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Norm Socialization of Women Migrant Workers' Rights

The Role of the National Human Rights Commissions of
Indonesia and Malaysia

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Abstract

How can national human rights institutions (NHRIs) socialize international norms of the rights of women migrant workers in a gendered manner? This is the main question of the thesis. With the thesis, I contribute to the theory on human rights norms socialization by shifting the highlight from states and transnational advocacy networks to NHRIs. By integrating a feminist perspective, I enrich the theory on human rights norms socialization. Therefore, in socializing of the norms of women migrant workers' rights, NHRIs carry out the socialization in a gendered manner.

The National Commission on Human Rights of Indonesia (Komnas HAM) and the Malaysian National Human Rights Commission (SUHAKAM) are the empirical focus of the thesis. I compare and analyze the strategy of these two NHRIs in socializing the norms of women migrant workers' rights into domestic practices. Specifically, I look into their strategy in raising awareness, promoting the ratification of the Migrant Workers' Convention, institutionalizing the international norms into domestic practices, linking the agenda to transnational advocacy networks, and constructing the discourse on women migrant workers' rights. The empirical findings show that Komnas HAM and SUHAKAM have not shown a strong gender perspective in carrying out their strategy, particularly in constructing a gendered discourse on the rights of women migrant workers. Therefore, at the end of the thesis, I also give notes regarding further work to be done by feminist transnational advocacy network to strengthen the role of NHRIs in socializing the norms of women migrant workers in a gendered manner.

Keywords: feminist perspective, norms socialization, national human rights institutions, Komnas HAM, SUHAKAM

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List of Acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Komnas HAM	Komisi Nasional Hak Asasi Manusia (National Human Rights Commission of Indonesia)
Komnas Perempuan	Komisi Nasional Anti Kekerasan Terhadap Perempuan (National Commission on Violence Against Women)
NGO	Non-governmental Organization
NHRI	National Human Rights Institution
RELA	Ikatan Relawan Rakyat Malaysia (Volunteers of Malaysian People)
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia)
UN	United Nations
UPR	Universal Period Review

“What is needed is a skeptical engagement with human rights institutions and standards aimed at making states more responsive to the gendered, racialized, and class-specific impacts of economic globalization on women who cross borders to find work.”
(Satterthwaite, 2005: 4)

1. Introduction

1.1. Framework of the Study

Since the last 50 years, women have constituted almost half of the migration flow. In some countries in Southeast Asia, the number of women migrants has even outnumbered their male counterparts, as in the case of Indonesia and the Philippines. This phenomenon has been recognized as feminization of migration. The world has not only seen the increasing share of women in migration flow, but also the gendering process of migration. Most of these women migrants leave their origin countries to work in other countries, attracted by opportunities offered in those countries. Countries of migrant destination demand for women migrant workers, whose wages are lower than men and local women, to fill in unwanted works in these countries and to alleviate domestic and care burden from the local society.

Being migrants in foreign countries, women migrant workers are often left without protection of rights. In countries of employment, their rights are limited because they are non-citizens; meanwhile countries of origin have only limited power to ensure that their rights are fulfilled in the foreign countries where they work. Further, the jobs they perform in countries of employment are mostly in informal sectors, which are often excluded from the labour policies of the origin countries and the employment countries. With domesticity characterizing their jobs, particularly those working as domestic and/or care workers, women migrant workers are in the origin states and the employment states' blind spots when it comes to the fulfilment and protection of rights. Migration policies often

exacerbate the appalling situation of women migrant workers by ignoring gender aspect of migration, limiting their rights as non-citizens, and shadowing them with deportation at every step.

On the other hand, states are constantly under the scrutiny of the international community who upholds mutually agreed human rights norms. These mutual norms are found in various international human rights instruments, of which states may be parties. When it comes to the rights of women migrant workers, two mainly referred conventions are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As part of the international community, states are expected to comply with norms of women migrant workers' rights derived from international human rights conventions.

In the last two decades, new type of human rights actors has emerged in the international community: national human rights institutions (NHRIs). NHRIs have increased significantly in number and have emerged worldwide. No unified definition of NHRI can be found; however, it can be described broadly as an independent institution established by a national government to promote and protect human rights at the national level (Pohjola, 2006: 1; Cardenas, 2003: 23; and UN Handbook, 1995: para. 39). Advocated by the United Nations (UN), NHRIs have been increasingly recognized as important actors for the promotion and protection of human rights at the national level.

The Principles relating to the Status of National Human Rights Institutions (the so-called Paris Principles), adopted by the UN General Assembly through Resolution No. 48/134 of December 20, 1993, work as a set of international normative standard for NHRI. The Paris Principles provide a framework on the mandates, functions and compositions of NHRI to ensure its effectiveness in socializing and implementing human rights norms. Vested with the authority to promote and protect human rights, the independency from the state and the requirement to work with various actors at national, regional and international levels, a NHRI is a human rights actor with a unique role. In particular, the Paris Principles suggest that NHRI shall promote and protect the rights of those who are made vulnerable by society due to their gender, age, sexuality, religion, or other minority status—among others women, children, and migrant workers.

With such unique role and responsibility, NHRIs are actors with high potential to promote and protect the rights of women migrant workers at the national level. One important role to promote and protect these rights is by socializing international norms of women migrant workers' rights into domestic practices.

1.2. Purposes of the Study and Research Questions

The thesis aims to understand how national human rights institutions (NHRIs) promote and protect the rights of women migrant workers at the state level by socializing international human rights norms; to contribute to Risse and Sikkink's (1999) theory on the socialization of human rights norms by utilizing gender perspective; and to give empirical facts on the work of NHRIs by taking two NHRIs as the case studies, i.e. the National Commission on Human Rights of Indonesia (Komnas HAM) and the Malaysian National Human Rights Commission (SUHAKAM).

As I elaborate further in chapter 2, socialization of human rights norms is a process whereby international human rights norms are promoted, internalized and implemented—in this case by NHRI—into domestic practices of a state to be accepted as a member in the international community. In analyzing the role of NHRIs in socializing the norms of women migrant workers, I am going to study, compare and analyze the strategies and mechanisms adopted by Komnas HAM and SUHAKAM in increasing public awareness on the rights of women migrant workers, encouraging the ratification of relevant international human rights conventions, promoting the institutionalization of the norms of women migrant workers' rights into national laws and policies, strengthening government mechanism for women migrant workers, and engaging with transnational advocacy networks on women migrant workers' rights. I will analyze whether or not these two NHRIs have included gender in their analysis of the issue of women migrant workers. I will also analyze whether or not they have socialized the norms of women migrant workers' rights by using intersectional approach. As an example, the rights of women migrant workers are not just their rights as workers, but also as women and as migrants.

One of the reasons behind the selection of the National Commission on Human Rights of Indonesia (Komnas HAM) as one of the case studies because the Commission represents NHRI in a country of migrant origin. Meanwhile, the Malaysian National Human Rights Commission (SUHAKAM) is chosen as the other case study because the Commission represents NHRI in a country of migrant employment. I will elaborate the reasons of case selection in the methodology chapter (chapter 3). Comparing two case studies will bring out commonalities of the role of NHRIs in the process of norms socialization in general as well as show particularities of each case due to their local contexts.

Therefore, by focusing on two case studies, i.e. the National Commission on Human Rights of Indonesia (Komnas HAM) and the Malaysian National Human Rights Commission (SUHAKAM), the research questions for this thesis are:

- *How are international norms of the rights of women migrant workers socialized by the national human rights commissions of Indonesia and Malaysia (Komnas HAM and SUHAKAM)?*
- *How can NHRIs socialize international norms of the rights of women migrant workers in gendered manner?*

The study wants to contribute to the existing literature on the socialization of human rights norms (Keck and Sikkink, 1998; Risse and Sikkink, 1999) in three ways. First, it explores the role of NHRI as a human rights norm-entrepreneur in promoting and protecting the rights of women migrant workers at the national level. So far, existing literatures on the socialization of human rights norms have been focusing on the role of international or transnational actors (Jetschke, 1999; Marsh and Payne, 2007; Alldén, 2009; Basok, 2009; Greenhill, 2010), while the role of NHRI has not been explored. Second, the study tries to meet discourses on migration, human rights and feminism to produce an intersectional discourse for the promotion and protection of women migrant workers' rights, while keeping the focus on the role of NHRI. In this way, the study also contributes to migration studies since it draws upon human rights and feminist approaches in analyzing international migration. Third, the study provides empirical knowledge on the strategies and mechanisms adopted by the two case-study NHRIs, and therefore it contributes to the existing knowledge about NHRI.

Limitation of the Study

Because this is a study on the strategy of NHRI in socializing the rights of women migrant workers using gender perspective, the focus of the study is NHRI. I will not elaborate the role of other actors in the socialization process of the rights of women migrant workers. Similarly, I will not elaborate states' responses which are the results of socialization.

1.3. Outline of Study

In the next chapter, I discuss theoretical framework related to socialization of human rights norms of women migrant workers. Since the study utilizes human rights and feminist approaches, I explore theories and relevant discourses on socialization of human rights norms, as well as feminist critics to human rights and migration discourses. In chapter 3, I present the methodology I use in the study. Then, I explain the contextual background of the study in chapter 4 by presenting the migration trend of women workers in Southeast Asia region and available international norms with regard to their rights. Then, in chapter 5, I discuss comparatively the strategies and mechanisms adopted by Komnas HAM and SUHAKAM in order to socialize the norms of women migrant workers' rights in Indonesia and Malaysia respectively. In chapter 6, I give analytical discussion on Risse and Sikkink's (1999) theory on norms socialization by incorporating feminist critiques into the theory, while at the same time suggest further work for feminist transnational advocacy network. Lastly, I give concluding remarks of the study in chapter 7.

2. Theoretical Framework

Since the study is about the role of national human rights institution (NHRI) in socializing the norms of women migrant workers' rights, the key frameworks to the study are theories on the socialization of human rights norms and critical feminist analysis on the rights of women migrant workers. Therefore, this chapter is going to be divided into two main sections. In the first section, I discuss the literatures on the socialization of international human rights norms. In the second section, I present feminist analysis on migration and human rights.

2.1. Socialization of International Human Rights Norms

As the underlying theory of the study, I will present theory about socialization of international human rights norms proposed by Risse and Sikkink (1999). They define socialization as “the process by which international norms are internalized and implemented domestically” (Risse and Sikkink, 1999: 5); meanwhile, using definition of norms by Jepperson, Wendt and Katzenstein, norms are “collective expectations about proper behaviour for a given identity” (Jepperson, Wendt, and Katzenstein, 1996: 54, cited in Risse and Sikkink, 1999: 7). From those definitions, we can understand the socialization of international human rights norms as a process whereby international human rights norms are inducted, internalized and implemented into domestic practices of a state to be accepted as a member of the international society. Accepting a norm is not only expressing a belief in it, but also having behaviour consistent with this belief. Hence, the socialization of international human rights norms is not merely a process of diffusion of norms, but also a process involving the institutionalization and sustainable implementation of the human rights norms at the domestic level. Therefore, in analyzing the role of a NHRI in socializing the norms of women migrant workers' rights, I will analyze how they promote the rights, as well as how they promote the institutionalization of rights and build the behaviour at the

national level to create sustainable environment for the protection of women migrant workers' rights.

Also implied in the definition of socialization as presented earlier is that there is a *socializer* who is assumed to have more knowledge on the norms and a *socializee* who supposedly has less knowledge on the norms to be adopted (Alldén, 2009: 18-19). In the context of this study, a NHRI is assumed to be the socializer of international human rights norms to the state. Nevertheless, when a NHRI interacts with the broader human rights society, it may become the socializee due to their limited knowledge on human rights norms in comparison to other actors, for instance the United Nations human rights bodies or experts and practitioners of women migrant workers' rights.

Transnational Advocacy Networks (TANs)

In 1998, Keck and Sikkink started by criticizing the lack of focus on the role of transnational advocacy networks in international politics (Keck and Sikkink, 1998). They define transnational advocacy network (TAN) as “relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services” (Keck and Sikkink, 1998: 2). They argue that TANs have high influence in creating pressure to change behaviour of states, particularly when the advocacy agenda is framed under human rights framework. For instance, transnational women's networks on violence against women gained bigger influence after they reframed their advocacy in human rights framework, whereby the central of human rights norms and violence against women is severe physical harm, because states have accepted the obligation to protect human rights (Keck and Sikkink, 1998: 165-198).

In Risse and Sikkink's theory about socialization of international human rights norms, TANs play a central figure in the socialization process. TANs serve the purpose of: (1) raising moral consciousness; (2) empowering and legitimating the claims of domestic opposition groups; and (3) creating a transnational structure pressuring from “above” and from “below” (Risse and Sikkink, 1999: 5). Together with domestic actors who also share the common position regarding human rights norms, TANs are believed to have the power to change human rights condition in a country. Considering the importance of TANs in norms socialization theory, I think it is also necessary to see the engagement of NHRI

with TANs. For instance, how the case-study NHRIs are involved in human rights mechanisms in the United Nations, or how they link their works with transnational networks working on the rights of women migrant workers.

“Spiral Model” of Human Rights Change

Risse and Sikkink suggest that human rights change, whereby international human rights norms are socialized into domestic practices, may happen through a five-phase “spiral model” (Risse and Sikkink, 1999: 22-35). The first phase refers to repression and activation of domestic human rights network. On this phase, domestic opposition is too weak to challenge the government due to repression. Transnational advocacy network may also find difficulties in acquiring information regarding human rights condition in the country. The second phase is denial. As the international awareness and dissemination of information on human rights condition in the country are increasing, state refuses to accept the validity of international human rights norms. State even denies that human rights violations have occurred in the country. At this stage, socialization has already started. The third phase is tactical concession. Domestic human rights actors gain more support from international actors (or “transnational advocacy network”). The pressure to the state is now both from the international (“above”) and from the local (“below”). State no longer denies the validity of human rights norms, and they start using “human rights logic and language” in the international and domestic spaces. Some domestic actors may also use human rights claims because it is easier to criticize the government as the state is under the scrutiny of international (human rights) community, although the actors may not believe in it.

