

Harmonizing Borders: A Legal Analysis of Migration Laws in Indonesia and Malaysia through Legal Harmonization Theory

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ABSTRACT

Irregular migration from Indonesia to Malaysia poses significant challenges to immigration governance, particularly as vulnerable groups such as women and children may face risks of exploitation and human trafficking. This study comparatively examines the legal frameworks governing migration in Indonesia and Malaysia and analyzes how differences in their regulatory approaches contribute to gaps in managing irregular migration. In Indonesia, Law Number 6 of 2011 on Immigration emphasizes immigration control, national security, and the regulation of the entry and stay of foreign nationals. Meanwhile, Malaysia's *Immigration Act 1959/63* provides a comprehensive framework governing the entry, stay, and employment of foreign nationals. The comparative analysis identifies differences in immigration control mechanisms, visa and residence arrangements, and the treatment and protection of vulnerable and undocumented migrants. These differences, combined with the absence of sufficiently integrated bilateral legal mechanisms, may limit the effectiveness of cross-border efforts to prevent irregular migration and protect affected migrants. Legal harmonization is therefore proposed as a strategic approach to strengthen bilateral coordination and regulatory compatibility while maintaining the respective legal frameworks of each country. Harmonization in this context does not imply uniformity of national immigration laws, but rather facilitates coordination between Indonesia and Malaysia in addressing irregular migration and protecting vulnerable migrants. This study employs normative legal research with a juridical-comparative approach, using primary legal materials, academic literature, official government sources, and relevant secondary materials. The study contributes a comparative legal perspective by highlighting the importance of regulatory compatibility and bilateral cooperation in developing a coherent, rights-based, and cooperative framework for managing irregular migration while respecting the distinct legal systems of both countries.

1. INTRODUCTION

Irregular migration from Indonesia to Malaysia remains an important cross-border issue, particularly because vulnerable migrants may be exposed to exploitation, human trafficking, and other forms of abuse. The movement of people through irregular routes is influenced by various socioeconomic factors, including economic inequality, employment opportunities, and limited access to decent livelihoods. Along the Indonesia–Malaysia border, these conditions are compounded by the geographical characteristics of the border area and the existence of alternative routes that may be used to bypass formal immigration controls (Ashari & Wisnu Widayat, 2020) ; International Organization for Migration (IOM), 2021). Previous studies have also documented the relationship between irregular migration and human trafficking in border areas, including West Kalimantan (Alunaza et al., 2022).

A comparative study of migration law between Indonesia and Malaysia is a very important topic in the global and regional context. These two countries have a long history of migration that includes internal and international migration, as well as various legal regulations governing migration issues (Killias, 2010). Law Number 6 of 2011 concerning immigration is the main legal basis that regulates immigration issues in this country (Saragih et al., 2021). This law covers various aspects, including visa arrangements, entry permits, and deportation. Apart from that, Indonesia has several additional regulations, such as Government Regulation No. 45 of 2014, which regulates the role of the Ministry of Foreign Affairs in managing and supervising migration. In this research, Malaysia also has the main law that regulates migration, namely the Immigration Act 1959 (Brata, 2021).

Previous research has examined various dimensions of Indonesia–Malaysia migration, including border management, migrant workers, human trafficking, and the role of international organizations. Ayub & Yusoof (2018), for instance, highlight the importance of legal harmonization within ASEAN to strengthen migrant worker protection against human trafficking. Other studies have examined the socioeconomic and security dimensions of migration along the Indonesia–Malaysia border (Itasari, 2020; Syamsiah et al., 2020; Alunaza et al., 2022). However, existing studies have not sufficiently examined the differences between the Indonesian and Malaysian immigration legal frameworks through the specific lens of Legal Harmonization Theory. This gap is particularly relevant because differences in national regulations may affect the consistency and effectiveness of cross-border migration governance.

