

## **CHAPTER IV**

### **MALAYSIA'S POLICY ON IMMIGRATION ISSUES**

In chapter II this research has examined the history, data, and the factors of immigrant that attract foreign workers in Malaysia. In chapter III I will explain political, security, economy and social situation in Malaysian concerning migrant workers issues. The Government should resolve the problem through effective policy such as the development of detention house, infrastructure or structural organization.

Malaysia faced many problems such as security, politic, social and economy that will give an impact to the future of Malaysia. Million foreign workers come to Malaysia to get better life, as well as better job. With low wages and placed in 3D (Dirty, Difficult, and Dangerous) will impact to local workers jealousy. It happened because the local workers usually seek to higher wages and good place and work in safety area. 3D (Dirty, Difficult, and Dangerous) can become 4D, the fourth D referred to Diseases. Dirty, Difficult and Dangerous work can bring Diseases to the foreign workers. Moreover, most of employers did not have responsibility on the health care of the workers that made them can easily contracted with diseases. The disease can influence local people through daily contact and will proceed social problems.

The incoming of immigrant can bring security issues, it emerged cause the difference of understanding and behavior in their home country. Mostly, the

immigrant use illegal way to reach Malaysia due to financially cheaper than through legal way despite more dangerous. After they arrived in Malaysia they will face many rules that controlled the people activity. Every country has their own rules that ruled by the government and should obey by the people to increase the quality of the country. Uneducated immigrant mostly ignores the rules, and then they will face a trouble. The immigrant will place in somewhere where they are condemned for their action. For legal immigrant, usually they just get an earful from the officer. However, the illegal immigrant usually gets a punishment and can get kicked out of the country. In this moment some bad politicians have deals to illegal immigrant. They will obtain citizenship if the willingly to votes particular political party in the election. This case can bring the impact to the vote result. However Malaysia's government already taken a serious action to create a policy. If the policies work properly, it will strengthen the accountability political representatives in Malaysia. Thus, the representative is from educated people, proper and good attitudes.

From this problem the author put a securitization migration concept from Philippe Bourbeau to analyze migrant workers issues in Malaysia. Malaysia uses two policies to secure the country from immigration issues. The first policy imposed to before the departure of migrants to Malaysia. It will help Malaysia's government to control immigration flows whether inflow and outflow from Malaysia. The second policy is to give a punishment to the immigrant who already entered and make a

trouble in Malaysia. The policy will punish the immigrant in detention house and then kick out of the country, so it will not destroy the social stability in the country.

Malaysia launches foreign worker Immigration Security Clearance (ISC) in 2014 for Bangladesh migrants looking to work in Malaysia. ISC is the key security step to be implemented on migrant workers before any work application process such as application for Visa/Calling Visa can begin. ISC acts as the first level of security measure by verifying the identity and status of migrants/candidates against its security database. ISC is launched with the inking of an agreement between VFS Global and S5 Biotech.

#### **A. Policy to Tightening Migration**

Philippe Bourbeau said that to secure the country, the country should create a policy to security, foreign affairs, and immigration. One of the indicators is interdiction means an activity that preventing the movement of people by prohibiting, intercepting, and/or deflecting them.

The legal framework of this policy is Laws of Malaysia act 155 immigration act 1959/63 it was amendments in 1 January 2006. The major most vital framework to tighten the migration is in part II about Admission Into and Departure from Malaysia and part III about Entry Permits. Part II that consists of:

1. Entry into or departure from Malaysia
2. Control of entry into Malaysia

3. Right of entry
4. Prohibited immigrants
5. Director General's power to prohibit entry, or cancel any Pass or Permit
  - a. Director General's power to limit entry into Malaysia (The Commissioner of Law Revision M. , Laws of Malaysia, 2006)

Above laws conclude that every entry and departure Malaysia should be controlled. Malaysia's government controlled landing places, airports or points of entry, authorized landing places, authorized airports or authorized points of entry, as the case may be, and no person shall, unless compelled by accident or other reasonable cause, enter or leave Malaysia except at an authorized landing place, airport or point of entry.

