seekers and refugees" (UNHCR Malaysia, n.d.). Among ASEAN members, only Cambodia and the Philippines have ratified these legal documents. At the regional (ASEAN) level, there have been some key documents, such as the ASEAN Charter and the ASEAN Human Rights Declaration adopted as resolution and mitigation channels. These frameworks, however, do not explicitly mention forced migrants, refugees, or asylum-seekers (Wahab, 2017). Instead, the term that is used, rather loosely, is migrant workers.

In this paper, we combine both the national and regional approach by looking at how Indonesia, Malaysia and Thailand deal with forced migrants, specifically what are their governance mechanisms. What, if any, are the similarities and differences in their approaches? Finally, what role do regional mechanisms have in mitigating issues related to force migrants, or do the countries operate in silo, bilaterally, multilaterally, in association with ASEAN. In doing this, we hope to conflate the national and regional scales of governance and imply that a multilateral approach may be effective in governing forced migration.

In examining the governance of forced migration in Indonesia, Malaysia, and Thailand, we have considered two main criterias. These are, the local/national policies towards forcibly displaced people, and, the practice of non-refoulement principle. The non-refoulement principle is a part of the International Customary Law (ICL) and International Human Rights Law (IHRL). Both laws prohibit countries from expelling the forcibly displaced people and demand a guarantee on the part of the countries that no one is "subjected to torture

or other cruel, inhuman and degrading treatment or punishment, or would be in danger of being subjected to enforced disappearance, or of suffering another irreparable harm." (IOM, 2019, p. 147). The essential element is receiving countries should avoid repatriation of forced migrants arriving their shores should there be strong indications that these migrants' lives are in danger in their home country.

Generally, ASEAN countries have shown compliance with the non-refoulement principle, for example, the case of the Vietnamese Boat People. There have been exceptions however, the most recent cases in the time of COVID 19 pandemic showed that Rohingya refugees arriving on boats to the shores of Malaysia were sent back, while Aceh (Indonesia) provided them refuge. In order to understand the practice of this international policy and the deviations, we need to first outline some major developments related to forced migrants in each of the country studied here. The following section will look at the individual (local/national) scenario, this will be followed with a discussion of the comparisons and commonalities that might inform a regional approach.

RESEARCH METHODS

The study is largely qualitative where a close analysis of existing literature and primary data on the respective countries are scrutinized. The data is drawn from relevant empirical findings in multidisciplinary fields, ranging from international relations, refugee and migration studies, regional governance, and public policy studies as well as supplementary relevant and reliable sources from the internet.

RESULTS AND DISCUSSION

Indonesian Context

As of 2018, 14,016 persons were registered with the UNHCR Indonesia.

They came from 49 countries, with half of them originating from Afghanistan (UNHCR Indonesia, 2020). This number is comparatively smaller than other neighboring countries like Malaysia and Thailand, as shown in the figure above. However, despite its low number, Indonesia is a popular transit country due to its proximity to Australia, a third country destination.

In terms of policies related to forced migration, there have been established national legal frameworks. The first legal document related to forced migration issued by the Indonesian government was in 1956, entitled "Circular Letter of the Prime Minister No. 11/R.I./1956 of 1956 on Political Refugees". The Letter underlined the protection of political refugees and explicitly guaranteed their shelter. Article 1 of the Letter states that "political refugees who entered into or are in the Indonesian territory will be granted protection on the basis of human rights and fundamental freedom in accordance with international customary law." (Prime Minister of the Republic of Indonesia, 1956). This rule, however, was only enforced for three years. Thereafter, the Indonesian government, in general, did not have a concise legal framework related to the governance of forced migration, particularly on refugees and asylum-seekers.