The fourth phase is prescriptive status. By this time, actors involved in the process regularly refer to human rights norms, although violating behaviour is still found. Some indicators of “prescriptive status” are the ratification of relevant international human rights conventions; the institutionalization of human rights norms in constitution and domestic laws; the establishment of institutionalized mechanisms to complain on human rights violation; and the engagement of states in dialogues and discursive practices about the validity of human rights norms. The fifth phase is rule-consistent behaviour. After the human rights norms are fully institutionalized, states will continuously try to uphold their claims. And,

with the incessant pressure from the international level and the domestic level, sustainable change of human rights in the country may be achieved.

From the theory on the “spiral model” of human rights change, we can derive some indicators which are necessary to show that socialization of women migrant workers’ rights is already underway. The indicators are: (1) the public awareness about the situation of women migrant workers and their rights; (2) the ratification of relevant conventions, particularly the Migrant Worker’s Convention (ICRMW) and the Women’s Convention (CEDAW); (3) the institutionalization of the norms of women migrant workers’ rights into domestic laws and mechanisms; and (4) the linkage between domestic actors and transnational advocacy network. Therefore, in analyzing the role of NHRIs, I will focus on these variables while simultaneously integrate feminist critiques on human rights and migration.

One critique against Risse and Sikink’s theory is that it shows a linear process with one end-destination (Marsh and Payne, 2007: 668). Marsh and Payne argue that although we can put any country into one of those phases, those countries do not necessarily reach phase five after progressing through earlier stages. Instead, many countries reach the fifth phase through human rights movement from mostly domestic sources after centuries of struggle (Marsh and Payne, 2007: 668).

With this critique, Marsh and Payne shift the target of socialization from merely states to societies at the domestic level. I agree that socialization of human rights norms to the domestic society is equally important with the socialization of human rights norms to states. By socializing the human rights norms to the domestic society, the change in human rights behaviour will be more sustainable because the human rights norms have been ingrained in the society. It means that society will create pressure to the government if the ruling government violates the human rights norms. Further, in democratic society, government leaders are those selected by the people from amongst the people. As argued by Marsh and Payne, if the society has ingrained the human rights norms, the selected leaders will also uphold human rights norms (Marsh and Payne, 2007: 687). If the socialization of human rights norms is taken place particularly at the society level, it is possible that states achieve the fifth phase by evolving from earlier phases. Because I think socialization of human rights norms to the domestic society is an

important means to achieve sustainable behaviour for the protection of women migrant workers' rights, in this study I will also see how NHRIs socialize the norms of women migrant workers' rights to the public, or the so-called the domestic society.

Another critique on Risse and Sikkink's theory is that it starts from the supposition that international human rights norms are valid, and that these norms are worthy of implementation (Marsh and Payne, 2007: 669-670). The expected outcome from the socialization is the acceptance on the universality of the human rights norms; meanwhile, Marsh and Payne argue that human rights are conceived by the Western society (Marsh and Payne, 2007: 670), which may cause problem when it is in contradiction with the non-Western cultures.

I agree with the critique that human rights are constructed by the dominant group, or using Marsh and Payne's term, by "the West". It is assumed that human rights are universally applicable, leaving no space for re-conception of human rights. This is problematic particularly from feminist's perspective because human rights are not only defined by "the West", but also according to a male's perspective. Feminists criticize that human rights are defined by a male perspective, and therefore women's experiences and voices disappear from the definition (Charlesworth, 1995; Bunch, 1995; Agosin, 2001). Further, third world feminists argue that international human rights law has not accommodated the needs of the third world women because the focus on the male/female binary has obscured "economic, social and cultural differences between first and third world women" (Engle, 2005: 48). Ignoring different experiences and views of women will result in the absence of protection for women from rights violations based on sex, gender and other social categories which are often intertwined with gender, such as class, ethnicity or nationality. However, human rights norms as stated in various international conventions or agreements are still useful to work as standards of rights to be enforced, even though they need to be read in critical manner. With that spirit, I will present feminists' contributions in enriching discourses on migration and human rights in the next section.

2.2. Critical Feminist Thinking on Migration and Human Rights

Feminist scholars contribute to migration and human rights studies by putting gender and power relations at the centre of analysis and by creating spaces for women and other marginalized groups to express their experiences and views. In this sub-chapter, I will start by presenting feminists' critiques about current approach in viewing migration which is lack of gender analysis, followed by feminists' critiques on interpretation of human rights norms from male perspective.

2.2.1. Feminism and Migration: Feminization of Migration

Hondagneu-Sotelo and Cranford (1999) criticize that many studies on migration are still using the sex role framework, whereby gender is viewed as a static attribute. According to sex role theory, “[m]en’s and women’s activities are seen as complementary and functional, as serving the greater purpose of social cohesion” (Hondagneu-Sotelo and Cranford, 1999: 107). Sex role theory ignores power relations and social change. Therefore, when migration scholars use sex role theory in understanding migration of women, they will only re-emphasize that women are weighed down by their domestic role while men are benefited from their ties with the public sphere. Hondagneu-Sotelo and Cranford (1999) call for a shifting of framework, from using the sex role framework to the gender relations framework. They argue that power and gender are inseparable and that gender relations is a fluid and changeable system which intersects with other social institutions (Hondagneu-Sotelo and Cranford, 1999: 107).

When it comes to research strategies, Hondagneu-Sotelo and Cranford suggest that migration scholars move forward from the “add and stir” approach. To achieve a gendered understanding of migration, women should not be treated merely as a variable “added” in the research; instead, scholars should use gender as an analytical tool and give more space to women migrants’ experiences. They argue that “[a] gendered analysis would show how social relations between women and men intersect with other institutions, such as the state and the economy, to produce gendered migration patterns” (Hondagneu-Sotelo and Cranford, 1999: 123). With this approach, women are not treated merely as objects of migration study, but instead as subjects of study because they participate actively in telling their experiences.

Another contribution of feminist critiques is the re-conceptualization of the understanding of “feminization of migration”. The concept of “feminization of migration” is often used to show a statistical figure where the share of female migrants is higher than male migrants. It might be the case in the last century; however, the proportion of women migrants have been steady at around 48% of the total international migrant population for over 50 years by now (UNDP, 2009: 25; Zlotnik, 2003), although this share may differ from one country to another (Rothschild, 2008).

Feminist scholars give theoretical contribution to the concept of “feminization of migration” by putting gender at the centre of analysis. By analyzing the relations between power and gender and by putting women migrants’ experiences at the centre, feminist scholars in migration studies investigate the gendered reasons behind the migration of women, emphasize particular vulnerabilities of women—which are related to their gender—during the migration process, and investigate new gender roles taken by women migrants. For instance, feminists argue that opportunities for women to work abroad are increasing as a result of the intertwining of the international division of labour with gender (Perrons, 2004: ch. 4; Brah, 1996: 179). The consequence is that women migrants fill in the most gendered and racialized occupations, such as domestic work, entertainment work, sex work, etc; while, at the same time they also reinforce the traditional gender roles (Rothschild, 2008). With gender stereotypes shadowing these occupations, women migrants are vulnerable to gender-based abuse and violence in the work place, such as rape, sexual harassment, sexual exploitation. Further, women migrant workers may take up new gender roles during the migration process, ranging from gaining respect and having better bargaining position in the family and society, increasing motherhood/care attention to children as a result of feeling “guilty” for leaving, to becoming heads of household.

2.2.2. Feminism and Human Rights

Similar to the proposal of feminist scholars in migration to use gender relations as an element of analysis in understanding women’s experiences in migration, feminist scholars in human rights studies also raise gender analysis in reading

human rights norms. Although human rights norms sound neutral and promote protection for everyone, in reality human rights are not necessarily applicable for women. Feminist scholars point out that human rights are constructed from a male perspective and the voices and life experience of women disappear. Work done by Charlesworth (1994, 1995) for instance shows how human rights are formulated by using the normative male model and therefore exclude women from their scope. Charlesworth re-articulates feminist critiques regarding the public/private dichotomy by saying that international human rights law reinforces the inferior position of women for only recognizing the application of rights in the public sphere. When it comes to human rights of women migrant workers, feminist critiques on public/private dichotomy are important. The rights of women migrant workers are often neglected since they work in the informal sectors, whereby their workplaces are mostly in domestic and private sectors. For example, domestic workers are often denied from accessing their rights because domestic work is not included in labour policies. States are also reluctant in monitoring the workplaces of domestic workers by arguing that the workplace, i.e. employer's home, is a private area.

Other feminist scholars, such as Kaufman and Lindquist (1995), criticize the gender-neutral language used in international human rights laws. By studying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention), Kaufman and Lindquist argue that the usage of gender-neutral language does not necessarily address the most important problem faced by women as the structural disempowerment of women is not recognized (Kaufman and Lindquist, 1995). Contrary to what is expected from the usage of gender-neutral language in international human rights laws, the "neutrality" of the language in practice disregards women's needs and creates discriminatory effect on women (Tomaševski, 1993). Women are also less likely to seek remedies when rights violations happen because they are unaware of their rights or do not know where to seek redress (Tomaševski, 1993: x).

Feminist critiques which question the disappearance of women's perspective from international human rights laws are important contributions to challenge whether or not the international norms of the rights of women migrant workers really touch people they aim to target. The usage of gender-neutral language in international human rights laws for instance does not guarantee equal

application of rights between men and women. As an example, various international human rights instruments recognize the rights of everyone to equal remuneration and favourable conditions of work (UDHR: Art. 23-24; ICESCR: Art. 7; CEDAW: Art. 11(1); ICRMW: Art. 25). In reality, women migrant workers receive less remuneration than male migrant workers, even less than women migrant workers from other nationalities. This is also the case of Indonesian domestic workers in Malaysia who earn half the amount of remuneration received by Filipina domestic workers or migrant workers in other low-paid sectors such as restaurants and factories (HRW, 2004: 61).

As power relations are found in different identities of women migrant workers, power establishes the position of women migrant workers in the societies of employment countries. As women, workers, migrants, persons from different race, and persons from lower class, women migrant workers are situated in subordinated position. This position makes them vulnerable to receive multiple discriminations and violations of rights.

Various international human rights instruments provide protection of women migrant workers' rights to be free from discriminations and violence. However, these instruments are often viewed separately, whereby each instrument provides specific protection of rights, such as economic, social and cultural rights (ICESCR), or civil and political rights (ICCPR), or rights to be free from torture and other degrading treatment (CAT), and protection to specific groups, such as to women (CEDAW), to migrant workers (ICRMW), to children (CRC). These international instruments shall be socialized and utilized as a comprehensive human rights framework to avoid partial rights protection for women migrant workers, and on the other hand, to provide an integral protection. Feminists' proposal of intersectional approach, as I will discuss in the next chapter, is a way to provide an integral protection for women migrant workers by utilizing various international human rights instruments.

2.2.3. Feminism and Intersectionality

In this section, I am going to discuss intersectionality proposed by feminist scholars and relate it with feminist critiques on migration and human rights. The term "intersectionality" was first coined by Crenshaw (1989) in explaining how

race and gender shape the employment experiences of black women. Crenshaw (1991) discusses intersectionality as a way to articulate the interaction between race and gender in the context of violence against women of colour. Crenshaw argues that women of colour are situated at the margins of both the anti-racist politics and feminist politics since the discourses raised by each group tend to deny the intersection of race and gender. As a consequence, when a political reform takes place, the needs of women of colour are unlikely to be met.

In relation to the issue discussed in this thesis, women migrant workers are subordinated in the labour market of the countries of employment because power relations has utilized gender relations, class and nationality to channel them to jobs unwanted by the local labour (dirty, dangerous and demeaning jobs). Nevertheless, intersectionality in the case of violations of women migrant workers' rights has yet received sufficient attention. Consequently, when states talk about the rights of women migrant workers, the rights are not seen by using intersectional approach. The rights of women migrant workers are limited to the rights of migrants and the rights of workers. Feminists criticize this position because women migrant workers are mostly employed in sectors which are not protected by employment sectors, and thus lead to lack of rights protection.

Yuval-Davis (2006) and Satterthwaite (2005) argue that intersectionality has just entered human rights discourses in the United Nations (UN). In the area of human rights, Yuval-Davis argues that intersectional analysis is “introduced to human rights discourse as part of gender mainstreaming”, in order to put different experiences of women into consideration (Yuval-Davis, 2006: 204). However, although intersectional analysis has been central in feminist discourses of international human rights, intersectional analysis has just emerged in discourses in the United Nations (UN) human rights bodies (Yuval-Davis, 2006; Satterthwaite, 2005). For example, General Recommendation on Women Migrant Workers issued by the Committee on the Elimination of Discrimination against Women in 2009 recognizes intersecting forms of discrimination faced by women migrant workers, whereby “[d]iscrimination based on race, ethnicity, cultural particularities, nationality, language, religion or other status may be expressed in sex- and gender-specific ways” (CEDAW/C/2009/WP.1/R: para. 14).

In the context of norms socialization of women migrant workers' rights, raising a discourse on intersectionality is crucial to emphasize that women

migrant workers experience multiple discrimination and violence due to their subordinated position in societies. I discuss further how NHRIs can raise intersectionality to promote a comprehensive human rights protection for women migrant workers.

3. Methodology

In this chapter, I elaborate the qualitative methodology I use in the research. First, I explain what is meant by qualitative research, and particularly feminist qualitative research. Then, I explain why I choose comparative case studies and discourse analysis as my research methods. Lastly, I present methods of data collection of the thesis, i.e. semi-structured interview and document analysis.