Legal Harmonization Theory provides a relevant framework for examining this issue because cross-border migration involves the interaction of different national legal systems. Harmonization does not necessarily require states to adopt identical laws; rather, it may involve aligning selected legal principles, procedures, and regulatory mechanisms to improve their compatibility in addressing shared cross-border challenges. In the Indonesia–Malaysia context, such harmonization may be

relevant to immigration procedures, migration status, border control, and migrant protection. Thus, the theory provides an analytical basis for examining how differences between the two legal systems may be addressed while preserving their respective national legal authority.

The relevance of legal harmonization is particularly significant within the ASEAN context, where respect for national sovereignty and the principle of non-interference limit the possibility of imposing a uniform legal framework across member states. Accordingly, this study does not view harmonization as the replacement of national immigration laws with a common supranational framework. Instead, harmonization is understood as a process through which Indonesia and Malaysia may, through mutual agreement and bilateral cooperation, improve the compatibility of selected legal rules and procedures while maintaining their domestic legal authority. Such an approach may help reconcile national sovereignty with the need for more coordinated governance of cross-border migration.

Based on this research gap, this study aims to compare the legal frameworks governing migration in Indonesia and Malaysia, identify regulatory differences and gaps that may create challenges in managing cross-border migration, and examine the relevance of Legal Harmonization Theory in addressing these differences. The study employs a normative legal research method with a juridical-comparative approach to analyze the principal immigration laws of both countries and relevant secondary legal materials. By connecting comparative migration law with Legal Harmonization Theory, this study contributes to the literature by providing a bilateral perspective on how greater legal compatibility can support more coordinated migration governance and migrant protection without requiring Indonesia and Malaysia to adopt identical legal systems.

2. METHOD

This study employs a normative legal research method with a juridical-comparative approach to examine and compare the legal frameworks governing migration in Indonesia and Malaysia. The normative legal approach is used to analyze the applicable legal norms and regulatory provisions concerning immigration and migration, while the comparative approach is applied to identify similarities, differences, and regulatory gaps between the two countries. Legal Harmonization Theory serves as the analytical framework for assessing the extent to which the respective legal frameworks can be aligned to support more effective bilateral migration governance.

The legal materials consist of primary and secondary legal materials. Primary legal materials include the Indonesian Law Number 6 of 2011 on Immigration and the Malaysian *Immigration Act 1959/63*, which constitute the principal legal instruments governing immigration in each country. These materials are examined to identify provisions relating to immigration control, entry and stay requirements, migration regulation, and the legal treatment of migrants. Secondary legal materials include scholarly journal articles, books, previous research, and academic publications relevant to

migration law, legal harmonization, and Indonesia–Malaysia migration relations. Official government websites and relevant mass media sources are used as supporting materials to provide contextual information concerning the implementation and development of migration policies in both countries.

The analysis is conducted through juridical comparison and legal interpretation. First, the relevant provisions of Indonesian and Malaysian immigration laws are identified and examined. Second, the provisions are compared to determine similarities, differences, and potential regulatory gaps. Third, the findings are interpreted using Legal Harmonization Theory to assess how differences between the two legal systems may affect bilateral migration governance and migrant protection. Relevant migration cases and legal developments are also considered where applicable to provide contextual support for the legal analysis. The analysis therefore focuses on the substance and compatibility of the legal frameworks rather than merely describing qualitative data

3. RESULT AND DISSCUSSION

3.1. Comparison of the Migration Legal Framework in Indonesia and Malaysia

The comparison of migration legal frameworks in Indonesia and Malaysia demonstrates that both countries have established national legal systems to regulate immigration and cross-border movement. However, differences can be identified in the legal basis, regulatory structure, and mechanisms used to manage migration. In Indonesia, Law Number 6 of 2011 on Immigration constitutes the principal legal basis for immigration governance, including the regulation of entry, stay, and departure of foreigners. Its implementation is supported by Government Regulation Number 31 of 2013. In addition, Law Number 12 of 2006 on Citizenship regulates matters related to citizenship (Saragih et al., 2021).

Malaysia primarily regulates immigration through the Immigration Act 1959/63, which serves as the main legal framework governing immigration matters. Other legislation, including the Passport Act 1966, complements the Malaysian immigration framework. These differences demonstrate that Indonesia and Malaysia maintain distinct national legal frameworks in accordance with their respective legal and institutional systems (Arifianto, 2009; Ahmad Yar & Bircan, 2023). The main similarities and differences between the two legal frameworks are presented in Table 1.