It was only in the recent few years that Indonesia started to develop a robust legal platform dealing with this issue (Prabandari & Adiputera, 2019). In 2016, there were two crucial policies released by the Indonesian authorities. The first regulation was No IMI-0352.GR.02.07 on "Handling of Illegal Immigrants who Declared as Asylum Seekers or Refugees" (Immigration Directorate General, 2016). It was issued on 19 April 2016 by the Immigration Directorate General of Indonesia. The document regulates the treatment of refugees and asylum-seekers, such as putting them in detention centers or other places and allowing them

to stay in the country with the obligation to obey the law. Another policy was the Presidential Decree (Perpres) No 125 of 2016 on the "Handling [of] Refugees and Asylum Seekers in Indonesia" (The President of the Republic of Indonesia, 2016). The document was signed by Indonesian President Joko Widodo on 31 December 2016. The Perpres, in particular, has been applauded as "the first of its kind in Indonesia" (Gordyn, 2017), a "significant development" (Prabandari & Adiputera, 2019), on the right track (Tobing, 2019), a promising step for Indonesia (Varagur, 2017) and an exemplary precedent for other countries (Gayatri & Bayani, 2017). The Perpres was also appreciated by the international community, considering it as a rare commitment (Tobing, 2019). It is because the Perpres is regarded to follow the Refugees Convention, either partially or its general principle.

Nevertheless, it is worth noting that the Perpres policy has several weaknesses. Missbach, Adiputera, Prabandari, et al. (2018) listed them as lacking three aspects, namely detention alternatives, political will, and funding. Additionally, governance of forced migration is not among the top priorities of the Indonesian government as almost 10 percent of the population still live below the poverty line (The World Bank, 2019). Thus, it is fair to say that the Perpres is a short-term response, rather than a long-term solution to the crisis.

In short, the Indonesian policy could be said as to "assimilate but not settle" procedure, thus, putting the refugees in an "awkward limbo". (Bemma, 2018). One clear example is the case of Kalideres camp, one of the detention centers situated in Daan Mogot, West Jakarta. Following the Perpres, the Governor of Jakarta allocated a portion of the fund to support about 1,500 forced migrants in the Kalideres camp. In August 2019, the local government of Jakarta stopped the assistance and asked them to leave the shelter

(Tambun & Yasmin, 2019). The Jakarta Governor, Anies Baswedan claimed that it was not his responsibility to govern the forced migrants. The support given by his local government was temporary and limited, as he put pressure on the UNHCR as the responsible institution in relation to forced migrants in the country. Anies stated that the “governance of refugees is at the hand of the UNHCR; therefore, the mandate is there. The nature of support in Jakarta is humanitarian to meet the basic needs when UNHCR was not able to do it. Now we returned the mandate. That is what we are doing now.” (Ikhsanudin, 2019).

In addition to the withdrawal of support from the local government, the forced migrants in the Kalideres camp also faced rejection from the surrounding neighborhoods, who are mostly middle-upper class households. At least ten banners hung across different streets in the area, with the message that “we, the residents of Daan Mogot, reject the immigrants center in our housing complex”. The reasons for this unwelcoming conduct were a result of the host not being informed by the government and the fear of disturbances from the immigrants (Satria, 2019).

Contrary to the Kalideres situation, refugees were warmly welcomed by the community in other regions like Aceh, Sumatra. The region has welcomed a series of boats full of forced migrants stranded in the sea. The famous instance was in 2015 when 1,800 refugees were turned away by the Malaysian and Thailand governments and eventually arrived in Aceh (Varagur, 2018). Although the Indonesian authorities forbade people to help stranded refugees, the Acehnese acted otherwise. The Acehnese spontaneously rescued those forced migrants and provided them with the initial support, before the government and non-state actors intervened (Missbach, 2016). However, Missbach considers this kind of hospitality as

facets (2017b) and hostile (2016) because it did not provide long-term and sustainability strategies. From these experiences, many issues needed to be addressed by the Indonesian government.