3.1. Feminist Qualitative Research

In this study, I do a feminist qualitative research. According to Mason, “qualitative research is concerned with how the social world is interpreted, understood, experienced, produced or constituted”, and the aim of such a research is “to produce rounded and contextual understandings on the basis of rich, nuanced and detailed data” (Mason, 2002: 3). In this study, I am interested in understanding how national human rights institution (NHRI) influences behaviour and policies of states towards women migrant workers through the process of socialization of women migrant workers’ rights.

Marshall and Rossman argue that qualitative research is “pragmatic, interpretive, and grounded in the lived experiences of people” (Marshall and Rossman, 2011: 2). As one of the strands in qualitative research (see Marshall and Rossman, 1999: 2-8), feminist research puts the lives and experiences of women and other marginalized groups at the centre of study (Hesse-Biber, 2007: 3). Similarly, Ramazanoğlu says that feminist methodology is “*shaped by feminist theory, politics and ethics and grounded in women’s experience*” (Ramazanoğlu, 2002: 16; italics in origin).

The study adopts a feminist analysis, which can be broken down into two ways. First, I use gender as the central element in analyzing the regional trend of migration. Theoretical discussion about critical feminist thinking in migration and human rights is the tool for doing the analysis. I will also analyze how gender has

intersected with other social categories which resulted in gender-specific vulnerabilities faced by women migrant workers. Second, I examine whether the two case-study NHRIs have promoted a gendered discourse in analyzing migration of women workers and in socializing the norms.

3.2. Research Methods: Discourse Analysis in A Comparative Case Study

3.2.1. Comparative Case Study

This study compares the strategy of two NHRIs—the National Commission on Human Rights of Indonesia (Komnas HAM) and the Malaysian National Human Rights Commission (SUHAKAM)—in socializing the norms of women migrant workers' rights. A *case study* is a study of one or a few cases with the purpose of shedding light to a larger set of cases, of giving insight to an issue (Gerring, 2007: 20; Stake, 1994: 237). A *comparative case study* is “the systematic comparison of two or more data points (“cases”) obtained through use of the case study method” (Kaarbo and Beasley, 1999: 372). Doing a comparative case study means focusing attention on to few elements of the selected cases to be compared.

According to Kaarbo and Beasley (1999: 374), a comparative case study is carried out by using theories or set of hypotheses to direct the examination of the cases. In this study, I use Risse and Sikkink's theory on the socialization of human rights norms enriched with gender perspective as the tool for analysis. Based on the theoretical discussion in chapter 2, variables I use to compare are the discursive and practical strategy adopted by NHRIs to: (1) increase awareness on the rights of women migrant workers; (2) promote the ratification of relevant international conventions; (3) institutionalize the international norms into national laws; and (4) engage transnational advocacy network. The underlying variable in analyzing the role is gender-sensitivity of NHRIs in socializing the norms.

When conducting a comparative case study, firstly a researcher has to select the cases to be studied. Based on the issue and Risse and Sikkink's theory on norms socialization, the criteria I use to select the cases are: (1) that the NHRI is situated in a country with significant number of women migrant workers; and (2) that the NHRI is situated in a country where the influence of transnational actors

is significant while at the same time the government is open for advocacy NHRI. In addition, Diesing proposes that one way to select cases, while at the same time ensuring control over their comparability, is by using principle of geographical contiguity since the supposition is that they will have many similarities (Diesing, 1971: 187).

Based on these criteria, I decided to study the National Commission on Human Rights of Indonesia (Komnas HAM) and the Malaysian National Human Rights Commission (SUHAKAM). First, both commissions are located in countries with dominant migration issue. Komnas HAM is situated in Indonesia, which is a source country of women migrant workers. Meanwhile, SUHAKAM is situated in Malaysia, which is a destination country of women migrant workers. Second, both countries are in the democratizing phase, after long-term leadership under authoritarian regimes of Suharto and Mahathir Mohamad, whereby transnational actors still exist to “support” new governments while national advocacy networks are gaining more space. Third, Indonesia and Malaysia are neighbouring countries. According to Diesing’s (1971) theory of geographical contiguity, it is assumed that the two NHRIs based there have many similarities.

In addition, SUHAKAM has been trusted by the Southeast Asian NHRI Forum (SEANF) to lead their joint cooperation project on migrant workers. With such a responsibility, SUHAKAM is assumed to have more initiatives in comparison with other NHRIs in the region in promoting and protecting the rights of women migrant workers. Moreover, as an Indonesian working on the issue of women migrant workers’ rights for some time now, I have extensive knowledge about the situation of Indonesian women migrant workers and I have an established network of contacts which is necessary for conducting the study.

3.2.2. Discourse Analysis

One important aspect in the process of socialization of international human rights norms is the discourse dynamics between actors. Therefore, in this study it is also important in this study to analyze the discourses found in the socialization process. Jørgensen and Phillips define ‘discourse’ as “*a particular way of talking about and understanding the world (or an aspect of the world)*” (Jørgensen and Phillips, 2002: 1; italics in original). The social world is not value-free and the

value itself is instable; when doing discourse, we are taking part in creating and changing it.

In the process of socialization of international human rights norms, the hegemonic discourse is that states should comply with human rights norms—including protecting the rights of women migrant workers. This is the discourse that is assumed to be upheld by NHRIs when they socialize international norms on women migrant workers. However, Laclau and Mouffe argue that discourse is always changing as a result of being in contact with other discourses (Jørgensen and Phillips, 2002: 6-7). Different discourses—representing different ways of talking and understanding—are in constant struggles to reach hegemony, to fix the meaning of a language, to fix the meaning of a “value”.

One discourse challenging the human rights discourse is a discourse by feminists or migrant worker advocacy groups which criticize the elimination of women migrant workers’ voices and experiences. Critical discourse analysts also argue that not everyone has the access to create a change through discourse. Groups with less access to material and symbolic power have lesser opportunities to change the existing structure (Jørgensen and Phillips, 2002: 55). Women migrant workers are often in a position of having no access to sound their experiences. Being foreigners in the country of employment, their rights are limited by the state. Confined in private homes, women migrant domestic workers do not have access to report exploitative situation they face. Therefore, the role of NHRI to sound their experiences and voices becomes important.

In the thesis, I discuss how Komnas HAM and SUHAKAM shape their discourse on the norms of women migrant workers’ rights at the national and international level. I examine whether these two NHRIs have created a discourse which puts women migrant workers’ experiences and voices are at the centre.

3.3. Data Collection: Semi-structured Interviews and Review of Document

For this study, I conduct semi-structured interview with nine representatives of Komnas HAM, SUHAKAM, and women’s organizations, including one activist on women migrant workers’ rights. In addition, I review relevant papers and

publications produced by the commissions concerning the human rights of women migrant workers. Each set of data is discussed in detail in the two sections below.

3.3.1. Semi-structured Interviews

Marshall and Rossman quote Kvale and Brinkman's opinion on interviewing as the following: "An interview is literally an *inter view*, an inter change of views between two persons" (Kvale and Brinkman, 2009: 2 cited in Marshall and Rossman, 2011: 145). It suggests that the views of the interviewees are important. Therefore, I put interviewees' views as much as necessary.

Seidman (1998: 9) says that interviews can be carried out in many ways, from "tightly structured, survey interview with present, standardized, normally closed questions" to "open-ended, apparently unstructured... friendly conversations". Doing a structured interview means that the researcher prepares a limited set of questions to ask to respondents. However, this method usually also limits the information gathered from the interview. On the other extreme, an open-ended interview might cause the respondents to give responses which deviate from the research topic. Therefore, a semi-structured interview is the most suitable approach to collect data in this study. In semi-structured interview, the researcher has already prepared a framework of themes and put it into groups of topics and questions to be asked to respondents according to their background and context. With such flexible characteristic, I can develop new questions during the interview as a response to what the interviewee says or a follow-up of the interviewee's answers. Similarly, the interviewees can add other relevant matters that they consider important—therefore, in this study, the interviewees are not just respondents, but also informants.

The topics I ask to the interviewees are: (1) the role of NHRIs in increasing public awareness and shaping gendered discourses on women migrant workers' rights; (2) the role of NHRI in promoting the ratification of relevant conventions, particularly Migrant Workers Convention 1990; (3) the role of NHRI in institutionalizing the norms into national laws and mechanisms; and (4) the interaction between NHRI with transnational advocacy networks.

The selection of interviewees is a crucial aspect of the interview method. For this study, I select the informants through purposeful-sampling technique. The respondents I choose are those who are responsible for, work on, or have expertise

on (women) migrant workers issues. Respondents are commissioners and staffs of Komnas HAM and SUHAKAM responsible for migrant workers issues, some representatives of women's organizations, and an activist working on women issues and/or migrant workers issues. In this way, I interview both the "elites" and the staffs/workers. Marshall and Rossman define that "elite" individuals for interviewing are "those considered to be influential, prominent, and/or well-informed people in an organization or community; they are selected for interviews on the basis of their expertise..." (Marshall and Rossman, 1999: 113). From interviewing the "elites", I gain an overall view of the issue and ideational inputs in relation with their scope of expertise. From the staffs/workers, I get an understanding of the practical challenges which sometimes come up when socializing the norms of women migrant workers' rights.

Due to the limited time and resources, I conduct the interviews via telephone. Ideally, interviews are done by meeting the respondents in their natural settings. However, telephone interview is the second best option. Telephone interview works like face-to-face interview; the difference is that I as the researcher cannot observe the respondents in their natural settings. Unlike face-to-face interview, the researcher needs more effort to gain trust from the respondents via telephone interview. All interviews are carried out either in English or in Indonesian.

3.3.2. Review of Document

Reviewing documents is a good method to get hold of the background and context of the research issue. Documents are also good sources to complement data yielded from interviewing (Marshall and Rossman, 1999: 116). The documents I use for analyzing the role of NHRI in socializing the norms of women migrant workers' rights are publication materials, papers, annual and thematic reports, and submissions produced by Komnas HAM and SUHAKAM with regard to women migrant workers' rights. To complement the data, I also use reports and articles produced by academics and NGOs with regard to Komnas HAM and SUHAKAM's work on women migrant workers issues.

Although documents can portray the values and beliefs of the participants, Marshall and Rossman remind us that documents should be read with scepticism

just like historians “search for “truth” in old texts” (Marshall and Rossman, 1999: 116-117). Similarly, Gannon and Davies argue that text constitutes of “certain truths and exclusive of others, and thus must always be placed under interrogation” (Gannon and Davies, 2007: 88). Therefore, in studying the documents, I deconstruct the text to understand the meaning and values in it. Further, I gain an advantage from doing such sceptic content analysis since I am also doing discourse analysis; discourse particularly at the ideational level is often found in documents.

4. Women Migrant Workers: Regional Trend and International Norms

In this conceptual chapter, I explain briefly the regional trend of the migration of women workers in Southeast Asia. Since my empirical focus is on women migrant workers' issues in Indonesia and Malaysia, the data I present here are mostly data from Indonesia and Malaysia. Later in this chapter, I also discuss briefly the norms of women migrant workers' rights according to various international human rights instruments.

4.1. The Migration Trends in Southeast Asia

A study on migration in East and Southeast Asia by Piper (2004) concludes that one of the migration trends in Asia is regionalization. Countries in Asia such as Malaysia, Singapore, Hong Kong and Japan have been gaining popularity as destination countries of migrant workers (Piper, 2004; Human Rights Watch, 2004). As an example, Malaysia is the second top destination country for Indonesian migrant workers, after Saudi Arabia (Department of Manpower and Transmigration of the Republic of Indonesia, webpage; World Bank, 2006).

Economic growth in these Asian countries is one of the reasons behind the trend. With the growing economy, these countries rely on workers from neighbouring countries such as Indonesia, the Philippines, and Thailand to fill labour demands which cannot be met by their domestic labour force. According to the data gathered by FIDH and SUARAM from various sources, the total of both legal and illegal migrant workers is about 30% to 50% of the total work force in Malaysia (FIDH-SUARAM, 2008: 6). The significant share of migrants in the labour force shows that Malaysia depends on migrant workers in its economy. Data collected by SUHAKAM show that migrant workers are mostly employed in manufacturing, agriculture, domestic work, construction, service and plantation (SUHAKAM, 2008c). Piper argues that the consequence of the regionalization trend is borne by migrant workers as wages have been lowered due to tight

competition, recruitment fees have increased due to commercialization of migration, and migrant welfares have been limited by labour migration policies (Piper, 2004: 74-76).

Due to increasing participation of women in destination countries in the national labour market, the job demands are mostly for women migrants. i.e. to fill in gendered forms of employment. Consequently, feminization of migration has emerged in the region. Women migrants from countries like Indonesia and the Philippines have outnumbered their male counterparts. For instance, between 2007-2009 Indonesian women migrant workers¹ constitute about 75% of the total migrant workers (Department of Manpower and Transmigration of the Republic of Indonesia, webpage). It shows that women migrate as independent workers.

Feminization of migration is not only in terms of number, but also in types of work these migrants perform. The statistic of Indonesian migrant workers (Department of Manpower and Transmigration of the Republic of Indonesia, webpage) shows that 95% of migrant workers employed in informal sectors are women². Piper's study shows that most of women migrants in East and Southeast Asia work as unskilled domestic workers under short-term contracts or as entertainers or sex workers, either willingly or being trafficked (Piper, 2004: 76). These works are available for women migrants because of the domesticity and femininity characters of the works, which is associated with the "nature" of women. Here, we can see that gender has been used to justify the preference of migrant workers in the labour market of countries of employment.

Piper (2004) also discusses about preference of women migrant workers of certain nationality, ethnicity, class and social capital to meet the labour demands. According to Piper, a new stratification has emerged, "whereby women are ranked as a group in the demand and wage scale according to nationality, ethnicity, class, and social capital", to meet the demands of workers who are "less expensive and more docile (less "rights" conscious)" (Piper, 2004: 77). As an example, the average salaries of Indonesian women migrant domestic workers in

¹ It should be noted that the data presented here are only data of migrant workers who migrate through formal procedures, while the number of migrant workers through illegal means is almost twice this number.

