

# Strong State and Free market: Systematic Abuse on Malaysia's Foreign Workers

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According to Malaysia Home Ministry statistics until 30 June 2017, there are currently 1,781,598 registered foreign workers mainly from Indonesia, Nepal, Bangladesh, Myanmar, and India, which most of them are working in manufacturing, services, construction, and agriculture industries. These statistics show that Malaysia is highly dependent on foreign labor to fulfill the need of the market, but on the other side, there are still many undocumented foreign workers in Malaysia whose living condition is constantly in ambivalence between a legal and illegal status. Although some aspects of Malaysia's *The Employment Act 1955* does protect some of their basic rights, there are increasing cases of foreign workers being treated inhumanely by their employers and an absence of adequate enforcement on such matters. Moreover, the agency system that currently practices and also alleged cases of corruption within the Immigration Department, all add up to the abuse of Malaysia's foreign worker's rights in a systematic way. By using various kinds of case studies and also media reports and NGOs reports, this essay will be an attempt to drown out the inherent systematic abuse in the employment of foreign workers in Malaysia, as well as to understand the severity of this phenomenon. The outcome of this essay will try to address what kind of actions can be taken from the government, NGOs, and any other people concerned with the rights of Malaysia's foreign workers, in order to improve the working conditions of foreign workers in Malaysia.

*Keywords: free market, Malaysia, Migrant workers, human rights, abuse*

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## Introduction

According to the Malaysia Home Ministry statistics until 30th June 2017, there are currently 1,781,598 registered foreign workers mainly from Indonesia, Nepal, Bangladesh, Myanmar, and India where most of them are working in manufacturing, services, construction, and agriculture industries. This statistic shows that Malaysia is highly dependent on foreign labor to fulfill the need of the market, but on the other side, there are still many undocumented foreign workers in Malaysia whose living condition is constantly in uncertainty between a legal and illegal status.

Although some aspects of Malaysia's *The Employment Act 1955* does protect certain elements of their basic rights, there are increasing numbers of foreign workers that have been treated inhumanely by their employers as a result of inadequate enforcements on such matters. Moreover, the foreign labor agencies' markets that currently practice and also alleged cases of corruption within

the Immigration Department, all add up to the abuse of Malaysia's foreign worker's rights in a systematic way.

By using various kinds of case studies, media, and NGO reports, this essay will be an attempt to draw inherent systematic abuse of the foreign worker's employment in Malaysia, as well as to understand the severity of this phenomenon. The outcome of this essay will try to address what kind of actions can be taken by the government, NGOs, and any concerned citizen with the rights of Malaysia's foreign workers, in order to improve the working conditions of foreign workers in Malaysia.

At the latest statistics available now, until 30 June of 2017, there are 1,781,598 registered foreign workers from around the globe, where most of the foreign worker's populations come from countries like Indonesia, Nepal, and Bangladesh occupying the top three numbers of Malaysia's foreign worker's populations. (See figure 1) But due to the unregistered status, the actual number of irregular migrants (including economic or political refugees) workers cannot be clearly known and it is widely being debated among Malaysian society with inconsistent, and to a certain extent, an exaggeration towards the actual number of the migrant workers. Nevertheless, foreign workers have contributed a huge part to the Malaysian workforce and in turn help with the growth of Malaysia's economy.

Following the common trends of migrant workers around the globe, Malaysia's foreign workers usually work in the sector where the domestic workforce usually would not, which can be categorized as dirty, dangerous, and degrading jobs (3D jobs). According to the Immigration Department of Malaysia, foreign workers can only work in five sectors, which are the construction, plantation, agriculture, services, and manufacturing where their jobs are usually considered as unskilled jobs. Although the statutory minimum wages of the domestic and foreign workers are the same and is protected by the Employment Act, which is RM1000 in Malaysia Peninsula and RM920 in East Malaysia (Per month), which is widely considered inadequate if the particular individual lives in the big cities such as Kuala Lumpur due to its high cost of living.