In relation to the non-refoulement practice, Indonesia broadly respects its principle as the 2016 Perpres emphasizes the country’s commitment to international laws (Tobing, 2017). Prior to that, there were minor cases on the Andaman Sea crisis where the Indonesian (along with the Malaysian) authorities followed the “cold policy” where they were silent and refused to rescue thousands of people on boats (Dhumieres, 2015). When the Indonesian citizens (the Acehnese) instantaneously saved some of those people, the government then started to shift its policy, as stated earlier. It is fair to say that the Indonesian government in all earnest has tried to honor the non-refoulement policy. In the next section, we turn our attention to Malaysia and Thailand.

Malaysian Context

In 2019, Malaysia had a total of 252,742 forced-migrants (UNHCR, 2019c). They comprised mainly 177,000 asylum-seekers and refugees who were registered by the UNHCR and 10,000 stateless people. The majority of them were from different ethnicities found in Myanmar (e.g., Rohingya, Chin, Rakhine, and Arakanese) and also from countries such as Afghanistan, Iraq, Palestine, Pakistan, Sri Lanka, Syria, and Yemen (UNHCR Malaysia, 2020a). These registered refugees and asylum-seekers were found spread across the states of Malaysia, as shown in Table 1.

In addition to the numbers above, it is believed that between two to four million undocumented migrants were in the country, as of 2019 (UNHCR, 2019a). Given this substantial number of both registered and unregistered displaced people in Malaysia, it is pertinent to evaluate the governance mechanism towards forced

migrants in Malaysia.

In terms of the legal framework, "there are no legislative or administrative provisions in place for dealing with the situation of refugees and asylum-seekers in Malaysia" (UNHCR Malaysia, 2020b). Probably the only available document is the Malaysian Immigration Act 1959/63 (The Commissioner of Law Revision Malaysia, 1959). The Act recognizes only documented or legal migrants. Thus, it implies that forced migrants are categorized as undocumented or illegal (unless they are registered with the UNHCR).

There has not been much progress in legally recognizing forced migrants, with the government continuing to rely and adopt UNHCR's documenting process and recognition. In fact forced migrants have been used as political rhetoric for the competing Malaysian political parties to mobilize the loyalists and attract uncommitted voters (Jerit, 2004).

Prominent examples include Malaysia's 14th general election in 2018. On 22 September 2015, a new political coalition was formed, named as the Alliance of Hope (Pakatan Harapan). The Alliance consisted of four parties namely the Democratic Action Party (DAP), Malaysian United Indigenous Party (BERSATU), National Trust Party (Amanah) and People's Justice Party (PKR), that collectively contested in the election to challenge the National Front (BN) coalition that has been ruling Malaysia since the country's independence (Teoh, 2015). On 8 March 2018, the Alliance of Hope issued a political manifesto, entitled *Book of Hope: Rebuilding Our Nation Fulfilling Our Hopes*. The manifesto contained 10 promises to be fulfilled in the first 100 days of their administration and 60 promises in five years respectively if they win the election (Pakatan Harapan Manifesto, 2018).

The issue of forced migration was also included in the manifesto, mentioned in Promise 35 and 59. The promises were "raising the dignity of workers and creat-

ing more quality jobs" and "to lead efforts to resolve the Rohingya and Palestine crises," respectively. For Promise 35, the Alliance of Hope government claimed to legitimize the status of Rohingyas and Syrian refugees by "providing them with UNHCR cards and ensuring their legal right to work.....Providing them with jobs will help refugees to build new lives and without subjecting them to oppression." (Pakatan Harapan Manifesto, 2018, p. 78). In Promise 59, the agenda was to resolve the Rohingya issue by "addressing the efforts of regional countries" and "make serious attempts" to find a long-term solution for the Palestine crisis, as well as to ratify the 1951 International Convention on Refugees (Pakatan Harapan Manifesto, 2018, p. 121).