² The statistic does not elaborate further the forms of work considered as "informal". The World Bank (2006) also noted that most Indonesian women migrant workers are employed as housemaids or in agricultural and industrial sectors, such as daily labours, caregivers to the elderly, shop assistants and waitresses.

Malaysia are about 400MYR (± 132 USD) per month, in comparison with 750RM (± 248 USD) for women migrant domestic workers from the Philippines; the reason behind the wage gap is said to be due to the Filipina workers' proficiency in English and higher level of skills and education (Elias, 2007: 8). The preference of women migrant workers of certain groups—whether based on nationality, ethnicity or class—shows that gender has intersected with race, ethnicity, nationality, and class to fulfil the labour demands. The result is employment of women migrant workers of certain nationality, ethnicity and class in the worst work conditions.

4.2. Gender-specific Vulnerabilities

As we have studied in section 4.1, women migrant workers are usually employed in gendered types of work, such as domestic work and entertainment work. In these jobs, women migrant workers face specific vulnerabilities due to their gender and due to the gendered character of their jobs. Some gender-specific vulnerabilities faced by women migrant workers are as the following.

1. *Stratification in labour market*

Labour market in the country of migrant employment is segregated based on nationality, gender, ethnicity, class, and social capital. Various elements have intersected with each other—power, gender, nationality, ethnicity, class—to create stratified labour market for women migrant workers which has an implication on employers' preference over workers as well as workers' wages and benefits. Women migrant workers who come from poor families in rural villages without skill, education or knowledge about their rights are at the bottom of the stratification. They are particularly in vulnerable situation since they do not have the power to change the structural subordination in the global economy or the option to choose for better work condition.

2. *Exploitative work terms and condition*

Working in the lowest stratification of employment, women migrant workers are poorly paid, work for long hours, do not have sufficient rest

time or day off, and do not receive any welfare benefits particularly in times of unemployment and sickness. Human Rights Watch has documented the exploitative work condition of Indonesian women migrant domestic workers in Malaysia. They work at their employers' beck and call, burdened with hefty workload, with low payment and no benefit (HRW, 2004). Since wage is left to the market, Indonesian domestic workers are among the poorly paid workers in Malaysia (HRW, 2004: 61). In addition, domestic work has not been recognized as work in most labour laws, e.g. Malaysian Employment Act of 1955.

The underlying problem of exploitative work terms and condition of women migrant workers is the enduring understanding that domestic work is women's work. Women are expected to perform domestic work, ranging from preparing meals, cleaning house, to taking care of elderly and children. When a woman migrant is employed in the house, she is viewed as a substitution of the woman in the house who supposedly does the domestic work. Without recognition of domestic workers as workers, the work conditions of migrant domestic workers are unlikely to improve.

3. *Limitation of movement, limitation of communication*

Employers of women migrant domestic workers often confine the workers at home because they fear that the workers will escape, or will be involved with local men and get pregnant (HRW, 2004: 41-42), or that the workers will learn about their rights (Elias, 2007: 19). In Malaysia, the national law does not allow migrant workers to change employers and allows employers to confiscate migrant workers passport for safety reasons. With these provisions, women migrant domestic workers are difficult to run from exploitative work conditions or abusive situation. If they leave the employers' house, they are vulnerable to be detained and deported for not having legal documents. Further, employers often limit women migrant workers from contacting their families or relatives (HRW, 2004: 40-42). Domestic workers even do not have private space in the house to make calls to their families back home.

4. *Gender-based abuse and violence*

Women migrant workers are vulnerable to psychological, physical and sexual violence due to their gender. According to the interviews done by Human Rights Watch with Indonesian domestic workers in Malaysia, psychological abuse are usually in form of harsh insults, threats and belittlement; physical abuse range from punching, kicking to severe beatings; and sexual violence range from groping and fondling to recurring rape (HRW, 2004: 46-48). Even when they try to report the sexual violence to female employers, they receive hostile responses (HRW, 2004: 49). Confined in the employers' houses without documents in their hands, women migrant domestic workers have no means to run away from the situation or to report the case to the authority.

5. *Trafficking in persons, forced labour*

Trafficking in persons is related with migrant workers issue since most of the victims were promised to be employed as migrant workers in foreign countries. Trafficking is highly gendered issue since the victims are mostly women, and they end up working in prostitution or entertainment work, or doing forced labour in shops or restaurants without being paid. Human Rights Watch reported that trafficked women and girls face violence and endure poor living condition (HRW, 2004: 51).

6. *Prohibition of family reunification or creating diaspora in the country of employment*

Women migrant workers are viewed merely from economic perspective, as part of the labour force. As a result, the socio-cultural aspects of women migrant workers are ignored. Studies show that migration policies of countries of employment in East and Southeast Asia can be broadly characterized as: (1) limiting the number of migration; (2) limiting the duration of migrants' residence and employment; and (3) preventing integration of migrants into the domestic society (Piper, 2004: 75; Yamanaka and Piper, 2005: 14). With these characters, migration policies often leave only little space for family reunification and for long-term settlement. As an example, the Government of Malaysia does not allow women migrant domestic workers to be pregnant, to get married with the locals, and to bring family members to the country (MOU Indonesia-

Malaysia, 2006). As the work contract for unskilled migrant workers is temporary, the Government of Malaysia limits the possibility of women migrant workers, mostly are unskilled, in settling down in the country.

4.3. What are the Norms for Protecting Women Migrant Workers?

Women migrant workers are supposedly protected from gender-specific violations of rights which have been elaborated above. The norm to protect the rights of women migrant workers are founded in various international human rights instruments. According to Risse and Sikkink, norms are “collective expectations about proper behaviour for a given identity” (Risse and Sikkink, 1999: 7). As part of the international community which upholds human rights, states are expected to protect the rights of women migrant workers regardless their migration status.

More specific norms are found in various international human rights instruments. The Universal Declaration of Human Rights (UDHR), which serves as a basic reference for other human rights instruments, lays the fundamental rights for *everyone* in every aspect. The International Covenant on the Civil and Political Rights (ICCPR), which lists civil and political rights for all persons within the State’s territory or jurisdiction—without discrimination between the nationals and non-nationals, except for certain political rights. The International Covenant on the Economic, Social and Cultural Rights (ICESCR) guarantees the rights of all individuals among others to work, just and favourable conditions, adequate standard of living, and health, which shall be protected by states regardless of their citizenship.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW/Migrant Workers Convention) guarantees the rights of migrants regardless of their legal status to equal treatment and working condition. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defines discrimination against women and encourages states to take measures to eliminate discrimination against women. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits discrimination based on race, colour, nationality or ethnicity and only allows distinction between national and non-nationals if it does not result in discrimination against particular group. The

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits torture and ill-treatment. The UN Convention against Transnational Organized Crime and two of its protocols which are related with migrants, i.e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines trafficking in persons and requires states to prevent trafficking in persons and to protect the victims, and Protocol against the Smuggling of Migrants by Land, Sea and Air requires states to prevent and combat smuggling of migrants.

So far, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is the most comprehensive convention which guarantees the rights of migrant workers and their families regardless their legal status, although additional rights are reserved to those with legal status. Nevertheless, ICRMW only receives limited support from states. Only a few states have ratified the convention and all of them are origin countries of migrant workers (see UN webpage). Further, ICRMW is criticized for not recognizing gender-specific vulnerabilities in gendered occupations (Piper, 2004: 82).

Satterthwaite suggests an intersectional approach to utilize various international human rights treaties to provide a comprehensive human rights protection for women migrant workers (Satterthwaite, 2005). The ratification of an international convention does not guarantee that the state has institutionalized the norms at the domestic level. Mechanisms such as regular reporting on the implementation of ratified conventions are means to monitor the improvement of human rights situation in the country. National human rights institutions here play an important role to promote the institutionalization of the convention at the domestic level, to build human rights-oriented behaviour, and to monitor the implementation of human rights treaties by the states.

5. National Human Rights Institutions on the Move

Here, I compare strategies and works of Komnas HAM and SUHAKAM in socializing the norm of women migrant workers' rights. I start by presenting what the responsibilities of NHRIs according to international standard are. Then, I give empirical comparisons on the mandate of Komnas HAM and SUHAKAM and their strategies on migrant workers' issues.

Sections 5.2 to 5.7 aim to give empirical comparative data on work carried out by Komnas HAM and SUHAKAM in socializing the norms of women migrant workers' rights. In developing these sections, I am guided by the following questions:

- What role have these NHRIs played in socializing the norm of women migrant workers' rights?
- To what extent have these NHRIs adopted a gender perspective?
- How these NHRIs link with transnational advocacy networks on women migrant workers' rights?
- What can be improved to increase the role of NHRIs in socializing the norms of women migrant workers?

5.1. The Mandate of National Human Rights Institutions

Adopted by the UN General Assembly through Resolution No. 48/134 of 20 December 1993, the Principles relating to the Status of National Human Rights Institutions (the Paris Principles) work as guidelines for the establishment of a national human rights institution (NHRI). The Paris Principles gives comprehensive guidelines regarding the responsibilities of NHRIs in areas such as raising awareness on human rights conditions, promoting ratification of international conventions, and ensuring implementation of human rights norms

(Paris Principles, 1993: Annex). NHRIs should also have the authority to receive and solve cases on alleged human rights violations. In particular, the Paris Principles require NHRIs to promote and protect the rights of vulnerable groups, such as women and migrant workers (Paris Principles, 1993: Annex).

Adherence to the Paris Principles means that NHRIs takes on the role as a socializer of international norms of women migrant workers' rights. Based on the Paris Principles, I would emphasize the following strategies of socialization: Increasing public awareness on human rights through campaigns and thematic researches on women migrant workers; encouraging states to ratify relevant human rights conventions, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW/Migrant Workers Convention) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/Women Convention); providing recommendations to improve the protection of women migrant workers' rights; cooperating with transnational advocacy networks. I will return to these points, together with the main guidelines of the principles, in the following sub-chapters.

5.1.1. The National Commission on Human Rights of Indonesia (Komnas HAM): Mandate and Strategy on Migrant Workers' Issues

The National Commission on Human Rights of Indonesia (Komnas HAM) was established under Decree No. 50 by President Suharto in 1993, just one week before the World Conference on Human Rights in Vienna. Jetschke argues that the establishment of the Commission was merely an instrumental gesture made by the Government to avoid potential international critics in the upcoming conference, particularly since the information regarding human rights situation in Indonesia have been increasingly accessible to the international community (Jetschke, 1999: 157-158). Along with the reformation which took place since 1998, the existence of Komnas HAM has been strengthened with the enactment of Law No. 39 of 1999 on Human Rights.

According to the law, Komnas HAM has functions "to study, research, disseminate, monitor and mediate human rights issues" (Law No. 39 of 1999, Art. 76). Article 89 of the Law gives further elaboration on Komnas HAM's

responsibilities and authorities which are in line with the Paris Principles (Law No. 39 of 1999, Art. 89). Law No. 26 of 2000 on Human Rights Court gives a breakthrough for the extension of Komnas HAM's mandate. According to the Law, the Commission has the authority to inquire into alleged serious human rights violations (Law No. 26 of 2000, Art. 18). However, human rights violations defined as serious human rights violations are limited to genocide crime and crimes against humanity (Law No. 26 of 2000, Art. 7).

Strategy on Migrant Workers' Issues

The strategy of Komnas HAM in migrant workers issue has continuously changed over the time. Prior to 2007, the issue of migrant workers was handled by the Sub-commission of Protection of Vulnerable Groups³, which conduct all range of work according to the mandate in Law No. 39 of 1999—from research, advocacy to training. After the Commissioners for 2007-2012 were elected, Komnas HAM changed its organization into four sub-commissions to be in line with its functions as stipulated in Law No. 39 of 1999: the Sub-commission on Study and Research; the Sub-commission on Education and Information; the Sub-commission on Monitoring; and the Sub-commission on Mediation. Under the new structure, migrant workers' issues are managed by the Migrant Workers' Team, which comprises of representatives of the four sub-commissions. The Team was mandated for two years by the Plenary Meeting to carry out works on migrant workers' issues. As the Team reached the end of their work duration in 2010, the Plenary Meeting decided that migrant workers' issues are to be handled by the Sub-commission on Education and Information since 2011 onwards (Interview with Yulianti).

5.1.2. The Human Rights Commission of Malaysia (SUHAKAM): Mandate and Strategy on Migrant Workers' Issues

The Human Rights Commission of Malaysia (SUHAKAM) was established by the Parliament in 1999 under the Human Rights Commission of Malaysia Act 1999, Act 597. The establishment of SUHAKAM was influenced by various

factors, among others the involvement of Malaysia in the United Nations Commission on Human Rights, the growing recognition on the universality of human rights, the changing in the Malaysian politics towards democracy, as well as the experience of the establishment of NHRIs in the region, including in Indonesia (SUHAKAM, webpage 1). However, the establishment should be scrutinized, whether it is also merely an instrumental gesture from the Government, particularly since at the beginning of its establishment SUHAKAM was placed under the Ministry of Foreign Affairs—and now under the Prime Minister’s Department.

Act 597 states that functions of SUHAKAM are to promote awareness on human rights; to advise and assist the Government in formulating legislation and administrative procedures and recommend necessary measures; to recommend the Government regarding subscription or accession of treaties or international instruments on human rights; and to inquire, upon complaints or by its own motion, human rights infringements (Act 597, Section 4). One breakthrough in SUHAKAM’s mandate is that the Commission has the authority to visit detention places, increasing their ability to monitor the situation (Act 597, Section 4(2) and 4(3)).