Despite the relatively low pay and continuous exploitation of foreign workers, if we observe the data on the previous years in order to understand the economic contribution of Malaysia's foreign workers, from the year 2007 to 2009, foreign workers in Malaysia hold 9.8% to 9.9% of Malaysia total workforce, but in the year 2010 to 2013, due to Malaysia's Ministry of Home Affairs's special 'amnesty program' called as a 6-P program. There was a sharp surge in the number of foreign workers in the Malaysia workforce, which is around 13.5% to 13.8%. (Micheaux, 2017) To be more specific, according to the International Labour Organization Regional Office for Asia and the Pacific's report, in 2014 alone, foreign workers in Malaysia had collectively contributed RM297 billion, or 35.7% of GDP. (Pacific, 2016)

Although the statistics do not count in irregular foreign workers, but at the very least, it is clearly shown to foreign workers in Malaysia although have contribute economically, workforce and production, still report on mistreatment and abuse cases, in some cases even leads to loss of life, is, unfortunately, happen in constant rates (News, 2018). Foreign labor is almost in every corner of Malaysia, which can only lead to one reasoning; there is inherently systematic abuse toward Malaysia's foreign labor and it is in need to be illustrated in order to get a clearer picture.

In this small essay, the author will discuss different aspects of systematic abuse of foreign workers, including the laws and enforcement related to foreign workers, foreign workers agencies, and abuse of basic human rights. This is an attempt to understand the bigger picture of Malaysia's treatments toward foreign workers, although it cannot cover all of the dynamics the paper's title suggests, the author hopes that this paper can serve as an overview and also lead to a more complete study.

### **Laws and enforcement, detention related to foreign workers**

In this section, the author will focus on three topics that define and characterize based on the basic question of, "How Does the Malaysia government treats foreign workers in general?' These topics are related to laws and enforcement, detention of foreign workers of which from here we can understand the 'governmentality' of the Malaysia government in regulating, controlling, and managing foreign workers in Malaysia, regardless of proper documented foreign workers or irregular foreign workers.

Firstly, we should talk about the enforcement part. According to Azizah Kasim and Ragayah Haji Mat Zin's research, in 2011 there are 17 depots in all states of Malaysia that have been established to accommodate irregular migrants who are being apprehended by authorities, which can accommodate about 11,000 inmates at one time. (Azizah Kasim and Ragayah Haji Mat Zin, 2011) Also from the research, the depots are meant to serve as a temporary hosting place for the irregular migrants that authorities had apprehended, for the Malaysian government to arrange for their eventual deportation by either directly fund them, negotiating with the respective foreign embassy or even, letting the irregular migrants paid for their own travels expenses.

The actual condition of such a depot center is unclear due to limited access for the public and the government bodies seldom disclose such information. According to several media reports and research, including Azizah Kasim and Ragayah Haji Mat Zin's, it has been suggested that the actual condition is dire, and it even cost the life of the foreign workers. (Azizah Kasim and Ragayah Haji Mat Zin, 2011) (Ananthalakshmi, 2017). One such case is reported by Reuters is saying that from the year 2015 to 2016, there are over 100 cases of deaths in several depots, where most of the cases consist of Myanmar nationalities (63 cases) and 50 death cases reported as a result of various illnesses such as tuberculosis, pneumonia, leptospirosis and the the other half of the death cases has not been disclosed of its reason.

Arguably, illness is not the main cause of death in depots, The Cambodia Daily reported that two returned maids had claimed that they experienced and saw cases of physical abuse by beating and kicking, and witnessed another two Cambodians and Vietnamese girls died after being repeatedly beaten. (Zsombor Peter, Kuch Naren, 2016). Although there is no way to prove their claims according to Malaysia's human right group SUARAM's 2015 report, the depots are severely lacking in accountability, transparency, and its questionable Standard Operating Procedures. Even the basic necessities such as food and water and their access to legal aid are also severely lacking. (SUARAM, 2015)

There were two major operations in order to tackle irregular foreign workers in Malaysia, Ops Nyah 1, focuses on border surveillance and control exercise and Ops Nyah 2, to root out irregular migrants. Ops Nyah 1 was introduced in January 1992 and Ops Nyah 2 was introduced in July of the same year, which both operations are still ongoing today. Both operations are Ops Nyah cross-department effort which involves the Malaysia Army (both the land and marine), Immigration Department division of enforcement, The Malaysia Royal Police, National Registration Department, and urban enforcement authorities and local government enforcement team, etc.