The Alliance of Hope coalition finally achieved victory in the general election, held on 9 May 2018. However, a year after the victory, the ruling government, named as Malaysia Baharu (New Malaysia), was criticized for their underperformance as the promises made in the Manifesto were mostly unfulfilled (Heijmans & Shukry, 2019; Shuzaidah, 2019; Thomas, 2019). This included Promise 35 and 59.

The chairman of the Alliance of Hope, Mahathir Mohamad, who also became the Malaysian Prime Minister, responded to the critics by asking for extra time to deliver all the promises. Later, Mahathir admitted that it was hard to implement the manifesto and even stated the fact that the Alliance of Hope had become the victim of their own manifesto. He stated that "we thought that we were going to lose [the election]. We put in tough things in the manifesto so that if we lose, the old government (BN) would be trapped. But now, we are the government. We are victims of our own manifesto." (Hafiz, 2019; M Fakhru Halim, Lee, & Rashid, 2019).

In February 2020, the Alliance of Hope coalition collapsed, with members from two of the coalition parties defecting

to form a new alliance with two other parties that were defeated in the 14th general election, namely the United Malay National Organization (UMNO) and the Pan-Malaysian Islamic Party (PAS). Under the new ruling government, known as Perikatan Nasional (The National Alliance), fate of the marginalized groups remain uncertain and their condition continued to worsen in the Covid-19 pandemic era. On April 16, 2020, the Royal Malaysian Navy intercepted a boat load carrying approximately 200 refugees off the coast of Malaysia. The boat was denied entry into Malaysian waters but those on board were given food aid (Human Rights Watch, 2020). Justification of this action was due to fear of these refugees bringing in Covid-19 into the country.

Member of the ruling government, Abdul Hadi Awang, also the leader of the Pan-Malaysian Islamic Party (PAS) defended the move by issuing a statement that read “The ... decision by the security forces to bring aid while at the same time blocking the ship carrying the refugee from entering the country, while the world is battling with COVID-19, was a must.” (Benar News, 2020). A wave of hate speech against the Rohingya surfaced online in April 2020 after a number of statements issued by several individuals from the Myanmar Ethnic Rohingya Human Rights Organisation in Malaysia demanded several things from the Malaysian government, such as equal rights, job opportunities, health access and education. This prompted the Home Minister, Hamzah Zainuddin to clear the air by saying “Any organisation that claims to represent the Rohingya ethnic group is illegal under the RoS Act, and legal action can be taken. Therefore, Rohingya nationals who are holders of the United Nations High Commissioner for Refugees (UNHCR) card have no status, rights or basis to make any claims on the government.” (Nik Anis, 2020).

The Alliance of Hope is not the only political front that exploited the forced migrants’ issue, particularly the Rohingya. Both the United Malay National Organization (UMNO) and the Pan-Malaysian Islamic Party (PAS) have had their share of strategically using the issue for political mileage. Both parties have been long-term rivals in Malaysian politics. Following their defeat in the 14th General Election, they agreed to consolidate their political relationship through the National Consensus Charter, signed on 14 September 2019 (Razak & Dzulkifly, 2019; Yunus, 2019). The ultimate aim is to win the next i.e. 15th General Election. It is worth noting that this “frenemy marriage” (Ueda, 2019) did not occur instantly but as a result of long-term political interaction. Despite their differences, both parties shared what they called ‘Islamic solidarity’.

In many instances, the former rival parties were united to fight the cause of the Rohingya and Palestine. For instance, on 4 December 2016, they managed to gather around 10,000 people to protest the “ethnic cleansing” by the Myanmar Government, which further caused the influx of Rohingya forced migrants into Malaysia (Teoh, 2016). In February 2017, both parties launched the humanitarian program named Food Flotilla for Myanmar (Ruzki, Idris, & Adnan, 2017). All of these actions demonstrate how political parties employ rhetorical tactics to advance their interests. We agree with Hussin (2017) who claims that “the counter-narrative of Najib [UMNO] and Hadi [PAS], oddly enough, does not concern the fate of the Rohingya Muslims, who have been displaced over several generations in Myanmar, but instead has more to do with drumming up support for UMNO and PAS.” The issue has political clout for parties and individuals hoping to retain power and the survival of their regime.