Table 1. Comparison of Migration Legal Frameworks in Indonesia and Malaysia

Legal Aspect	Indonesia	Malaysia	Relevance to Legal Harmonization
Principal legal basis	Law Number 6 of 2011 on Immigration	<i>Immigration Act 1959/63</i>	Both countries maintain national immigration laws; harmonization does not require replacing these laws
Entry and immigration control	Regulated through Indonesian immigration legislation	Regulated through Malaysian immigration legislation	Procedures can be coordinated to improve cross-border management

Visa and immigration permits	Regulated under the Indonesian immigration framework	Regulated under the Malaysian immigration framework	Selected administrative procedures may be made more compatible
Residence/immigration status	Determined according to Indonesian immigration provisions	Determined according to Malaysian immigration provisions	Greater compatibility in the recognition and administration of migration status may reduce uncertainty
Border control	Conducted under Indonesian national authority	Conducted under Malaysian national authority	Requires bilateral coordination and information exchange
Irregular migration	Addressed through Indonesian immigration and related laws	Addressed through Malaysian immigration and related laws	Joint procedures and bilateral cooperation may strengthen management
Migrant protection	Provided through relevant national legal mechanisms	Provided through relevant national legal mechanisms	Protection principles and procedures can be coordinated while maintaining national authority
State sovereignty	Immigration authority remains under the Indonesian state	Immigration authority remains under the Malaysian state	Harmonization must respect the sovereignty and domestic legal authority of both countries

Source: Authors' analysis based on Law Number 6 of 2011 on Immigration, Government Regulation Number 31 of 2013, Law Number 12 of 2006 on Citizenship, and the Malaysian Immigration Act 1959/63.

Table 1 indicates that the principal difference between Indonesia and Malaysia lies not in the existence of immigration regulation, but in the structure and mechanisms through which each country exercises its immigration authority. Both countries retain the right to regulate entry, residence, and movement within their respective territories. Therefore, the objective of harmonization should not be the unification of the two legal systems, but rather the improvement of compatibility in areas directly connected to cross-border migration.

This distinction is important because irregular migration involves movement between jurisdictions. Differences in immigration procedures and regulatory mechanisms may create uncertainty when migrants move from one country to another. Consequently, legal harmonization can be directed toward specific areas where cooperation would provide practical benefits, such as border management, information exchange, immigration procedures, and migrant protection (Syamsiah et al., 2020).

3.2. Legal Harmonization Theory and Its Relevance to Migration

Legal Harmonization Theory provides a framework for understanding how different national legal systems can become more compatible without requiring them to become identical. In the context of Indonesia and Malaysia, harmonization is relevant because migration across the shared border involves the interaction of two separate legal and administrative systems. Previous research has highlighted the importance of legal harmonization and cooperation in addressing migrant protection and human trafficking within the ASEAN context (Ayub & Yusoo, 2018). The application of Legal Harmonization Theory in this study is therefore focused on selected areas in which greater

compatibility between Indonesian and Malaysian regulations may improve cross-border migration governance. These areas include immigration procedures, migration status, border management, information exchange, and migrant protection.

Table 2. Potential Areas of Legal Harmonization between Indonesia and Malaysia

Area	Existing Condition	Potential Harmonization
Immigration procedures	Each country applies its own national procedures	Coordination and greater procedural compatibility
Migration status	Status is determined according to national regulations	Greater consistency in definitions and administrative treatment
Border management	Border control remains under national authority	Bilateral coordination and information exchange
Irregular migration	Managed through separate national mechanisms	Development of coordinated bilateral procedures
Human trafficking	Addressed through national and cooperative mechanisms	Strengthening cross-border cooperation and victim protection
Migrant protection	Protection mechanisms may differ between jurisdictions	Alignment of relevant protection principles and procedures
Information exchange	Information is managed through respective institutions	More systematic bilateral information-sharing mechanisms

Source: Authors' analysis based on the comparative legal framework and the concept of Legal Harmonization Theory.