These two major operations, alongside the much smaller scale of the similar operation on the local level, have contributed to the source of arrestment and detention of Malaysia migrant workers in general. According to Azizah Kassim, the recent trend has shown that the Malaysia government is more on Ops Nyah 2, wherein November 2001, there was around 87,461 irregular foreign worker that has been nabbed compared with the same year Ops Nyah 1, it was only around 9,103 irregular foreign workers been arrested. (Kassim, 2003)

But what are the reasons for detention in the first place? From 404 respondents collected by Azizah Kasim and Ragayah Haji Mat Zin, a majority of them are violations of the Immigration Act 1959/63 and Passport Act 1966 (88.5%), Violations of Foreign Workers Policy (5.6%), Criminal & Other Offences (4.1%) and others reason (1.8%). This number may be aligned with the official statistics released by the Home Ministry, where in the year 2015 to March 2016, there is a total of 71,356 foreign nationals committed various immigration offenses, were from that numbers, 49,124 were males, 18,149 were females and 4,083 were children. (Nokman, 2016) The Immigration Department of Malaysia also lists down the top three offenses that have frequently been committed by foreigners in broad senses, which include foreign migrant workers, which are illegal entry, overstaying and make, falsify the document. (Malaysia Immigration Department, 2010). With the estimated numbers of almost 60% of the foreign workers hopping jobs to jobs, of which it is disallowed in the foreign worker's policy, the actual number of arrests will spike. (Hoh, 2017)

Such phenomena will eventually lead to a better understanding of Malaysia's foreign labor related laws. Although the main department administering the labor migration is the Ministry of Human Resources and the Ministry of Home Affairs, but due to unequal division of task between the two ministries, is it lead by Ministry of Home Affairs that dealing such affair, which in many cases is the department that actually leads labor migration policies, that heavily implementation on national security, which focusing on reducing irregular migration and border management as the main concern (Pacific, 2016). The unequally divided tasks also contribute to what can be called 'chaos in the house', which describes the conflict of authorities on policies regulating and managing migrant inflows. (Evelyn Devadason Wai Meng Chan, 2014). It has been described in their paper that due to various economic sectors, the government has signed a memorandum and demanded the private sector is generating short-lived policies, such as import bans or increase on import, several amnesty programs and a continuous enforcement operation on the irregular foreign worker. In short, Evelyn Devadason and Wai Meng Chan in quoting Amarjit, '...the core problem is the lack of a comprehensive migrant worker policy and weak governance structures.'

### **Privatization, foreign workers agencies, and violation of the basic human right**

When the Malaysian government set up the Committee for the Recruitment of Foreign Workers in 1992, it was a significant event where it entails the government has stepped inside the affair in the recruitment process of foreign workers unlike before 1992, it was unregulated. According to Cheong WeiJin, this event shows that (1) transnational labor entered an era of migration policies with strong economic factors and the new form of migration, which entail in ethnicity and social class element (2) feminize of transnational labor, especially in domestic workers. (Cheong, 2010)

And yet another important change occurred in 2005 when the government issues guidelines to private companies, instructing them to utilize the services of 'labor outsourcing companies' if they are intending to hire less than fifty foreign workers, and if the hiring number is more than fifty, the private companies can choose direct recruitment by themselves or use the outsourcing companies. This policy, combined with the aforementioned government step in, entails a government backing of private foreign workers agencies industry, where it also creates a new problem such as the misconduct by the outsourcing companies, like limiting the freedom of movement, lacking an acceptable living condition and unguaranteed legal minimum wage. A more fundamental problem is the 'clouded the legal relationship between migrant workers and their employers, making their statutory responsibilities belong to who is unclear' (Pacific, 2016)

Privatization does have its two-fold effects where according to Garces-Mascarenas, is the increased cost of legal migration, and secondly, 'producing' illegality of legally recruit foreign workers due to real employer that have the right of applying the work permits for the foreign workers but inform the outsourcing companies that they do not want them for various reason, while the workers are already in Malaysia. (Garces-Mascarenas, 2016). Some even argues that the process of recruitment and supplying foreign workers has become big business, and some companies have the monopolies and the exclusive right in handling the process involving migrants workers, such as MyEg E-government services where it was given the monopoly over the annual renewal of permits renewal of migrant workers, where the company's executive director is the former political party UMNO supreme council member (SUARAM, 2015), and Fomema, a company that have the monopoly of the migrant's workers health exam registration.