Meanwhile, in terms of non-refoulement practices, the Malaysian gov-

ernment has largely ignored the principle since the Indochina crisis. (Robinson, 2004). Although Malaysia initially provided refuge to those fleeing Vietnam, on humanitarian grounds, the constant arrival of Vietnamese boat people turned away Malaysia's support, authorities had towed more than 10,000 Vietnamese forced migrants arriving Malaysian waters. Subsequently, in an ironic twist, the Malaysian Foreign Minister chaired the 1989 International conference on Indochina in Geneva, which endorsed a consensus to provide temporary shelter for the displaced people. This inconsistent act demonstrates what Helton describes as "the government's hypocrisy" (Helton, 1992).

In recent times, an infamous case related to the arrest and deportation of Praphan Pipithnamporn, a Thai activist who was involved in a peaceful anti-monarchy group called the Organization for Thai Federation showed Malaysia's inconsistency yet again. Praphan fled to Malaysia in January 2019 to escape persecution by the Thai government. Three months later, she was granted refugee

status by the UNHCR. Despite her status as a registered asylum-seeker, the Malaysian government arrested her on 24 April 2019 under the request of the Thai government. She was repatriated to Thailand a month later and was subsequently detained by the Thai police (Human Rights Watch, 2019a). The case has resulted in sharp criticisms against then ruling government (PH coalition) for violating the customary international law on the protection of refugees, the government was also alleged to have behaved like the old regime, that it replaced (Koya, 2019).

Thailand Context

Thailand recorded 582,130 registered forced-migrants in 2019. (UNHCR, 2019c). Out of this number, the majority were stateless people, approximately around 80 percent, while the rest comprised refugees and asylum-seekers. More than 1.5 million unregistered stateless individuals were believed to live in Thailand (Cheva-Isarakul, 2018), and estimates for registered stateless were recorded at about half a million (479,943) as

Table 1. Geographical Distribution of Registered Persons of Concern in Malaysia
 Source: UNHCR Malaysia (2020a)

Persons of Concern (PoC) in the Malaysian States	
Name of State	Number of PoC
Selangor	66,030
Kuala Lumpur	27,370
Pulau Pinang	18,660
Johor	14,332
Kedah	12,570
Terengganu	5,780
Pahang	5,630
Kelantan	4,520
Perak	3,780
Negeri Sembilan	2,670
Melaka	1,990
Putrajaya	450
Perlis	280
Total	164,062

of June 2020 (UNHCR Thailand, 2020a). The stateless in Thailand are usually tribal hill groups and non-Tai ethnics like the Karen in the north who are mostly without Thai citizenship, as well as Burmese migrants who fled the country for personal security and a better life in Thailand. These groups as well as those who have been uprooted from their ancestral lands due to conflict, development and natural calamities fall under the category of Internally Displaced Persons (IDP). (UNHCR Thailand, 2020b).

Indeed, the majority of the forced migrants comprise of various ethnic groups from Myanmar. Based on data provided by relief agencies such as The Border Consortium (TBC) and the UNHCR on registered and unregistered refugees and IDPs, the UNHCR estimated there are about a quarter-million IDPs in the four states/regions in southeast Myanmar where it operates (Kayah, Kayah, Mon, and Tanintharyi). The figure is in addition to the 120,000 refugees from Southeast Myanmar living in Thailand, (who are officially, 'displaced persons', residing in temporary shelters) in camps close to the border town of Mae Sot, along the Thailand-Myanmar border. More than three-quarters of these are ethnic Karen and, about 10% Karenni). (South & Joliffe, 2015, p. 16, UNHCR, 2019c). Thailand is also host to 6,000 urban refugees and asylum-seekers from some 40 countries (UNHCR Thailand, 2020c). Additionally, there are also nine temporary shelters along the Thai-Myanmar border, home to 91,940 refugees who have been there for almost three decades (UNHCR Thailand, 2020b). In short, Thailand is at the center of numerous migratory movements in the region and, the country hosts an estimated two million migrants, often overlapping between those arriving for economic reasons and asylum-seekers (Sebastien, 2016).