As shown in Table 2, harmonization can be implemented selectively rather than through the creation of a single legal framework. For example, Indonesia and Malaysia may retain different visa systems or immigration laws while improving coordination in procedures that directly affect cross-border migration. Similarly, border control can remain under the authority of each state while being supported by mechanisms for information exchange and coordinated responses to irregular migration (IOM UN Migration, 2020).

This approach is consistent with the understanding that legal harmonization does not necessarily require the adoption of identical laws. Instead, harmonization can involve the alignment of legal principles, procedures, and regulatory mechanisms in specific areas where differences between national systems create practical difficulties. In the context of migrant protection, harmonization can also support the development of compatible standards and procedures for addressing exploitation and human trafficking (Killias, 2021; Ramadhani et al., 2023).

The relevance of this approach is particularly evident in the Indonesia–Malaysia border context. Previous research has identified the relationship between irregular migration, socioeconomic vulnerability, and human trafficking in border areas, including West Kalimantan (Itasari, 2020; Alunaza et al., 2022). Therefore, greater compatibility between the legal and administrative mechanisms of Indonesia and Malaysia may strengthen the ability of both countries to respond to migration risks while maintaining their respective legal authority.

3.3. Legal Challenges in Harmonizing Migration Law

The harmonization of migration law between Indonesia and Malaysia faces several challenges. These challenges arise from differences in national legal systems, economic interests, border security priorities, and social and cultural conditions. Since immigration remains a core component of state sovereignty, each country retains the authority to determine its own immigration policies. Consequently, harmonization must be designed in a manner that respects national legal authority while addressing shared cross-border problems (Nugrahaningsih et al., 2020).

Table 3. Challenges and Strategies for Migration Law Harmonization

Challenge	Potential Impact	Harmonization Strategy
Differences in national legal systems	Different procedures and legal interpretations	Identify specific areas suitable for legal and procedural compatibility
National sovereignty	Limits the possibility of legal unification	Apply bilateral harmonization while maintaining domestic legal authority
Different economic interests	Different approaches to migrant workers and migration management	Identify shared interests and mutually beneficial arrangements
Border security	Different security priorities and enforcement mechanisms	Strengthen coordination and information exchange
Social and cultural differences	Different perceptions regarding migrant rights and treatment	Promote dialogue, consultation, and mutual understanding
Human trafficking and exploitation	Vulnerable migrants may face cross-border risks	Strengthen cooperation in prevention, identification, referral, and protection

Source: Authors' analysis based on relevant literature concerning migration, border governance, and legal harmonization.

One of the principal challenges is the difference between the national legal systems of Indonesia and Malaysia. Each country has developed immigration regulations according to its own legal traditions and national interests. Therefore, attempting to establish identical immigration laws may create difficulties and may not be consistent with the principle of national sovereignty.

Economic interests also influence migration governance. Indonesia and Malaysia have different economic structures and labor market needs, which may result in different approaches to migrant workers and cross-border mobility. These differences need to be considered when developing bilateral migration arrangements so that harmonization does not undermine the economic interests of either country.

Border security presents another significant challenge. Irregular border crossings, human trafficking, and other forms of transnational crime require effective cooperation between the two countries. However, each country retains its own security priorities and enforcement mechanisms. Harmonization can therefore focus on improving coordination, information exchange, and joint mechanisms rather than transferring national enforcement authority to a supranational institution (Alunaza et al., 2022).

Social and cultural differences may also influence the formulation and implementation of migration policies. Differences in social values and perceptions regarding migrant rights can affect the acceptance of particular regulatory approaches. Consequently, bilateral dialogue and consultation are necessary to develop arrangements that are acceptable to both countries (Rusli et al., 2022; Sambas News, 2021).