Strategies on Migrant Workers’ Issues

SUHAKAM structures its organization into four groups: (1) Education and Promotion Working Group; (2) Complaints and Inquiries Working Group; (3) Law Reform and International Treaties Working Group; (4) Economic, Social and Cultural Rights Working Group. In addition, SUHAKAM has a Committee on International Issues and Cooperation, which maintains SUHAKAM’s networks at the regional and international levels. According to Nayagam, Commissioner of SUHAKAM, the strategy of SUHAKAM in dealing with migrant workers issue can be divided into three main concerns, i.e. complaints mechanism, education, and business and human rights (Interview with Nayagam). Based on ratified human rights conventions⁴, SUHAKAM works to ensure that the Government

³ In addition of migrant workers, the Sub-commission was also responsible for the promotion and protection of the rights of women, children, disabled persons, elderly persons, internally displaced persons, poor persons, peasants, minority groups and indigenous people.

⁴ From nine core international human rights conventions, Malaysia has only ratified three conventions, i.e. the Convention on the Elimination of All Forms of Discrimination against

protects the rights of migrant workers, including providing remedies such as lawyers and court process in case of rights violations, and that employers respect migrant workers' rights. "So SUHAKAM becomes a link to them [women migrant workers] and the Government, becomes the link between them and the corporations [their employers]," said Nayagam, Commissioner of SUHAKAM (Interview with Nayagam).

5.2. Data Collection and Dissemination of Information on the Situation of Women Migrant Workers

In Risse and Sikkink's (1999) theory on the socialization of international human rights norms, dissemination of information on human rights situation in a country plays an important role in activating advocacy networks. In the first and second phases, transnational advocacy networks start the socialization of international human rights norms after collecting data on human rights situation in the country (Risse and Sikkink, 1999: 22-24). Data on the situation of women migrant workers is a strong set of proof to be presented to states to urge the protection of women migrant workers' rights. In this section, I firstly compare the strategy of Komnas HAM and SUHAKAM to collect and disseminate data on women migrant workers.

5.2.1. Data Collection and Dissemination of Information by Komnas HAM

One strategy of Komnas HAM to collect data on the situation of migrant workers is to conduct research or monitoring on migrant workers' issues. During their work period (2008-2010), the Migrant Workers' Team monitored areas of migrant origin (the regions of Cirebon and Lombok), border area (Nunukan) and points of departure (Soekarno Hatta Airport in Jakarta and Juanda Airport in Surabaya). The monitoring was conducted partly in cooperation with the National Commission on Violence Against Women (Komnas Perempuan). When visited the areas, the team of Komnas HAM gathered the data from families of migrant

Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the

workers, organizations working on migrant workers' issues, recruitment agencies and middle-men (Interview with Yulianti). The monitoring report has yet finalized so it has not been accessible for public. Informant from Komnas Perempuan nevertheless regretted the failure of Komnas HAM in integrating intersectionality in the analysis. According to Chuzaifah, Chairperson of Komnas Perempuan:

When we tried to combine perspective [in analyzing joint monitoring data], Komnas HAM wanted to emphasize on trafficking because it is closely related to migrant workers' issues. But Komnas Perempuan... wanted to focus on the issue of migrant workers. Because migrants' issues are simplified to trafficking issues... For migrant workers' movement, first we want an acknowledgement that they are workers, migrants. Second, the protection for them should also protection as migrants, as workers. So, trafficking is a part [of the issues]... (Interview with Chuzaifah)

Another source of data on violations of women migrant workers' rights is the complaints of alleged rights violations received by Komnas HAM. According to its annual report of 2006, the number of complaints on migrant workers' rights and peasants is the highest in comparison to other vulnerable groups (Komnas HAM, 2006: 67). In 2008, Komnas HAM reported that the Commission received 128 cases of migrant workers in the previous year, where the cases vary from unpaid wages to violence and rape (Komnas HAM, 2008: para. 54).

Komnas HAM disseminates the data on the situation of Indonesian women migrant workers and violations of their rights through annual reports and submissions or shadow reports prepared by the Commission to international forum. In annual reports, the Commission regularly reports alleged human rights complaints, including cases of migrant workers, which they receive. The Commission also highlights some issues in its submissions to international forum or in shadow reports to the United Nations (UN) treaty bodies; for instance, submissions of Komnas HAM to the Committee Against Torture (Komnas HAM, 2008: para. 54-55), and submissions of Komnas HAM with regard to the Universal Periodic Review (UPR) of Indonesia (Komnas HAM, 2007: para. 14).

5.2.2. Data Collection and Dissemination of Information by SUHAKAM

Similar to Komnas HAM, SUHAKAM is also mandated to carry out research and study on human rights issues, including women migrant workers. Some of the research they have conducted is on trafficking in women and children (SUHAKAM, 2004); migrant workers and undocumented persons (SUHAKAM, 2008c); arrest and detention of migrants (SUHAKAM, 2008a; SUHAKAM, 2008b); and the rights of women migrant workers, as part of their report on the status of women's rights in Malaysia (SUHAKAM, forthcoming).

As mandated by Human Rights Commission Act 1999, Act 597, SUHAKAM also has the authority to receive complaints from any group or individual, including migrant workers. This is another source of data on violations of women migrant workers' rights. According to Hamzah, Complaints and Inquiries Working Group of SUHAKAM, complaints related migrant workers are confiscation of passport, non-payment of salary, hazard working condition, bad treatment, and violations of other clauses in Employment Act (Interview with Hamzah).

However, the Commission does not segregate complaints data based on sex, and therefore it is difficult to trace whether violations of migrant workers' rights are related to gender or not. According to Hamzah, a gender-specific complaint received by the Commission so far is on the restriction of the right of a woman migrant worker to reunify with her spouse (Interview with Hamzah).

SUHAKAM's authority to visit detention places is also important to gather data because undocumented migrant workers are vulnerable to be raided and detained by immigration officers⁵ and Volunteers of Malaysian People (RELA)⁶ at any time. Problems with regard to confiscation, falsification of migrant workers' documents and poor conditions in detention places have been raised by

⁵ Section 27 of Malaysian Immigration Act authorizes an immigration officer who doubts the right of someone to enter Malaysia to send the person to an immigration detention centre and the person "shall remain there until permitted to leave by the officer" (Immigration Act 1959/63: section 27).

⁶ The Government of Malaysia established RELA in 1972 based on a state of emergency. Since 2005, RELA has been given authority to curb illegal migrants in Malaysia, including to arrest without warrant based on personal belief that someone is an illegal immigrant (FIDH-SUARAM, 2008: 11). There have been reports that RELA volunteers have been abusing their power by using excessive force in carrying out their work, including putting evidence to justify the arrest of migrants (UNDP, 2009: 62; Amnesty International Malaysia, 2008).

many parties, such as Tenaganita⁷, Voice of the Malaysian People (SUARAM) and International Federation of Human Rights (FIDH) (FIDH-SUARAM, 2008), including SUHAKAM (SUHAKAM, 2008a; SUHAKAM, 2008b). Some of the problem they raise are specific needs of detained women migrants, such as reunification of detainees and their families, availability of medical access, provision of diapers and baby formula for mothers with infants, and provision of sanitary pads (SUHAKAM, 2008a; FIDH-SUARAM, 2008).

SUHAKAM has raised the issues of migrant workers' rights as part of vulnerable groups in its annual reports, although not necessarily focusing on women migrant workers. In its Annual Report of 2010, the Commission even put the issue of migrant workers' rights as one of the key issues (SUHAKAM, 2010: 17-18). SUHAKAM has also included migrant workers' issues in other reports; for instance, in the report on the status of women's rights in Malaysia (SUHAKAM, forthcoming), or in the report on trafficking in women and children in Malaysia (SUHAKAM, 2004). In addition, SUHAKAM regularly reports the number of complaints they received, including cases of migrant workers, in their annual report. Visits conducted by the Commission to prisons and immigration detention centres are also documented in monitoring reports (see for instance SUHAKAM, 2008a).

In comparison to Komnas HAM, SUHAKAM is not as bold as its Indonesian counterpart in raising important migrant workers' issues in regional and international forum. While Komnas HAM raises violations of women migrant workers' rights in their reports or submissions to regional and international forum, the issues raised by SUHAKAM are limited to activities done by the Commission. In a report evaluating SUHAKAM's performance after 5 years of establishment published by ERA Consumer Malaysia, Kang similarly argues that interventions done by SUHAKAM at the UN Commission on Human Rights and at the Asia Pacific Forum of NHRIs (APF) are "narrative and technocratic", focusing on "its activities and outreach, and less on articulating substantive controversial issues" (Kang, 2006: 10-14). One empirical example can be read in Appendix 1, where I

⁷ The Memorandum published by Tenaganita in 1995 which documented abuses against undocumented migrant workers in detention places—from sexual exploitation of women, beatings, malnutrition to poor medical care—based on their interviews with 300 former detainees led the Director of the organization, Irene Fernandez, faced long unfair trial on charges of

compare parts of Komnas HAM and SUHAKAM's reports respectively related with migrant workers' issues to the Asia Pacific Forum of NHRIs (APF).

One improvement of the substance of submission shall be noted in SUHAKAM's submission in response to the initial findings and recommendations of the UN Working Group on Arbitrary Detention. In the submission, the Commission briefly raises about the poor conditions in immigration detention centres and its recommendations to the Government to improve the conditions (A/HRC/16/NI/2). The Commission also calls the Government "to identify and separate trafficking in persons among migrant workers" (*ibid.*).

5.3. Public Awareness on Women Migrant Workers' Rights

In Risse and Sikkink's (1999) theory on the socialization of international human rights norms, raising awareness is important to shape human rights discourses at the national and international levels and to habituate human rights norms into domestic practices. Marsha and Payne (2007) contribute to Risse and Sikkink's theory by arguing that socialization of norms to domestic societies is as important as the socialization of norms to states. Therefore, in this section, I present the strategy of Komnas HAM and SUHAKAM to raise awareness on the rights of women migrant workers to the public in general.

5.3.1. Awareness Strategies of Komnas HAM

One strategy adopted by Komnas HAM to socialize the norms of women migrant workers' rights is to carry out public campaigns to promote the protection of women migrant workers' rights. Since 2008, Komnas HAM has printed posters regarding the urgency of the protection of women migrant workers' rights. The Commission has also conducted talk-shows in televisions to discuss women migrant workers' issues. One example is a regular talk-show program, called *Warung HAM* (Human Rights Coffee Shop). The program is cooperation between Komnas HAM with Voice of Human Rights News Center, a community-based

"maliciously publishing false news". After seven (7) years, Fernandez was "found guilty and sentenced to 12 months imprisonment" (FIDH-SUARAM, 2008: 21-22).

news centre, to raise various human rights topics, including migrant workers' rights (see VHR webpage).

Since 2011, Komnas HAM has increased its campaign on the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW). The consistency of Komnas HAM in carrying out campaigns on the ratification of ICRMW in the media is noted by one of the informants, "Komnas HAM is consistent in bringing up the importance of the ratification in the media, although the Commission does not do it together with civil society" (Interview with Zulbahary).

Komnas HAM has also tried to habitualize human rights norms between government agencies through training. The Commission has conducted human rights trainings for government agencies; however, the materials of the training do not explicitly deal with migrant workers' rights. In early April 2011 the Commission has just started conducting training which was specifically on the protection of migrant workers' rights. The training was held in Jember, one of the origin areas of migrant workers, by involving the local government (Pemda), local parliament (DPRD), police, migrant workers, NGOs assisting migrant workers, and academics from University of Jember. According to Armiwulan, Commissioner of Komnas HAM, "the vulnerability of women migrant workers is of course a prioritized issue in the training because most victims are women. They received violence because they are women" (Interview with Armiwulan). As a follow-up of the training, University of Jember is going to establish a crisis centre for migrant workers which will have link and coordination with Komnas HAM.

5.3.2. Awareness Strategies of SUHAKAM

SUHAKAM has also conducted public campaigns on women migrant workers' rights. Some issues which have been brought up by the Commission in their campaigns are trafficking in women migrant workers, the rights of domestic workers, forced labour such as in sex trade or forced to work long hours, and confiscation of passport (Interview with Nayagam).

One informant from a women's organization in Malaysia, however, criticized that SUHAKAM has not given sufficient attention to migrant workers' issues, particularly on the issue of domestic workers' rights. Josiah, Women's Aid

Organization, said, “[t]o my knowledge, they have not done anything around the issues of domestic workers” (Interview with Josiah). As the majority of women migrant workers work in the domestic field, the lack of attention by SUHAKAM on this point should be seen as regrettable from a feminist perspective. Nevertheless, SUHAKAM’s current campaigns on trafficking in persons which highlight women migrant domestic workers as one of vulnerable groups should be welcomed. Through its online campaign materials, the Commission has raised the awareness of the public to identify victims of trafficking in persons who are employed on a farm, in a factory, in domestic labour, in a spa or massage parlour, when travelling, on street or public places, and children in a home (SUHAKAM, webpage 2).

In addition to public campaigns on migrant workers’ rights, SUHAKAM has conducted human rights trainings for government officials. Based on their investigation on the situation of prisons and immigration detention centres, the Commission had initiated human rights training for police officers, prison officials and RELA. In the training for police officers of the Sexual and Child Investigation Division, the materials include human rights norms stipulated in CEDAW and CRC and the application of the norms in daily work, such as sensitivity in hearing the complaints from women and children victims. According to SUHAKAM’s Annual Report 2010, one change to be noticed is that women and children are taken into a private room when filing a complaint (SUHAKAM, 2011: 31). This is an indicator that the norm has started to diffuse into the domestic system.