The Royal Thai Government (RTG) has no formal legal policy on forced mi-

grants, particularly the refugees and asylum-seekers. The only legal framework that the country has is the 1979 Immigration Act, which does not differentiate between forced migrants and voluntary immigrants. It means that forced migrants are at risk, "subject to arrest, detention and deportation for failure to comply with its provisions" (Amnesty International, 2017, p. 14). The RTG does not have a formal government commitment to refugees except for those individuals displaced by the conflict in Myanmar and end up in temporary shelters along its border (Hedman, 2008, p. 358).

Clearly, Southeast Asia lacks regional instruments for managing refugees, such as the 1974 African Union Convention on Refugees or the 1989 Cartagena Declaration on Refugees. Although the ASEAN Human Rights Declaration enshrines the right to seek and receive asylum, ASEAN member states often show reluctance towards asylum seekers and in abiding with non refoulment (Amnesty International, 2017). Thailand fears that complying with the conventions involve financial obligations, which the country is ill-equipped to handle. Bangkok feels 'threatened' that such actions would increase the number of refugees arriving in its territory (Davies, 2006, p. 565; The Equal Rights Trust, 2014, p. 4). Attitudes towards unregistered migrants are generally negative in urban areas, driven largely by the view that unregistered migrants are economic competitors. This view persists despite most of them filling the labor gap in menial and 3D jobs (Sunpuwan & Niu-mosipla, 2012: 56).

Since January 2004, the Thai government has revoked UNHCR's right to screen individuals from Myanmar for refugee status. It has placed the Rohingya in a protection vacuum that excluded them from protection from both the UNHCR and the Thai Provincial Admissions Board (Ostrand, 2014).

Despite the granting of refuge, politi-

cal statements indicate that the Thai government viewed protecting forced migrants as a detrimental imposition on the state. The general view is that the Thai government looks to the refugees for economic and political gains rather than based on humanitarianism (Jetschke, 2019). Nonetheless, the Thai government has vehemently rejected this view and alleges instead that Myanmar's internal strife and misadministration has led to Thailand having to endure the frequent arrivals of displaced persons fleeing the military junta.

In 2000, Khun Surpong Posayanond, an official from the Thai Foreign Affairs Ministry claimed that "the influx of displaced persons has entailed huge cost[s] for Thailand in terms of administration and personnel, environmental degradation, deforestation, epidemic control and the displacement of affected Thai villages as well as the psychological impact on the local population" (H. Lang, 2001, p. 5).

Since 2016, the Thai government attempted to soften its policy. In that year, the country participated in the Leaders' Summit on Refugees in 2016 in New York and committed to further progress on the issue. The following year, the Thai Cabinet issued Resolution 10/01, B.E. 2560 (2017) on screening and management of forced migrants.

Another commitment by the Thai government is the Memorandum of Understanding (MoU) on the Determination of Measures and Approaches Alternative to Detention of Children in Immigration Detention Centers, signed on 21 January 2019 by relevant officials comprising Deputy Prime Minister General Prawit Wongsuwan, Royal Thai Police, and six ministries namely Education, Foreign Affairs, Health, Interior, Labor, and Social Development and Human Security (Ministry of Foreign Affairs of the Kingdom of Thailand, 2019). The MoU generally agrees to refrain from detaining chil-

dren of forced migrants, and if they have to be detained, it should be "as a measure of last resort" (Human Rights Watch, 2019b).

