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**IRREGULAR MIGRATION AND
IMMIGRANT LEGALISATION IN MALAYSIA**

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Abstract

Legalisation has been at the cornerstone of Malaysia's migration control measures in handling the crisis of irregular migration. It has been utilised as a policy instrument due to the large number of irregular migrants. Although this approach may not address the root cause of irregular migration caused by acute labour market shortages, the privatisation of recruitment, the activities of labour brokers, the existence of migrant social networks, and the illegal entry of immigrants, this paper suggests that legalisation programmes complement the hard approach of arrests, detention, and deportation. Legalisation helps lessen the financial, infrastructural, and human resource costs, and also reduces overcrowding at the detention camps. Legalisation may serve as an alternative measure, in strengthening interior enforcement. This research draws upon official documents, parliamentary debates, news media and secondary literature. It shows that the soft approach implemented through amnesty, legalisation and voluntary repatriation, in the Malaysian context, is essential in the enforcement of immigration laws.

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1. Introduction

Among the migration control measures, amnesty and legalisation exercises have been politically controversial. Amnesty was initiated to stem the flow of irregular migration by encouraging the irregular migrant workers to go home when they failed to participate in the legalisation programme. Periodic amnesty programmes were undertaken in 1989, 1991, 1996, 1998, 2002, and 2004 to encourage voluntary repatriation. In the periodic amnesty programme, the workers were to go home legally without prosecution and to return to Malaysia as legal migrant workers after successfully obtaining legal documentation from their home country (Devadason & Chan, 2014; Hedman, 2008; Kassim & Mat Zin, 2011).

Both the host and home countries believed that legal employment status could end workers' exploitation by unscrupulous employers, protect them under labour laws, extend equal treatment between foreign workers and the locals in terms of salary and work conditions, and protect local workers from unfair labour market competition (Garcés-Mascareñas, 2012). From the official perspective, amnesties are effective in reducing the number of irregular migrants and they are beneficial to the economy. A report prepared by the World Bank (2013) indicated that "moving all undocumented workers from underground to formal employment has important benefits for the overall economy in terms of tax collection, minimum wage enforcement, and other regulations" (p. 177). Rather than keeping irregular migrants at detention centres, legalisation helps to solve the escalating detention cost yearly (Kassim, 1997).

Yet parliamentarians have argued that the soft approaches have sent a wrong message and have failed to deliver the much wanted deterrence to irregularity. Soft approaches undermine enforcement operations when migrants are well aware that their presence would be tolerated. The influx of immigrants was actually reported when they were aware that they could be legalised and granted amnesty (Federation of Malaysia, 2008, p. 17). Amnesty can thus be seen as victimising those following the law, while rewarding those who do not follow the rule of law. Whereas, the government is urged to ensure that those who abide by the law are rewarded. Irregular migrants were granted amnesty under different types of programmes (Federation of Malaysia, 2017, p. 31).

1.1. Literature Review

Market factors, resulted from the state's economic growth and wage differentials between Malaysia and neighbouring countries, were the main pull factor drawing migrant workers, into construction, manufacturing, and plantations sectors in the 1970s. The tide of irregular migrants has been facilitated by the activities of recruitment agencies and social networks, paralleled by the development of Malaysian-Indonesian migration industries (Kaur, 2014; Garcés-Mascareñas, 2012). The influx of foreign labour has become a permanent phenomenon in Malaysia due to the structural problems of the labour market, which relies heavily on foreign workers for low-waged jobs (Lee, 2017).

The government resorted to legalisation programmes from time to time when deemed necessary (i.e. 1989-1990, 1991-1992 and 1996-1997). Ever since the first regularisation programme was carried out to legalise Indonesian workers in the plantation sector, it has been subject to wide criticism. Regularising irregular migrants was tantamount to the recognition of irregular migrants which have resulted in opposition parties and trade unions accusing the government of "violating its own immigration laws" (Garcés-Mascareñas, 2012, pp. 84-85). Voluntary repatriation may not have the intended result in the long run: as

“voluntary return does not mean leaving the country once and for all. Since borders continue to be porous, programmes for voluntary return would seem to facilitate movement back and forth between countries” (Garcés-Mascareñas, 2012, p. 93). Going back legally with their family has appeared attractive for migrant workers after some years of sojourning in Malaysia. For them, re-entry into Malaysia is easy and many irregular migrants have been known to later re-enter the country (Garcés-Mascareñas, 2012, p. 99).