Part III consists of:

1. Entry Permits
2. Endorsement of name of wife and children on Permits, Passes and Certificates
3. Power to make inquiries
4. Cancellation of, and declarations regarding Permits and Certificates
5. Unlawful entry or presence in Malaysia

Above laws conclude that any person seeking to enter Malaysia who is not entitled so to enter as a citizen or by virtue of a valid Pass to enter Malaysia issued to him or seeking to remain in Malaysia after the expiry of such a Pass may make application in

that behalf in the manner prescribed to the Director General or to such other person whether within or outside Malaysia as the Director General may, from time to time, appoint for the purpose.

In 2011, Malaysia government start to use biometric data to control the flow of immigration (Indonesia, 2011). In 1 June biometric data inaugurated by Malaysia's National Enforcement and Registration System (NERS) said the embassy by the Department of Foreign Affairs. Biometric data is a general term used to refer to any computer data that is created during a biometric process. The system is created to scan subject's thumb prints, and then input and compare the data that already records by the Malaysian Immigration System, make sure that foreign workers are legal like what they said when undergoing the screening (Beal, 2017).

The process in using biometric data foreigners are asked to place their two index fingers on the glass plates of the electronic fingerprint scanning machines at immigration office. The data from biometric process will be saved in the Department of Immigration's database. The data will used for the security of the country, the immigrants will get verification process upon exiting the country. Malaysia had amended the Immigration Law and Regulations to support the operation of new biometric registration requirement at entry points. Under the new system, all immigrants from 12 years and above should submit to the biometric procedure to control the flows of migration more secure (Team I. , 2011).

Malaysia Immigration general director Datuk Seri Mustafar Ali, said that Immigration department identified the percentage of immigrant especially foreign workers who have tried to fake their medical screenings and the using of the biometric screening system represents the seriousness the Malaysia's government authorities to overcome the issues. From 400.000 foreign workers who came to Malaysia about 2.6 percent failed their medical exams, leading to their disbarment from working in the country.

The Malaysia's government starts to develop the biometric data so it can used to identify the refugee. The reason of Malaysia's government to develop biometric data system is to tackle the terrorism as well as to weeding out potential Islamic State terrorists (Perala, 2017).

However Malaysia's government increase the quality of biometric data to control the immigrant for the medical screening of foreign workers is scheduled to go into action starting from October 2017. It will increase the security of the country and make the flows of immigration to Malaysia tighter than before. It will help to maintaining a central database would discourage the immigrants using fake documents by using other people identity to get permission to work, reside or study in the Malaysia. Fingerprints every person is different so it will make easier to reliably match immigrants to their personal identification data and documentation.

Database would make the Police to help Immigration department and Naturalization Service. The Police will check the identity of immigrants especially the foreign workers because mostly the problem comes from the illegal foreign workers. Foreigners also have benefit from the use of biometric data that it could prevent their falling victim to identity theft, which can be a serious problem.

Biometric data also make Malaysia's government easier to track down visa over stayers living and working illegally in the country. Malaysian immigration officials said that a new and unique 'Biometric Tracking System' will introduce in the country's immigration department. Through this system officers could easily looking for the exact location of illegal immigrants that already broke the rule of the country due to not extend validity of their visa terms. Immigration department claimed that the new system will extensively reduce illegal immigration in the country, which rose to almost 700,000 in 2011. Immigrant department officials also said that the new system is a sustaining process from previously implemented system, to decrease or even eradicate criminal cases like people and narcotics smuggling, called the Advanced Passenger Processing System (APPS).

The visa over stayers was one of the major concerns of the authorities as they have been continuously increasing in numbers. The number of over stayers, living in the country as of 2011 was 694,000. Usually the over stayers are from Indian and Chinese immigrants who had decided to remain in Malaysia. Indian and Chinese after their visa expired they will not extend the validity period however they work

illegally in local companies. The main issue in this case for immigration department was that, due to the absence of any registering documents except for their passports, the over stayers sometimes they don't feel that they involved in criminal activities and they enjoyed it.

Biometric system would assist the authorities in tracking down and getting rid of such offenders in a much timely manner said Alias Ahmad, head of the Malaysian immigration department. He said that immigration department will maximize the function of biometric data to the offenders. Biometric data will give the immigrants that have a problem and detect the location that automatically already active in the system. The immigration data will use all the offenders' access to get the location, by:

1. From bank account that they have, in registration they would need to provide their fingerprint
2. From the first offenders visiting the country, they should have to use their passports while checking in at any hotel. This will allow the authorities to immediately determine any immigration offender's location as soon as the hotel scans their passport through their computers, which will be linked with the authorities.