While the MoU was considered as an excellent initiative, human rights and refugee activists raised their concern as further steps needed to be done. The MoU acknowledges that underaged forced migrants should be protected; however, it did not address another equally important aspect, the parents. Both forced migrant mothers and fathers still had to struggle to be reunited with their children. As for the mothers, they needed to pay a bail of 50,000 Thai Baht (US\$1,500), which is somewhat burdensome. The bail is not applicable to the fathers; thus, the chance of family reunification is harder (Human Rights Watch, 2019b).

On 24 December 2019, the Thai cabinet approved the National Screening Mechanism, which differentiates between voluntary and forced migrants. This progress was hailed positively by the UNHCR, regarding it as "concrete steps towards ensuring the protection space for refugees and asylum-seekers in its territory" (UNHCR Thailand, 2019). The extent to which the implementation of the mechanism when it comes into force remains to be seen.

Additionally, between 2017 and 2019, the Thai government conducted frequent crackdowns targeting overstaying foreigners. Since 2017, the Thai authorities launched X-Ray Outlaw Foreigners targeting overstayed voluntary and forced migrants. It was one of the measures taken by the Thai government to implement the Immigration Act. The result was that by 2019, almost 10 thousand people were under arrest (Thaiger & Nation, 2019).

The practice was labeled discriminatory as the Thai police targeted mostly people with African and South Asian backgrounds (Chen & Promyamyai, 2018). The authorities also made refugees as "collateral damages" (Villadiego, 2018)

as hundreds of them, including children, who are recognized by the UNHCR, were also arrested. What is worse, they were further detained in immigration centers that are “notorious” (Quinley, 2019), “appalling” and “worse than prison” (Amnesty International, 2017, p. 18). In short, the contradictory practice between the Thai government’s formal diplomatic commitment and the reality on the ground, as shown above, indicates that forced migration governance is flawed and tends to persecute the victims.

ASEAN member states are cautious and unwilling to provide a rule-based commitment in handling forced migrants. Member states such as Thailand, Malaysia, and Indonesia, however, claimed that despite the lack of a legally-binding commitment, they would provide protection, albeit minimum, to refugees, including adherence to the non-refoulement principle on humanitarian grounds. How ASEAN responded to these issues relied heavily on the commitment of individual member states and shared responsibility to make the region a place called “home” for everyone (Wahab, 2017). The unresolved conflict in Myanmar as well as recent hardships post COVID 19 indicates that the issue of forced migrant population will remain a tricky and complex problem for ASEAN in the years to come. The exercise of the principle of non-refoulement by Southeast Asian countries is a grey area that complicates forced migration governance.

The Thai government, for instance, has been condemned for turning back boats carrying refugees or deporting them at the request of their respective governments. Despite the country committing, since 2017, to protecting forced migrants, the situation has remained status quo. Some of the cases that received global attention are discussed below.

On the 11th and 6th January 2018, the Thai court convicted two forced migrants, A Ga and Sam Sokha, for overstay-

ing in the country and, violating the Immigration Act. The former is a Vietnamese man, while the latter is a Cambodian woman. Although both were recognized as refugees by the UNHCR, they were fined and jailed (Amnesty International, 2018). It underscores the dismissiveness of the Thai government on the rights of refugees, leading many to criticize Thailand for violation of human rights. A Ga’s fate was better as he and his family were later resettled in the USA (Duy & Anh, 2019). Sam Sokha, on the other hand, was less fortunate. Despite similar efforts from the UNHCR and western embassies to resettle her in a third country, the Thai government handed her to the Cambodian authorities on 8 February 2018, leading to her immediate imprisonment there (Al Jazeera, 2018).