In trainings for prison officials and RELA, SUHAKAM also raised human rights standards as the basis for their work, whereby the rights of women and children are also part of the material. One noticeable change is that complaints on RELA have decreased. According to the Annual Report 2010, the change is possibly because of the result of human rights awareness program done by SUHAKAM, improvement in RELA’s standard operating procedure, or change of operations whereby RELA now only assists Immigration Department officials or the police (SUHAKAM, 2011: 32). Whatever the reason, the effort of SUHAKAM to diffuse the norm into the work of these enforcement agencies is appreciated, particularly since these agencies are directly engaged with women migrant workers as part of their responsibilities.

5.4. Ratification of International Human Rights Instruments Related to Women Migrant Workers' Rights

One of the indicators of the “prescriptive status”, which is the fourth stage of norms socialization (Risse and Sikkink, 1999: 29), is the ratification of international human rights conventions. Ratification of international human rights conventions indicates that the ratifying states have accepted the validity of the norms stipulated in the conventions. In chapter 4, I have elaborated some international human rights instruments which provide norms of women migrant workers' rights. As a brief reminder, some of these conventions are: the International Covenant on the Economic, Social and Cultural Rights (ICESCR); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In this sub-chapter, I am going compare how Komnas HAM and SUHAKAM promote the ratification of international human rights instruments related with women migrant workers' rights.

5.4.1. Ratification Instruments of Komnas HAM

Indonesia has ratified almost all of the core international human rights conventions⁸, despite of some reservations, with the Migrant Workers Convention (ICRMW) as the only exception. The Government of Indonesia has signed the Migrant Workers Convention in 2004, and the ratification plan has been included in the Human Rights Action Plan since 2004, but it has not been ratified until

⁸ The nine core international human rights treaties are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), and the Convention on the Rights of Persons with Disabilities (CRPD). For information on status of ratification and reservation, see (UN webpage).

now. As I have mentioned in the part on public awareness, the Commission has consistently raised the urgency of the ratification of ICRMW. One strategy used by the Commission to promote the ratification of ICRMW is to propose the implementation of the norms stipulated in the convention to manage migrant workers' issues. Zulbahary, an activist from a women's organization, said:

Komnas HAM is consistent in bringing up the importance of the ratification in the media, although the Commission does not do it together with the CSOs. Komnas HAM suggests that all problems related with migrant workers can be solved by ratifying the convention, which shall be used as the main reference in improving the mechanism. In urging the ratification, Komnas HAM also engages relevant government agencies. (Interview with Zulbahary)

In addition to giving recommendations, Komnas HAM has also lobbied the Government about the urgency of ratifying ICRMW. In discussions held by Komnas HAM, as well as together with Komnas Perempuan, the Commission has tried to convince the Government about the advantages and disadvantages of ratifying the Convention (Interview with Chuzaifah). Komnas HAM also provides spaces for NGOs and experts on migrant workers' rights to present their opinions to the Government in the discussions. Armiwulan, Commissioner of Komnas HAM, said, "the Government has given more positive response because the President in the Cabinet Meeting in December 2010 decided that the ratification of ICRMW is important" (Interview with Armiwulan).

However, we cannot be sure whether the reason behind the change of the Government's position is the advocacy carried out by Komnas HAM because many parties advocate the ratification of ICRMW to the Indonesian government. Indonesian NGOs have even established a coalition for advocating the ratification of ICRMW, i.e. People's Alliance for the Ratification of Migrant Convention 1990. One of the informants viewed that NGOs have played bigger role in advocating the ratification of ICRMW by linking the efforts to transnational advocacy networks. According to Krisnawaty, an activist of women migrant workers' rights in Indonesia:

It is instead NGOs that have utilized platforms provided by ASEAN ...to urge the Government to ratify the convention. ...On the other side, Komnas HAM has also not shown incessant efforts to urge the

ratification [of ICRMW] to the Government. (Interview with Krisnawaty).

Further, Krisnawaty also argued that the changing of the Government's position with regard to the ratification of ICRMW does not necessarily lead to real action. She said, "[t]he response given by the Government seems positive and promising, but they keep changing their opinion and try to delay it" (Interview with Krisnawaty). Therefore, according to Armiwulan, "[w]e are planning to guard [the discussion] and to speed it up" (Interview with Armiwulan).

5.4.2. Ratification Instruments of SUHAKAM

Malaysia is lagged behind in terms of ratification of international human rights instruments. Malaysia has only ratified three conventions: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). Malaysia has just withdrawn some of its reservation to CEDAW, whereby SUHAKAM is part of the Government's Technical Committee on the Proposal to Withdraw Reservations to CEDAW (SUHAKAM, 2011: 49).

SUHAKAM has promoted the ratification of other international conventions. In the Annual Report 2010, the Commission includes ratification of core international human rights instruments as one of the key issues (SUHAKAM, 2011: 20). However, the responses of the Government are low. According to Hsi, Head of the International Issues and Cooperation Division of SUHAKAM:

We are still in the process of pushing the Government to ratify the other six conventions... But it's very difficult... because the Government always say that they need to ensure that the domestic legislations are in place and also in line before they decide to ratify a treaty or a convention..." (Interview with Hsi).

In relation with the ICRMW, one fundamental challenge for SUHAKAM is that the Government has not recognized families of migrant workers and undocumented migrant workers (Interview with Hsi). This is in contrary to human rights perspective, as Hsi said:

But from the point of view of the institution and from the human rights perspective, we treat everyone as equal. There shouldn't be a distinction between legal or illegal, documented or undocumented. But the Government has a problem because they do not recognize migrant workers with illegal status. (Interview with Hsi)

5.5. Institutionalization of International Norms into Domestic Practices: Laws and Mechanisms

Risse and Sikkink (1999) say that institutionalization of norms in the constitution and/or domestic laws is also one of the indicators of the “prescriptive status” (Risse and Sikkink, 1999: 29). Institutionalization of norms in domestic laws shall be followed by the adoption of norms in policies and the implementation of these policies. In addition to policies, Risse and Sikkink (1999) suggest that states provide an “institutionalized mechanism for citizens to complain about human rights violations” (Risse and Sikkink, 1999: 29), or in this case, the availability of a mechanism for women migrant workers to complain about violations of rights. The strategy of Komnas HAM and SUHAKAM in advocating these components is what I am going to present in this section.

5.5.1. Institutionalization of Norms by Komnas HAM

National Laws

In Indonesia, the only law directly regulating migrant workers is the Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers in Foreign Countries. The law has been criticized for not sufficiently providing protection of migrant workers rights as most of its provisions are on the placement procedures of migrant workers, and for not having gender-sensitivity (KOPBUMI, 2005; Komnas Perempuan, 2006). There has been a plan proposed by the Department of Manpower and Transmigration to revise the law. However, most informants from Indonesia said that Komnas HAM has not carried out any significant work with regard to the revision plan by the Government (Interview with Zulfahary, Krisnawaty and Chuzaifah). Krisnawaty, an activist, said:

I have barely heard any news in the public about the involvement of Komnas HAM [in the plan to revise the Law No. 39 of 2004 on the Placement and Protection of Migrant Workers in Foreign Countries]. But that's probably because DPR [House of Representatives] is not transparent in doing their works. Or, maybe because Komnas HAM does not say anything in the media [even] if they are involved by the DPR in the process. (Interview with Krisnawaty)

There is, however, a belief that Komnas HAM is involved but that the work is not communicated to the public:

For sure [the work of Komnas HAM with regard to the plan of amendment of Law No. 39 of 2004] is barely heard in the media. I think they do something... (Interview with Chuzaifah)

Imparsial, an Indonesian NGO which is part of The Asian NGOs Network on National Human Rights Institutions (ANNI), reported that the Commission are "less active in lobbying members of parliament and intervening in discussions of draft legislation going through parliament" (ANNI, 2010: 87). Although this opinion is about the lack of Komnas HAM's intervention in the discussions in the Parliament for the preparation of legislation, it can be assumed that the intervention of the Commission for amending the law on migrant workers to be in line with the international norms is also low.

The low involvement of Komnas HAM in adjusting national laws to comply with international norms might be due to a matter of priority; as the Commission seems to prioritize the ratification of the ICRMW. Armiwulan, Commissioner of Komnas HAM, said, "Komnas HAM recommends the ratification of Migrant Workers' Convention before the amendment of the Law No. 39 of 2004 so the amendment is in line with provisions in the convention" (Interview with Armiwulan).

In addition to Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers in Foreign Countries, another law which is relevant with migrant workers is Law No. 21 of 2007 on the Suppression of the Crime of Trafficking in Person. The drafting process of the law was advocated closely by NGOs, including Komnas HAM (Komnas HAM, 2006). Due to the advocacy, the law is considered to have sufficiently given protection for victims of trafficking in persons (Komnas Perempuan, 2009: 19). The definition of trafficking in the law

has even adopted the definition of trafficking in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Komnas HAM has also advocated the drafting process of a law on domestic workers. The labour law in Indonesia excludes domestic workers from most of its provisions. Since most Indonesian migrant workers are employed as domestic workers, a law specifically regulates on domestic workers is needed at the national level. A national law on domestic workers shall become the reference for the protection of all Indonesian domestic workers, including Indonesian women working as domestic workers in foreign countries.

Policies and Mechanisms

There has not been a comprehensive national policy available for the protection of migrant workers in Indonesia. According to the Law No. 39 of 2004, migrant workers issue is managed by different departments in accordance to their respective mandate, with the National Agency for the Placement and Protection of Overseas Labor (BNP2TKI) and the Department of Manpower and Transmigration as the main agencies.

Komnas HAM has promoted the setting of standard with regard to women migrant workers' rights which shall serve as the foundation for a comprehensive policy on migrant workers' issues. This initiative is carried out by the Commission together with Komnas Perempuan. The activities are among others documenting human rights violations of Indonesian migrant workers, drafting human rights protection standard for migrant workers at the national level, and recommending human rights protection standard for migrant workers at the national and regional level (Komnas HAM, 2009: point V.1.1). Simultaneously, the Commission has called for an improvement of the migration system comprehensively at the national level. One of the informants, an activist from women's organization working on migrant workers' issues, said:

Other recommendations by Komnas HAM which are often heard in the media are having a standard-setting to deal with migrant workers issues and improving the migration system comprehensively at the national level. For instance, managing recruitment agencies, or education for women migrant workers about their rights. But I don't know whether Komnas

HAM gives the recommendations to the Government or not. (Interview with Zubahary)

On the contrary, Krisnawaty, an activist of women migrant workers' rights, argued that the Commission has not recommended a systemic measure for migrant workers' issues. She said:

Based on my observation in the public sphere, looks like Komnas HAM has not done any systemic measure to address migrant workers' issues at the national as well as at the regional level. ...Responses given by Komnas HAM for women migrant workers' issues are casuistic, case-to-case basis. (Interview with Krisnawaty)

Further, Krisnawaty finds it difficult to measure whether the recommendations given by Komnas HAM on women migrant workers' issues are implemented by the Government or not, "because the recommendations are also not clear" (Interview with Krisnawaty).

One of the mechanisms for migrant workers to complaint about violations of their human rights is to file complaints to Komnas HAM, which falls into its mandate. The Commission often receives complaints about violations of migrant workers' rights from NGOs. However, one of the informants who is an activist on women migrant workers' rights criticized that this mechanism—where NGOs file complaints and Komnas HAM responds—has become the characteristic of the relations between Komnas HAM and NGOs. Krisnawaty argued:

The relationship between Komnas HAM and NGOs are on case-to-case basis, whereby NGOs report women migrant workers' cases to Komnas HAM and Komnas HAM gives [a] response. This relationship is reactive, not long-term relationship which aim is to build a system. (Interview with Krisnawaty)

Although Komnas HAM has the authority to conduct a public inquiry into alleged gross human rights violations, the Commission has not conducted a public inquiry into violations of migrant workers' rights despite the violations are systemic. An intention to conduct a national inquiry into women migrant workers issue had been discussed between Komnas HAM and Komnas Perempuan in 2008. As national inquiry was not feasible due to limited resources, the two commissions decided to conduct joint monitoring instead (Interview with Chuzaifah).

5.5.2. Institutionalization of Norms by SUHAKAM

National Laws

There is no national law in Malaysia which specifically regulates migrant workers' economic rights. The Malaysian Employment Act 1955 is the law regulating labour issues in Malaysia; among others, wages, termination of contract, work hour, holiday, and so on. Normatively, the law does not discriminate between employees of Malaysian nationality and employees of other nationalities. This law however excludes domestic workers who are not recognized as workers from most provisions of the Act, such as work hour, holiday, and termination of contract (Elias, 2007: 17).

Apparently SUHAKAM has not done much in ensuring the institutionalization of international human rights norms in domestic laws. So far the law advocacy has been heavily focused on the effort to repeal the Internal Security Act 1960 (ISA), which allows preventive detention (SUHAKAM, 2011: 59). SUHAKAM still needs to do more work to ensure that the application of the labour law does not violate the norms of women migrant workers' rights. An informant from SUHAKAM criticized the tendency of government agencies to prioritize provisions in employment contract than human rights norms, or to support employers than workers when rights violations occur (Interview with Hamzah). Further, considering that domestic workers are excluded from the labour law whilst women migrant workers are mostly employed as domestic workers, SUHAKAM should also advocate the integration of domestic workers in the law in order to ensure the protection of their rights.

Policies and Mechanisms

Similar to Indonesia, there has not been a comprehensive policy or mechanism for migrant workers in Malaysia. Migrant workers' issues are managed by various ministries in the Government, which leads to lack of coordination and overlapping responsibilities. This concern was also raised by one of the informants from SUHAKAM. Hsi said:

Even among the government agencies, they don't have a centralized unit to handle migrant workers' issues. ...Currently the Ministry of Human Resources is also handling the issues of migrant workers, and

then the Ministry of Home Affairs is also handling those issues. So it is like overlapping of role. (Interview with Hsi).