Alias Ahmad said that the system that already developed is far better than the current system, under which the over stayers can only be detected while they are exiting the country, or during any other action particularly for this purpose.

The officials wish that system would work properly and actually be the continuation of Advanced Passenger Processing System. The system will be used for cracking down on human trafficking, people smugglers and drug dealers. Under the Advanced Passenger Processing System, the foreigner checked and conducted by the immigration authorities to ascertain if they had any criminal links or records (Preet, 2012).

## **B. Institutional Immigration in Malaysia**

The legal framework of this policy is Laws of Malaysia act 155 immigration act 1959/63 it was amended in 1 January 2006. The major most vital framework to tighten the migration is in part V about Removal from Malaysia that consists of:

1. Removal of prohibited immigrants from Malaysia
2. Removal of illegal immigrants
3. Removal of persons unlawfully remaining in Malaysia
4. Detention of persons ordered to be removed
5. Power to arrest person liable to removal
6. Unlawful return after removal (The Commissioner of Law Revision M. ,  
Laws of Malaysia, 2006)

The institutional Immigration in Malaysia make Malaysia social order more organized. That will creates peacefully Malaysia without any immigrant issues. It happened because the detention house did a great job that controls the immigrant to not make harmful condition. Before the detention Malaysia immigration were crowded and uncontrolled after detention house the crowded reduce and the immigrant that involved in some issues, they have their place in detention house. It make the deviant behavior in foreigner decrease, now should follow the Malaysian law. Because law is a must, so the immigrant who broke the law they will get jailed in detention house before they deported.

As a magnet for immigrants despite the country have failure to ratify key human rights treaties and poor human rights record. Illegal entry and stay without any permission is criminalized and Malaysia already solve the problem, the illegal migrants often serve prison sentences before being transferred to one of twelve detention house while awaiting deportation. Caning, a legacy of British colonial rule, is widespread. In 2013, more than 5,000 foreigners were caned.

The immigrant that have serious problem that related to the security, social, politic and economic issues to the country usually caned in detention house. Detention house is a place maintained by the civil authorities for persons charged with a crime, and sometimes for witnesses, awaiting trial.

Malaysia is one of the more vibrant economies in Southeast Asia. All unauthorized foreigners, including Rohingyas that fleeing from Myanmar also considered as illegal or prohibited immigrants under the Immigration Act (The Commissioner of Law Revision, 2006). Immigration detention in Malaysia includes various unique and brutal features such as caning and detention aboard vessels.