As noted by Hedman (2008), forced removal often takes place after amnesty has ended. The Malaysian model represents a distinct strategy of migration control based on the fact that many of the irregulars were actually granted amnesty or the so-called prior notice before they were raided. Once the extended amnesty period was over, those who failed to legalise their status would be tried and deported through military operations such as: Ops Nyah 1 and Ops Nyah 2. In the first six months of 1992, Ops Nyah 1 witnessed the deportation of 40,000 irregular Indonesian migrants who failed to register. After the registration deadline expired on July 1, 1992, Ops Nyah II commenced (Jones, 2000). In 1997, a tougher policy was adopted and the government launched its new deportation programme. After the 1996 regularisation practice, the government made it clear that no more voluntary return would be carried out and implemented a harsher policy approach for irregular migrants, human smugglers, as well as their employers (Garcés-Mascareñas, 2012).

In 2005, the Ministry of Home Affairs launched a nationwide crackdown “Ops Tegas” to arrest and deport irregular immigrants after the end of the 2004 amnesty deal (Hedman, 2008, p. 363). Yet again, migrant workers were allowed to return home and obtain legal documentation for their re-entry into Malaysia. Nearly 400,000, mostly citizens from Indonesia, the Philippines, Myanmar, Bangladesh, India, and Sri Lanka left without facing any penalty during the first three months of the amnesty policy. Irregular migrants who continued their irregular employment were caught and were sent to court and barred from re-entering Malaysia. According to Azmi Khalid, the then Home Affairs Minister, “There is no other country in the world that has come up with the amnesty programmes like what we have. We have been very humane with the irregulars” (as cited in Aljazeera, 2005). As compared to the harsher approaches such as arrests and forced deportation, voluntary return programmes demonstrated the humanitarian perspective of immigration enforcement.

Migrant communities and civil society organisations urged the government to protect the rights of undocumented migrants. Enforcement operations on undocumented migrant workers failed to address the root causes of irregular migration. Migrants have become undocumented due to various reasons such as victims of trafficking, deception by recruitment agents, cheating by legalisation agents, debt bondage and labourers’ exploitation. However, many have failed to recognise that foreign workers were brought in by the Malaysian government, employers, and agents and have contributed to the overall economic growth of Malaysia. Accordingly, the government was called to halt enforcement operations and to devise rights-based solutions (Civil Society Organisations, 2018).

2. Problem Statement

While the literature has discussed the prospects and limitations of immigrant legalisation, the official perspective from the enforcement aspect has not been fully explored. Although the legalisation exercises have been subject to wide criticisms among local law makers the Immigration Department views periodic

legalisation programmes as necessary. This paper demonstrates that a combination of both the soft and hard approaches is essential in reducing the number of irregular immigrants.

3. Research Questions

How does legalisation complements the hard approach of enforcement operations?

What roles do amnesty and voluntary repatriation have in migration control?

4. Purpose of the Study

This paper analyses the State's different legalisation programmes and the responses of various stakeholders. It contributes to the literature by looking at the official viewpoint of amnesty and voluntary repatriation. Different from the official viewpoint, trade unions, and civil societies have argued that legalisation have only served as the short-term remedy to address the problems with foreign workers. According to civil societies, a long-term solution lies in the migrant labour management reform, which has been undertaken by the new Pakatan Harapan government.

5. Research Methods

This paper draws upon the analysis of parliamentary debates, press releases, online news media, and secondary literature. Document analysis is used to examine these primary and secondary resources.