The Commission currently is preparing a grand policy at the national level to deal with migrant workers' issues. Nayagam, Commissioner of SUHAKAM, said, "I made a commitment to the SUHAKAM as well as the international bodies that I will have the policy [on migrant workers] to be ready by June" (Interview with Nayagam). This initiative shall be welcome as a step to improve the protection of migrant workers' rights.

Similar to Komnas HAM, SUHAKAM is also authorized to receive complaints of alleged human rights violations from any group or individual, including migrant workers. After receiving the complaint, the Commission will talk to the victim and other relevant actors, and investigate the case. Measures which can be taken by the Commission are guiding the migrant worker on the next steps, including in accessing remedies, writing agencies for explanation, and mediating all parties. Nayagam, Commissioner of SUHAKAM, said:

We have three things that we are able to do. One is we are able to advise and guide the worker on the next step... Or we would write to the relevant agencies seeking an explanation. ...[Or] mediate and call both parties together to find out exactly how best we can solve the matter out" (Interview with Nayagam).

When it is proven that a group has been mistreated, a public inquiry can be made, whereby the Commission can carry out a comprehensive investigation about what has happened to the community. However, until now there has not been a public inquiry on migrant workers.

One particular breakthrough in SUHAKAM's mandate in relation to complaints mechanism is the authority to visit prisons and immigration detention centres. This is important to ensure that the rights of detainees, including migrant detainees, are respected. The Commission has visited immigration detention places several times—among others in 2003 and 2007-2008—to monitor the situation of migrant workers and refugees in these places. Nevertheless, visits to detention centres and prisons are not always *ad hoc* because the Commission can only conduct the visit upon permission of the persons in charge of the places. Hamzah, Complaints and Inquiries Working Group of SUHAKAM, said:

It would depend on the relationship between the conducting officer or the conducting commissioner and the place in question. So sometimes we have to write in advance, but sometimes we just make a phone call... (Interview with Hamzah)

5.6. Links to Transnational Advocacy Networks (TANs)

Transnational advocacy networks (TANs) are important actors in Risse and Sikkink's (1999) theory on the socialization of international human rights norms because they raise moral consciousness, empower claims by domestic groups, and create structural pressure (Risse and Sikkink, 1999: 5). In this section, I will see how Komnas HAM and SUHAKAM link their work on the socialization of the norms of women migrant workers' rights to TANs.

5.6.1. Link between Komnas HAM and TANs

At the international level, Komnas HAM has utilized the space provided by the UN human rights mechanisms to raise women migrant workers' issues. For an example, the Commission raised migrant workers' issues in its submission to the Universal Period Review (UPR) of Indonesia in 2008. The Commission particularly brought into attention gender-specific problems faced by women migrant workers, such as rape, forced prostitution and violence, and emphasized that women migrant workers are often ill-treated during the whole migration process (Komnas HAM, 2007). The intervention of Komnas HAM to raise migrant workers' issues in the UPR forum brought was able to put the issues on the table during the UPR Session considering the report of the Indonesian Government. Representatives of Sudan and Morocco required further information to the delegation of the Indonesian Government regarding the Government's plan for the protection of Indonesian migrant workers in foreign countries, while representative of Turkey asked about the Government's plan to ratify ICRMW (A/HRC/8/23: para. 56, 57, 60 and 62).

The Commission also raised migrant workers' issues, focusing on violations of women migrant workers' rights, in its submission to the Committee against Torture (CAT) upon the regular reporting period of Indonesia in 2008

(Komnas HAM, 2008). The intervention also resulted in the inclusion of migrant workers' issues, particularly women migrant domestic workers, in the list of issues to be considered during the examination of the Indonesian Government's report (CAT/C/IDN/Q/2: para. 36), as well as in the Concluding Observations of the Committee Against Torture (CAT/C/IDN/CO/2: para. 20).

At the regional level, Komnas HAM—as well as SUHAKAM—is a member of the Asia Pacific Forum of National Human Rights Institutions (APF) and the South East Asia National Human Rights Institutions Forum (SEANF). In these two regional forum, Komnas HAM has raised the issues of women migrant workers' rights. Example of Komnas HAM's annual report to APF with regard to migrant workers' issues can be found in Appendix 1. In addition, the APF has adopted the Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia, which recommends among others a standard-setting for the protection of women migrant workers' rights (Seoul Guidelines, 2008: para 1 and 41). The recommendation of standard-setting is now campaigned by Komnas HAM (Komnas HAM, 2009: point V.1.1). Komnas HAM is also part of the Steering Committee of the APF Migrant Workers Committee. However, according to Armiwulan, Commissioner of Komnas HAM, there has not been any follow-up on the committee (Interview with Armiwulan).

South East Asia National Human Rights Institutions Forum (SEANF) was declared in 2007 by four NHRIs in the Southeast Asia. SEANF agreed that migration and migrant workers is one of the issues for joint cooperation. Hence, Komnas HAM contributed to the preparation of SEANF's Paper on Migrant Workers, compiled by SUHAKAM. The paper contributes to the preparation of migrant workers' instrument in ASEAN.

Although Komnas HAM is active in SEANF, my informants argue that the Commission has not been sufficiently engaged in other Association of Southeast Asian Nations' (ASEAN) forum (Interview with Krisnawaty; and Zulfahary). Zulfahary, an activist who is part of the People's Alliance for the Ratification of Migrant Convention 1990, said:

in the current work of CSOs [civil society organizations] in engaging ASEAN Human Rights Commission and ASEAN Migrant Workers Committee in preparing ASEAN migrant workers instrument. The role

of Komnas HAM [on this matter] is only technical, for example facilitating place... (Interview with Zulbahary).

5.6.2. Link between SUHAKAM and TANs

SUHAKAM is not as active as Komnas HAM in raising migrant workers' issues at the regional and international levels. As I have discussed in Section 5.2.2, SUHAKAM does not raise substantial matters in its intervention in regional and international forum. In its submission to the UPR of Malaysia, SUHAKAM gave information that "Malaysia signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007", and that "[t]he Government has not ratified the Workers Convention on Migrant Workers and the adoption of principles of the ILO" (SUHAKAM, 2008d: para. 12 and 25). The issues of migrant workers, including undocumented migrants, were raised in the review of the Malaysian Government's report. However, since migrant workers' issues are raised elaborately by other parties, we can say that the discussion of migrant workers' issues in the UPR Session is not necessarily due to SUHAKAM's submission. In fact, the only migrant workers-related issue raised by SUHAKAM mentioned in the Summary of Stakeholders' Information is about the ratification of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers by Malaysia, although some issues on trafficking are also raised (A/HRC/WG.6/4/MYS/3).

At the regional level, SUHAKAM is also a member of APF and SEANF. As I have mentioned earlier, the report submitted by SUHAKAM in APF is narrative, mainly on activities of the Commission. However, SUHAKAM, representing receiving countries of migrants, is part of the APF Migrant Workers Committee (Interview with Hsi). In addition, staffs of SUHAKAM have participated capacity building organized by APF, such as the APF training on ICRMW (Interview with Hsi). SUHAKAM, as one of the representatives of APF in the ICC Bureau, was trusted to propose the establishment of ICC Working Group on Migrant Workers (APF, 2010: 4).

In SEANF, the role of SUHAKAM in promoting the norms of migrant workers' rights is important because the Commission is responsible for SEANF's joint cooperation in migration and migrant workers' issues. In 2008,

SUHAKAM—in cooperation with other NHRIs in SEANF—led a research on migrant workers. The report, which is the SEANF’s Paper on Migrant Workers (SEANF, 2010), gives recommendations regarding the preparation of ASEAN migrant workers’ instrument, and specific recommendations to governments of Indonesia, Malaysia, Thailand and the Philippines. As a follow-up, SUHAKAM has also conducted a consultation meeting to discuss the paper, inviting government agencies (Interview with Hsi).

5.7. Discourse on Women Migrant Workers’ Rights

Discourse is an important means to socialize human rights norms according to Risse and Sikkink’s (1999) theory on the norms socialization. Transnational advocacy networks construct discourse at the international level which emphasizes on the poor human rights condition in the country and the urgency to adopt international human rights instruments. Simultaneously, feminists argue that women’s voices have disappeared from human rights discourse (Charlesworth, 1994; Bunch, 1995), as I elaborate further in chapter 6. Here, I discuss therefore the role of Komnas HAM and SUHAKAM to create the discourse on women migrant workers’ rights from a gender perspective.

5.7.1. Discourse Construction of Komnas HAM

In some occasions, Komnas HAM has raised the discourse on women migrant workers’ rights by using a gender perspective. For instance, in its submissions to the UPR of Indonesia and to the Committee Against Torture, the Commission has brought up gender-specific vulnerabilities of women migrant workers, such as violence or rape (Komnas HAM, 2007; Komnas HAM, 2008).

However, in the discourse, the Commission has not clearly connected the vulnerabilities of women migrant workers with their subordinated position in the migration system. One of the informants, who is an activist of women migrant workers’ rights, said that Komnas HAM has not fully used gender perspective (Interview with Krisnawaty). Krisnawaty said, “Komnas HAM has only used gender perspective in a narrow means. For instance, Komnas HAM sometimes

fails to include gender in analyzing women migrant workers cases” (Interview with Krisnawaty). Similarly, an informant from a women’s organization argued:

Komnas HAM has barely integrated gender aspects in their analysis. As an example, Komnas HAM is not sharp in reading the specific needs of women migrant workers in trafficking issues. Maybe because there is Komnas Perempuan [which specifically does gender analysis], or maybe because most commissioners of Komnas HAM are men... (Interview with Zulbahary)

Chuzaiifah, Chairperson of Komnas Perempuan, criticized that Komnas HAM has shaped the discourse on women migrant workers’ issues as merely trafficking issues. She said:

When we tried to combine perspective [in analyzing joint monitoring data], Komnas HAM wanted to emphasize on trafficking because it is closely related to migrant workers’ issues. But Komnas Perempuan... wanted to focus on the issue of migrant workers. Because migrants’ issues are [often] simplified to trafficking issues... (Interview with Chuzaiifah)

5.7.2. Discourse Construction of SUHAKAM

It is hard to analyze whether SUHAKAM has shaped gendered discourse on women migrant workers’ rights at the international level. As mentioned before, in its submissions to regional and international forum, SUHAKAM has barely raised the issues of women migrant workers. We can still note that the Commission has tried to raise gender analysis on women migrant workers’ rights in some of its research reports, such as analyzing problems specifically faced by maids: unspecified job task, multitasking (as domestic workers and as helpers in the employers’ trade), pass abuse by employers to avoid tax (SUHAKAM, 2008c); or specific needs of women migrant detainees: availability of pre-natal and post-natal care (SUHAKAM, 2008a). However, one of the informants from a women’s organization in Malaysia argued, “No, I don’t think there is a very clear gender perspective in their work. Their argument with gender perspective is that ‘oh, we must look at CEDAW’, you know, that kind of thing” (Interview with Josiah).

The focus of SUHAKAM in trafficking in women is one issue which I often find when I do this study. The issue of trafficking in persons, particularly women and children, is found in SUHAKAM’s campaign materials (SUHAKAM,

webpage 2), annual report (SUHAKAM, 2011), even an elaborated research on trafficking in women (SUHAKAM, 2004). A step ahead of its Indonesian counterpart, the discourse of trafficking in women raised by SUHAKAM has separated women migrant workers' issues from trafficking in women. In its submission responding to the findings and recommendations of the UN Working Group on Arbitrary Detention, the Commission encourages the Government to identify trafficking in persons amongst migrant workers (A/HRC/16/NI/2). The analysis of SUHAKAM in its trafficking in women's research has also shown the capability of the Commission in raising intersectionality. The Commission maps trafficking as part of a complex web where gender has intersected with various factors, such as migration, socio-cultural attitudes, poverty, discrimination, and human rights violations, which make women and children vulnerable to be trafficked (SUHAKAM, 2004).

6. Socializing the Norms of Women Migrant Workers' Rights with A Gender Perspective: the Potential Role of NHRIs

In this chapter, I discuss how feminist critiques can enrich the development of Risse and Sikkink's (1999) theory on the socialization of the norms of women migrant workers' rights and how national human rights institutions (NHRIs) can play an active role in socializing the norms. The comparative data on the strategy of Komnas HAM and SUHAKAM contribute as a foundation to support my arguments. While discussing the strategy, I also give recommendations of further intervention by feminist transnational advocacy networks.

6.1. Creating a Gendered Discourse: Putting the Experiences and Voices of Women Migrant Workers at the Centre

We can simplify Risse and Sikkink's (1999) theory on the socialization of international human rights norms into two main characters of activity, i.e. creating a discourse on human rights and taking active action to show acceptance of international human rights norms. During almost the whole process of norms socialization, discourse—although Risse and Sikkink (1999) do not necessarily call it this way—plays an important part in triggering the change of human rights situation. Lobbying, persuasion, and “shaming” mechanism, which are found in phase 2 to 5 of Risse and Sikkink's “spiral model” (Risse and Sikkink, 1999: 22-35), are means of intervention to change the position and behaviour of norm-violating states to accept and adopt international human rights norms.

Feminists criticize the disappearance of women's experiences and voices from the discourses on migration and human rights (Hondagneu-Sotelo and Cranford, 1999; Bunch, 1995; Charlesworth, 1994). Feminist scholars like

Kaufman and Lindquist (1995) also argue that the usage of gender-neutral language does not always lead to inclusion of women in the discourse). Therefore, when socializing the norms of women migrant workers' rights, NHRIs should include women's voices and avoid constant usage of gender-neutral language in the discourse.

In addition, NHRIs should cooperate with various actors at the national, regional and international levels, including vulnerable groups like women migrant workers. As national institutions promoting human rights, NHRIs should raise the needs of civil society and groups whose rights are violated to the government through discourse. Critical discourse analysts also emphasize that groups with limited access to material and power have only limited opportunities to create a change through discourse (Jørgensen and Phillips, 2002: 55). Being in a subordinated position in societies, women migrant workers do not have much access and power to express their views. Hence, the role of NHRIs in raising their voices in human rights discourse with the states is crucial.