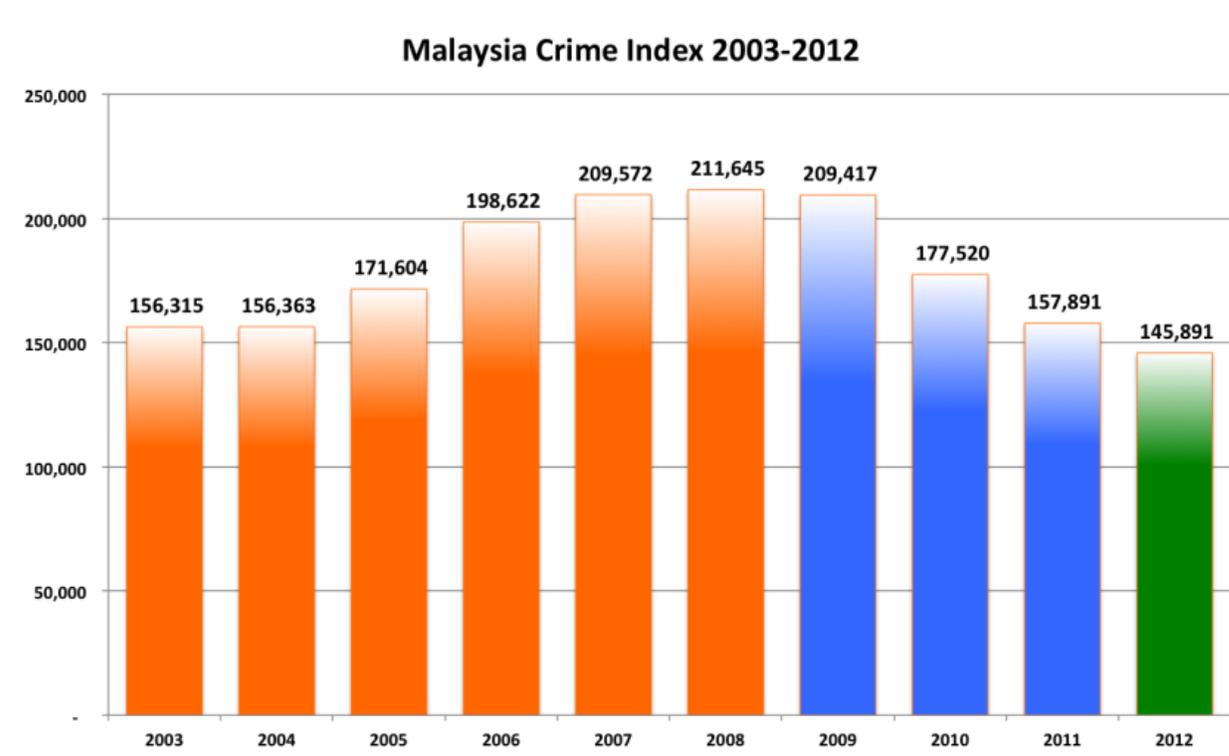
Illegal immigrants that stay in Malaysia considered as criminal action. The illegal immigrants often serve time in prisons before being transferred to one of the twelve administrative detention houses while awaiting deportation. Legacy from British rule that is caning still remains a judicial punishment for criminal offences in the Malaysian Criminal Procedure Code. It was introduced in the Immigration Act in 2002 to deter unlawful migration. According to the Home Minister, 8,481 prisoners were caned in 2013, of which 5,968 were non-citizens (Meikeng, 2014).

About 68,000 people were placed in immigration detention house in 2013, mostly people are from Indonesians, Burmese and Bangladeshis. Suruhanjaya Hak Asasi Manusia (SUHAKAM) as the national human rights institution reported that about 1,406 children were arrested in detention house from January to October 2013 (Team S. , 2013). From section 34(1) of the Immigration Act provides that persons may be arrested for an urgent or necessary period usually detention house is a place for immigrants that have a problem before deportation. The immigrants generally spend between two months and two years in detention.

The procedures of deporting immigrants are reportedly very poor. Generally immigration detainees are rarely having information of the reasons for detention in a language they understand. Moreover the authority limits the migrants right to get access to legal counsel. There are no alternatives to immigration detention. Some United Nations High Commissioner for Refugees (UNHCR) refugee cardholders that detained in detention house can be released due to the government's discretion however the UN refugee agency only has access to them after they are transferred to the detention house from prisons.

The deportation in Malaysia already have significant improvement, the witnesses of state's improve the ability to deport, through diplomatic partnerships, and the involvement of the International Committee of the Red Cross (ICRC), international NGOs (such as the United Nations High Commissioner for Refugees (UNHCR), and the International Organization for Migration (IOM)). By partnership, it will overcome the geopolitical stalemate. International collaboration is pertinent, as enforcement is often limited by "geopolitical difficulties," which refers to the states of origin being unwilling to accept their own returned nationals. If the immigrants have no money, the officer will ask if he has friends or relatives in Malaysia or his home country who are able to pay the ticket cost. If the funds cannot be secured, the detainee's embassy or ex employer would then be asked to find a suitable solution (Choo Chin Low and Khairiah Salwa Mokhtar, 2017).

The implication of the policies since the crime index rate for Malaysia has decreased between 4.2 per to 12.6 per cent from 2011 until 2015 (Nokman, 2016). This is mean that the policies that run from Malaysia's government work properly as they wish. It will make the country secure from politic, security, economy and social issues that happened caused by immigrants.



**Figures 5: Malaysia Crime Index (2003-2012)**

Above figure conclude after Malaysia's policy the crime index in Malaysia decrease (Hays, Police and Crime in Malaysia, 2015)