6. Findings

Amnesty and legalisation exercises have allowed the government to monitor the number of irregular migrants in the country. While the number of irregular immigrants in the country could not be fully ascertained, legalisation has the advantage of tracking them and keeping them under surveillance. Since 2011, the government implemented two legalisation programmes: the 6P Programme in 2011 and the Rehiring Programme in 2016. The 6P Programme is a total package solution that refers to registration (pendaftaran), amnesty (pengampunan), legalisation (pemutihan), monitoring (pemantauan), enforcement (penguatkuasaan), and deportation (pengusiran). Under the 6P programme, the number of immigrants participating in the different stages of the programme was as follows: (i) biometric registration - 1,303,126 migrants; (ii) legalisation - 503,161; (iii) monitoring - 387,430. Subsequently the enforcement stage was implemented through 6P Integrated Ops (October 20 to August 31, 2013) which recorded 42,102 immigrants who were arrested. The final stage of deportation witnessed 141,664 migrants being deported in 2014 (Federation of Malaysia, 2014c, p. 71).

Meanwhile, the Rehiring Programme was aimed at providing irregular workers in Malaysia with a valid work permit to meet the requirements of the authorised employment sectors. The programme was implemented until June 30, 2018. A total of 83,919 employers and 744,942 migrant workers were registered (Federation of Malaysia, 2018, p.16). Those who were not eligible under the Rehiring Programme were required to return home through the voluntary return program called the "Three Plus One Programme" (3 + 1). Under this approach, the migrants were asked to surrender, pay a compound, and obtain a ticket to

return home. Any surrendered migrant worker was charged a fine of MYR 300 and a special pass was given to be sent home for only MYR 100. They were exempted prosecution for related offenses under the Immigration Act 1959/1963 but were blacklisted from entering the country for a period of five years after having their biometric records taken. Following the end of the Rehiring Programme, the Immigration Department's efforts focused on enforcement operations (Federation of Malaysia, 2018, p. 17).

Through the 6P Integrated Ops phase 1 (September 1, 2013 to January 20, 2014), a total of 2,405 operations were held in various locations throughout the country such as houses, business premises, restaurants, entertainment centres, construction sites, and factories. A total of 56,044 foreign nationals were investigated while 17,455 irregulars, and 234 employers were arrested. During the 6P Integrated Ops phase 2 (January 21, 2014 through April 1, 2014), a total of 1,424 operations nationwide were carried out involving 15,818 members from various enforcement agencies. Among the operations carried out, 31,999 people were investigated which led to 9,214 foreign workers and 125 employers being arrested. These enforcement operations have been continuously carried out to reduce the number of irregular immigrants by enforcing the Malaysian Immigration Act 1959/1963, the Passport Act 1966, Immigration Regulations 1963, the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Federation of Malaysia, 2014a, p. 17).

A combination of both the hard and soft approach has become the mechanism to deal with irregular migration. The Immigration Department aims to achieve "zero irregular migrants" by 2020, that is to be accomplished through enforcement operations combined with voluntary repatriation programmes (Malaysian Insider, 2014). Voluntary removal expedites deportation and alleviates backlogs in the detention centres especially when the Immigration Department of Malaysia carries out a large-scale operation. The measure taken helped to cut back on government expenses since the return tickets were paid by the immigrants (Federation of Malaysia, 2014b, p. 98).

Amnesties offered a temporary and timely solution to cutting cost and manpower saving. The process of arrest, detention, and deportation of the estimated 2.5 million irregular migrants (as of 2014) is a daunting task. Forced removal is time consuming due to difficulties in determining their citizenship status with respective embassies, and obtaining their documentation. In the effort to counter the influx of irregular immigrants, voluntary removal is executed simultaneously with forced removal through enforcement operations (Malaysian Insider, 2014). At present there are 14 detention depots nationwide which could accommodate 13,000 people (Star Online, 2019).

7. Conclusion

Malaysia's immigration regime represents both aspects of continuity and change. In the context of the enforcement approach, a combination of soft and hard approaches has continued to characterise Malaysia's deportation policies. The massive operations of surveillance, raids, detention, and deportation show that Malaysia has focused on internal control measures. As a result, this paper suggests that internal control remains important, as it can prevent the harbouring of irregular immigrants among the public. Although voluntary removal may reduce the number of irregulars for a specific time frame, amnesties offered too often might have an opposite psychological effect. As for the issue on amnesty, this paper highlights how

the state reconciles between stricter immigration control and a softer approach practiced concurrently at the correct point of time.

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