Involving Women Migrant Workers and Women's Organizations

One strategy which can be taken by NHRIs to create a gendered discourse is to involve women migrant workers and women's organizations working on women migrant workers' issues in their work. In chapter 5, I have presented, among others, strategies of Komnas HAM and SUHAKAM in collecting data, disseminating information and raising public awareness. In order to create a gendered discourse, NHRIs should meet women migrant workers to get first-hand data, consult the data they find with women migrant workers and women's organization, and create a space of women migrant workers or women's organizations to present the situation of women migrant workers and their rights.

Take the strategy of Komnas HAM in having talk-shows on the rights of women migrant workers as an example. Komnas HAM should invite former women migrant workers as source persons in the talk-shows. In this way, Komnas HAM provides a space for women migrant workers to recount their experience first-hand.

Talking the Intersectionality of Women Migrant Workers' Identity

Feminists have shown that it is difficult to discuss violence against women by separating gender from other social categories; therefore, intersectionality is a means to articulate the interaction between gender and other social categories such as class, race, nationality and sexuality (Crenshaw, 1989; Crenshaw, 1991; Yuval-Davis, 2006). The term “intersectionality” however has not been widely used in human rights discourse. Meanwhile, by creating a discourse on intersectionality, NHRIs are able to shape the rights violations of women migrant workers as a result of subordination of various identities of women migrant workers. In a globalized economy, power relations have created subordination of women due to their gender, subordination of migrants due to their non-nationality, as well as subordination of women migrant workers due to their class. How women migrant workers experience multiple discrimination and violence due to their subordinated identities should be brought up by NHRIs in their discourse on the norms of women migrant workers’ rights.

One strategy to articulate intersectionality is to integrate it as part of the analysis done by NHRIs in their reports. Dill, McLaughlin and Nieves argue that intersectional analysis:

centers the experiences of people of color and locates its analysis within systems of ideological, political, and economic power as they are shaped by historical patterns of race, class, gender, sexuality, nation, ethnicity, and age. (Dill, McLaughlin and Nieves, 2007: 629)

Therefore, when putting intersectionality in their analysis, NHRIs shall put the experiences of women migrant workers at the centre and connect the experiences with the ideological, political and economic systems. The work of SUHAKAM in analyzing trafficking in women as part of a complex web (SUHAKAM, 2004) is an example of creating a discourse on intersectionality—although the Commission does not use the term “intersectionality”. NHRIs should do similar analysis in their reports and submissions to regional and international forum to bring awareness of states women migrant workers experience violence due to their intersectional identities.

Further Work for Feminist Transnational Advocacy Networks

Promoting a gendered discourse on the rights of women migrant workers to NHRIs is a future work for feminist transnational advocacy networks. As I have

presented in chapter 5, the capability of Komnas HAM and SUHAKAM in doing a gendered analysis is still relatively low. As a socializer of gendered human rights, it is necessary that feminists and women's rights transnational networks strengthen the gender perspective of NHRIs in order to create human rights discourse which is sensitive to women's vulnerabilities and women's needs. Engagement of feminist transnational advocacy networks with NHRIs for this purpose can be done through among others giving critical response to reports issued by NHRIs on women migrant workers' issues, creating dialogue with NHRIs, or involving NHRIs in capacity building training. The engagement will give positive feedback if NHRIs also involve feminist transnational advocacy networks in their work.

6.2. Socializing the Rights of Women Migrant Workers as a Set of Rights Standards

In the earlier section, I have elaborated about the importance of creating a discourse on intersectionality to understand that multiple discrimination and violence experienced by women migrant workers are due to their intersecting subordinated identities. As a consequence of having multiple and intersecting identities, women migrant workers are positioned in an intersection of various human rights standards. While international human rights conventions provide comprehensive protection of rights, these conventions at the same time are characteristic and groups-specific. For instance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) stipulates the protection of human rights of migrant workers and their family members; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) specifically provides protection for women to be free from discrimination; or the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates the protection of economic, social and cultural rights.

Since the rights of women migrant workers are scattered in these international human rights instruments, it is crucial for NHRIs to socialize the norms stipulated in these conventions as a set of human rights standards for women migrant workers. As an example, the rights of women migrant workers as

migrant workers are protected by ICRMW. However, in order to socialize the protection of their gender-specific rights, such as reproductive rights, the right to marriage, the right to equal payment with their male counterparts, or the right to be free from racism and xenophobia, NHRIs should also socialize the Women's Convention (CEDAW) and the Anti-racial Discrimination Convention (ICERD).

The socialization of the norms of women migrant workers' rights based on various international human rights instruments is particularly necessary in cases where states have not ratified all core international conventions. If we take the case of Malaysia as an example, the State has only ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). The most related convention for women migrant workers' rights is CEDAW. In this case, as what has been done by SUHAKAM, the NHRI should promote the rights of women migrant workers based on provisions in CEDAW, while at the same time simultaneously promote the ratification of other core international conventions to ensure that the State respects and protects the rights of women migrant workers comprehensively.

Further Work for Feminist Transnational Advocacy Networks

Satterthwaite (2005) argues that intersectional approach has not been sufficiently utilized in human rights area. Although an intersectional approach in viewing the human rights of women has entered the United Nations documents, it has not been integrated in the work of UN treaty bodies (Satterthwaite, 2005; Yuval-Davis, 2006). It indicates that feminist transnational advocacy networks should put more effort in integrating the intersectional approach in human rights field to ensure that human rights protection for women migrant workers is a comprehensive protection. Feminist transnational advocacy networks should socialize to human rights advocacy networks that these international instruments should be treated as a set of standards for women migrant workers' rights. The engagement is expected to give a domino effect to the socialization pattern of NHRIs. At the domestic level, feminist transnational advocacy should socialize the intersectional approach to NHRIs as well as to states.

7. Concluding Remarks

In the thesis, I have presented the regional trend of migration of women workers in Southeast Asia, the norm of women migrant workers' rights, and the role of national human rights institutions (NHRIs)—represented here by Komnas HAM and SUHAKAM—in socializing these norms. Due to its unique position, NHRIs have the potential to diffuse the norms of women migrant workers' rights to the governments and to the societies. The socialization of norms to the societies lays the foundation for habitualization of norms and to create pressure from the national advocacy network. Through engagement with transnational advocacy networks, NHRIs provide impartial information to the international community regarding situation of women migrant workers and their rights, and bring crucial matters under the international spotlight to create pressure.

Empirical findings on the strategy of Komnas HAM and SUHAKAM in socializing the norms of women migrant workers' rights show that both commissions have their own strengths and weaknesses. However, both commissions show relatively weak gender perspective in shaping the discourse on women migrant workers' rights.

With the thesis, I have brought more attention to NHRI as one of the actors at the national level which has big potential in socializing the norms of women migrant workers' rights. This way I have contributed to Risse and Sikkink's (1999) theory on the socialization of international human rights norms. I have enriched Risse and Sikkink's (1999) theory on the socialization of international human rights norms from a gender perspective. In the socialization process, NHRIs have the potential to create a gendered discourse by putting the experiences and voices of women migrant workers at the centre, as well as to socialize the norms of women migrant workers' rights as a set of human rights standard. I also suggested future works for feminist transnational advocacy networks in order to strengthen the role of NHRIs in this area.

Executive Summary

In this thesis, “Norm Socialization of Women Migrant Workers’ Rights: The Role of National Human Rights Commissions of Indonesia and Malaysia”, I discuss how national human rights institutions (NHRIs) socialize the international norms of women migrant workers’ rights by putting into consideration the gender element of the migration phenomenon. Discriminative migration policy, lack of protection, feminization of the jobs and marginalization by the society are among others the reasons why women migrant workers are prone to rights violations and labour exploitation. As national institutions responsible for the promotion of human rights, the potential role of NHRIs in socializing the rights of women migrant workers has yet to be explored. However, since the migration of women as workers has been feminized, both in terms of number and characterization of the jobs, the integration of a gender perspective in the norms socialization process by NHRIs is inevitable. Therefore, one question lingers: How can NHRIs socialize the international norms of women migrant workers’ rights in a gendered manner? I try to answer the question by meeting the theory of norms socialization—particularly the one proposed by Risse and Sikkink (1999)—with the feminist critiques on migration and human rights.

I take the National Commission on Human Rights of Indonesia (Komnas HAM) and the Malaysian National Human Rights Commission (SUHAKAM) as the case studies. I chose Komnas HAM because the Commission is situated in a country of migrant origin, while SUHAKAM is chosen because it is situated in a country of migrant employment. In the thesis, I compare and analyze the strategy of Komnas HAM and SUHAKAM in socializing the international norms of women migrant workers into domestic practices. In particular, I focus on the strategy of these two NHRIs to raise public awareness on the situation of women migrant workers and their rights, to promote the ratification of relevant international human rights conventions, to institutionalize the norms into domestic mechanisms, to link their agenda with transnational advocacy networks, and to construct the discourse on women migrant workers’ rights.

The empirical result of the study shows that Komnas HAM and SUHAKAM have similar strategy in socializing the norms of women migrant workers’ rights, although some slight differences are also documented.

Nevertheless, both commissions have shown a weak gender perspective in socializing the norms of women migrant workers' rights. As an example, Komnas HAM and SUHAKAM have not actively integrated gender in their analysis as they socialize the rights of women migrant workers.

Reflecting on the empirical findings, I discuss the theory of norms socialization from a feminist perspective. I suggest that in the socialization process, NHRIs should create a gendered discourse particularly at the national level by putting the voices and experiences of women migrant workers at the centre. In order to ensure the integrity of the rights of women migrant workers, these rights should be socialized by NHRIs as a set of human rights standards. Considering the weak gender perspective of the case-study NHRIs, I also suggest that transnational feminist networks should advocate NHRIs continuously in order to strengthen their ability to socialize the norms of women migrant workers by using a gendered approach. Some forms of advocacy are engagement of the transnational networks with NHRIs to create a gendered discourse at the national, regional and international levels, or to promote an intersectional approach to human rights advocacy networks, NHRIs as well as states.

By writing this thesis, I contribute to Risse and Sikkink's (1999) theory on the socialization of international human rights norms by putting NHRIs as one of the national actors with high potentials to socialize the norms of women migrant workers' rights. At the same time, I also enrich the theory by integrating a feminist perspective to create a norms socialization process which puts forward women migrant workers' voices and needs. I also give empirical contribution regarding strategies and mechanisms of the two case-study NHRIs in socializing human rights norms of women migrant workers.

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Hamzah, Ameer Izyanif, Principal Assistant Secretary of Complaints and Inquiries Working Group of SUHAKAM, April 29, 2011

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Nayagam, James, Commissioner of SUHAKAM, April 29, 2011

Appendix 1: Annual Reports to APF

Komnas HAM

Annual Report of Komnas HAM 2009 in the 14th APF Annual Meeting 2009

a. Part IV.1.5 on Migrant Worker Rights studies:

The research and study on the International Convention on the Protection of Migrant Workers and their Families has been done. The Commission has urged the Government to ratify the Convention. The Commission has also prepared for the academic draft of the ratification. It was planned on the Human Rights National Action Plan that those convention should be ratified by 2005.

b. Part V.1.1 on The Cooperation between National Commission on Human Rights (Komnas HAM) & National Commission on Violence against Women (Komnas Perempuan) relating to Protection of Migrant Workers:

The human right violation in high frequent to migrant workers is becoming one of important issue for two institutions. Base on the data of human power placement released by Indonesian Government, 1.479.063 migrant workers noted as Men while 4.145.034 migrant workers noted as Women. Indonesian Government also noted that 80% of all victims from many cases descend upon migrant workers are Women. It happened due to less of protection at most.

In the national level, the policy of the placement form migrant workers is not adjusted by the policy of sufficient protection for them. Although Law Number 39 Year 2004 concerning Placement and Protection to Indonesian Man Powers stating that responsibility to the protection of human rights for migrant workers is borne by non-state actor which one of them is PJTKIS. As the matter of the fact, there is no such a comprehensive and sensitive mechanism in handing the cases of migrant workers. The human rights often violated in all migration process (departure, on the spot and arrival). The fact has been noted to improve protection of migrant workers, especially women.

The objectives of the program are: to build standard of human rights protection for migrant workers base on human rights principal and to strengthen Komnas HAM & Komnas Perempuan in carry out their mandate effectively, particularly in case of monitoring and establishing the suitable mechanism of protection to migrant workers.

The activities taken is achieving the objectives are: documenting the violation of human rights to Indonesian migrant workers; build draft of human rights protection standard for migrant workers in national level base on sufficient data and information; compose recommendation regarding the frame of human rights protection standard for migrant workers in the regional level based on consultation with several sources in the regional level; conduct campaign and socialization on how importance to build human right; protection standard to migrant workers in the national and regional level; and monitoring and evaluation.

(Komnas HAM, 2009)

SUHAKAM

Annual Report of SUHAKAM in the 14th APF Annual Meeting 2009

a. Part 2.1 on Regional and International Cooperation:

SUHAKAM maintains a steady engagement and cooperation with three other ASEAN NHRIs Forum (ANF) members, namely, Thailand, Indonesia and Philippines on several on-going projects pertaining to human rights issues. SUHAKAM has been tasked to lead one of the projects which is on migrant workers.

b. Part 2.2 on Education and Promotion of Human Rights:

Acknowledging that everyone has the right to education, SUHAKAM initiated a study on accessibility of vulnerable children to basic education alongside with a series of field visits to their settlements. Among those identified in the study include indigenous children, street children and children of the hardcore poor, children of undocumented immigrants/ refugees/ asylum seekers and children in the detention centres.

(SUHAKAM, 2009)