3.4. Strategies for Strengthening Bilateral Legal Harmonization

The challenges identified above indicate that harmonization should be implemented through a gradual, selective, and bilateral approach. Regular consultation between Indonesian and Malaysian authorities can provide a mechanism for identifying regulatory differences and determining areas where greater compatibility is required. Bilateral meetings and institutional cooperation can also strengthen mutual understanding and support the development of coordinated migration policies (Suravoranon, 2017). The first strategy is to strengthen coordination in border management. This may include improving information exchange concerning irregular migration, developing compatible procedures for handling cross-border cases, and strengthening communication between relevant immigration and law enforcement institutions.

The second strategy is to strengthen migrant protection mechanisms. Since irregular migrants may be vulnerable to exploitation and human trafficking, Indonesia and Malaysia can improve coordination in identifying vulnerable migrants, referring victims to appropriate services, and addressing cross-border trafficking cases. Such cooperation can strengthen migrant protection without requiring both countries to adopt identical legal provisions (Ramadhani et al., 2023). The third strategy is to develop mechanisms for continuous bilateral consultation. Harmonization is not a one-time process because migration patterns, security conditions, and national policies may change over time. Regular consultation can therefore provide an institutional mechanism for reviewing existing cooperation and identifying new areas requiring coordination (Suravoranon, 2017; SERRA, 2006).

Overall, these strategies indicate that legal harmonization between Indonesia and Malaysia is more appropriately understood as a process of functional compatibility rather than legal unification. Indonesia and Malaysia can retain their respective national immigration laws while aligning selected principles, procedures, and mechanisms that are directly relevant to cross-border migration.

3.5. Implications for Cross-Border Migration Governance

The comparative analysis demonstrates that the differences between Indonesian and Malaysian migration laws do not necessarily need to be eliminated. Instead, these differences identify specific areas where greater legal and administrative compatibility may be beneficial. Legal Harmonization Theory therefore provides an analytical basis for determining which aspects of migration governance can be coordinated while preserving national sovereignty.

The findings suggest that a functional and bilateral model of legal harmonization is more appropriate for the Indonesia–Malaysia context. Such harmonization may focus on immigration

procedures, border management, information exchange, irregular migration, human trafficking, and migrant protection. This approach is also consistent with the broader ASEAN context, in which cooperation must take into account the sovereignty and domestic legal authority of member states.

Accordingly, legal harmonization should not be interpreted as the creation of identical migration laws in Indonesia and Malaysia. Rather, it should be understood as an effort to establish greater compatibility, coordination, and mutual understanding between the two national legal systems. Through this approach, harmonization can contribute to more effective cross-border migration governance while maintaining the legal sovereignty of both Indonesia and Malaysia.

4. CONCLUSION

This study concludes that the migration legal frameworks of Indonesia and Malaysia have differences in their legal structures, regulatory mechanisms, and approaches to immigration governance. Indonesia relies primarily on Law Number 6 of 2011 on Immigration, while Malaysia relies principally on the Immigration Act 1959/63. These differences reflect the respective legal authority and national interests of each country. However, differences between the two legal systems do not necessarily constitute an obstacle that must be eliminated through the unification of migration laws. The application of Legal Harmonization Theory demonstrates that harmonization in the Indonesia–Malaysia migration context is more appropriately understood as a process of improving legal and administrative compatibility. Harmonization can focus on selected areas, including immigration procedures, migration status, border management, information exchange, irregular migration, human trafficking, and migrant protection. Such an approach allows both countries to strengthen cross-border cooperation while maintaining their respective national legal systems and sovereignty.

The study also identifies several challenges to migration law harmonization, including differences in national legal systems, economic interests, border security priorities, and social and cultural conditions. These challenges indicate that harmonization cannot be achieved through a uniform legal framework. Instead, it requires gradual, selective, and bilateral cooperation supported by regular consultation, institutional coordination, information exchange, and compatible procedures for managing cross-border migration. Therefore, the study argues that functional and bilateral legal harmonization is a more appropriate approach for Indonesia and Malaysia. This approach does not require both countries to adopt identical migration laws but seeks to establish greater compatibility and coordination in areas of shared concern. Such harmonization can contribute to more effective management of irregular migration, strengthen migrant protection, and support cross-border cooperation while respecting the sovereignty and domestic legal authority of both countries.

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