Another example was Hakeem Al-Araibi, a footballer who fled his country Bahrain and received asylum in Australia. In November 2018, he traveled to Thailand with his wife for a holiday. On his way back to Australia, he was stopped at the Bangkok airport and then jailed by the Thai government at the request of Bahrain. His imprisonment sparked controversy and drew international attention, particularly from the human rights groups and the Australian government (Davidson, 2018). He was finally released in February 2019 and was granted Australian citizenship a month later (Henriques-Gomes, 2019).

Subsequently, a similar case emerged in January 2019 relating to Rahaf Mohammed al-Qunun, a Saudi girl aged 18. She renounced Islam and feared that she would be killed by her family; hence she made her way to Australia seeking asylum. While transiting at Bangkok airport, the Thai immigration officials wanted to deport her. She barricaded herself in a hotel room and sought support from social media. Her case triggered the intervention of the UNHCR, after initial resistance from the Thai government

(Regan & Britton, 2019). She was eventually released and obtained Canadian citizenship. In short, all of these cases, either refoulement or intention to practice refoulement, demonstrated the lack of political will on the part of the Thai government in mitigating the problems and governance of forced migration.

CONCLUSION

Our findings indicate that the governance of forced migration in Indonesia, Malaysia, and Thailand, to some extent, reflect a common Asian expression; 'same same but different', where there are "contradictions, differences, and variations within an understanding of the similarities which link and unite" (Fong, Winter, Rii, Khanjanusthiti, & Tandon, 2012). As those countries have not ratified the 1951 Convention, their legal framework related to forced migration is considerably weak. Lately, these nations have demonstrated their efforts to improve forced migration governance by developing a few policies. Indonesia arguably has performed better with the Perpres 125/2016 Law. For Malaysia, forced migrants continue to provide fodder for political rhetoric. This is noted from the short lived Malaysia Baharu government's inability to fulfill their political commitment in relation to forced migrants (Points Number 35 and 59, of their PH Political Manifesto) to recent events of turning away boatload of Rohingya refugees arriving at the height of the COVID 19 pandemic. In the case of Thailand, the state follows in the footsteps of Indonesia in moving forward, albeit small steps in the last few years. However, we find that there have been inconsistencies between political will (policies) and political action (mistreatment of forced migrants).

In regards to the second criteria, that of the non-refoulement principle, there are notable variances practiced among the countries. The Indonesian experience in the practice of non-

refoulement can be traced back to 1956 with the Circular Letter of the Prime Minister No. 11/R.I./1956 on Political Refugees. The latest Perpres 125/2016 further ensures the government's commitment to comply with the non-refoulement principle. Malaysia and Thailand, in contrast, have expelled some forced migrants back to their own countries. Both countries faced fierce criticisms for their controversial, at times, inhumane acts through the detention and refoulement of vulnerable people, despite the latter receiving recognition by the UNHCR.

What can be done better? In order to be more effective in forced migration governance, states need to shift towards adopting needs-based policies. Although Indonesia is possibly one step ahead of Malaysia and Thailand, much more needs to be done. It is still premature to expect these nations to ratify the 1951 Convention. Nonetheless, there are some possible ways, such as to have long-term vision policies, strengthening regional partnerships (through ASEAN and beyond), and enhancing engagement of non-state actors.

Forced migration remains a sidelined issue, it is not a priority compared to national issues. In fact during the COVID 19 period, throughout the first quarter of 2020, forced migrants were seen as a threat to local population, in terms of jobs being snatched away from the local people and as vulnerable groups who were potentially "super spreaders" of the COVID strain. Forced migrants were also subjected to racial biases, prejudice and all forms of discrimination.

The potential for forced migrants to be permissibly employed and contribute to the job market can be positively explored rather than the blanket denial of employment for this people. This may turn out to be a win-win situation for both the host and the migrant groups in relation to income and economic development, while also protecting the persecut-

ed and vulnerable groups from neighbouring countries. A regional approach that takes into consideration humanitarianism, despite the challenge of narrow opportunities and slow progress for forced migrants' resettlement in a third country, can be positively developed.

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