These privatization policies have led SUARAM to explain the reason why there is a 'lack of respect and political will to do anything about protecting and enhancing the human right of migrant workers.' (SUARAM, 2015). The author fully agrees that the outsourcing companies and supply-demand chain as a whole is entirely profit-driven; not only in the legal way of recruitment but also give motivation to the human trafficking activities as there are virtually no legal protection for foreign workers.

These highly political link companies and also non-transparency on such matters, have led to internal corruption. 22nd March last year, the then Bukit Mertajam Member of Parliament Steven Sim said that government at that time has appoint the middlemen in registering temporary ID card called as Enforcement card(E-Card) in order to register undocumented foreign workers, and allegedly need to pay up the middlemen to almost RM800 per workers where the registration of E-card is supposedly to be free. Steven Sim called it 'paper-shifters taking advantage of a flawed system' (Reporters, 2017). The same year on 28th April, the Anti-Corruption Committee had arrested nine people involved in an allegedly bribes-for-permits activity where it is not clear whether these two cases are linked to each other, but still it has shown the monopoly right is indeed a fertile ground in breeding the corruption which feeds on the exploitation of foreign workers. (Nambiar, 2017)

Also from SUARAM, they have list down the common abuse of foreign worker in Malaysia, which is the passport retention, non-payment of wages, payment of under minimum wage, non-payment on overtime, arbitrary deductions, excessively long hours and lack of rest time or rest days, neglection of health and workplace safety. Although these are common problems that the domestic workers are facing, due to their foreign workers status in a profit-driven and flawed governance, the abuse against them will surely affect them more as compared to the domestic workers, and this does not include the discrimination in the social-work that they have to face daily.

### Conclusion

The foreign workers in Malaysia are indeed facing a systematic failure where it leads to their deterioration of their condition. A migration labour policy which is focusing more on national securities than workers' rights is seen as foreign workers as a potential threat, which is basically a limited chance for foreign workers to work for a longer period in Malaysia. The 'chaos' on both migration policy and workers policy, which in some cases even produced irregular foreign workers that do not intend to, and lack of political participation of foreign workers, have led to them 'voiceless' or even 'faceless', submerge in various forms of abuses.

But at the same time, we need to understand that by combining the privatization of the recruitment process of foreign workers, it also has made their life even worse. Political parties-backed the monopoly of the companies in controlling the supply chain of foreign workers recruitments, although some claims that it makes the recruitments process easier, but what they don't see this kind of monopoly companies is based on the exploitation of foreign workers, which they have to pay a heavy fees in order to gain access to Malaysia. In many cases, what the agents promised is just lie, at the same time they have subjugated in various debts, which in turn make them subaltern in a foreign 'free country'

These two factoring in the systematic abuses against foreign workers, and the author believe that further privatization and ignore the root cause of the problem, regardless the newly elected government claims trying to lower the population of foreign workers, may not really focus solving their deterioration condition, but is based on xenophobic reason. As what the author knows, the situation is not optimistic due to the xenophobic tendency of voters that elected the new government, which they will push pressure in them in order to achieve their goal.

**Figure 1.** Origin Countries of Malaysia's migrant workers

Nationality	Populations
Indonesia	728,870
Nepal	405,898
Bangladesh	221,089

Myanmar	127,705
India	114,455
Pakistan	59,281
Philippines	56,153
Vietnam	29,039
China	15,399
Thailand	12,603
Sri Lanka	5964
Cambodia	5103
Laos	39
Total	1,781,598

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