

**MANAGING THE MIGRATION POLICIES OF
ILLEGAL IMMIGRANTS IN MALAYSIA
THROUGH POLICY TRANSFER APPROACH**

NOR SAKINAH BINTI OMAR

UNIVERSITI SAINS MALAYSIA

2023

**MANAGING THE MIGRATION POLICIES OF
ILLEGAL IMMIGRANTS IN MALAYSIA
THROUGH POLICY TRANSFER APPROACH**

by

NOR SAKINAH BINTI OMAR

**Thesis submitted in fulfilment of the requirements
for the degree of
Doctor of Philosophy**

September 2023

ACKNOWLEDGEMENT

ALHAMDULILLAH. Thanks to Allah S. W. T. on His permission that I managed to complete my research successfully. I would like to express my gratitude to HIM for giving me the opportunity and help me endlessly in finishing this PhD thesis. Besides, it would not be possible for me to finish this thesis writing without the amazing help, encouragement, support, guidance, and inspiration of many people. Therefore, I want to convey my appreciation to everyone who offered their assistance in a variety of ways.

First and foremost, I would want to offer my sincerest gratitude and appreciation to all my supervisors, Dr Low Choo Chin, Assoc. Prof. Dr. Khairiah Salwa Mokhtar and Dr. Wan Asna Wan Mohd Nor for their insightful advice, suggestions, and cooperation during the process of my research and the writing of this thesis. My special thanks go to Dr Low Choo Chin for revising the draft chapters, sharing of materials, and providing flexibility in conducting research activities. Furthermore, I owe particular thanks to Assoc. Prof. Dr. Khairiah Salwa Mokhtar who has been with me since the beginning of my study, especially who has accompanied me during the data collection and her ongoing encouragement toward accomplishing the research objectives.

Besides, the completion of the thesis owes much to the financial support of Fundamental Research Grant Scheme (Ministry of Higher Education) of which I worked as a Graduate Research Assistant. I would also like to acknowledge the support of the MyBrain15 scholarship by the Malaysian government for postgraduate study, which provided funding and allowed me to encourage myself as well as utilise my studies.

In addition, a great deal of appreciation and enormous thanks also go to my little family. Especially to my husband, Tuan Nurul Farid Ahmad, who has patiently supported me throughout the years and remains a source of strength, understanding and love. The same goes to both of my sons, Muhammad Noor Fageeh and Muhammad Noor Faheem, whom I gave birth during the conduct of this study, I dedicate this thesis to you.

Also, special thanks are due to my "abah", Omar bin Hashim and "mama", Asma binti Che Long; you both deserve praise for all the efforts made in raising me to the person I am now; thus, my thesis is dedicated to you too. I am also thankful to my in-laws, Ahmad bin Man and Che Amah binti Salleh for their constant prayers and encouragement throughout my postgraduate study. I also must thank my sisters and brothers, Siti Fatimah, Nor Jalillah, Mohd Syakir and Muhammad Adham who never failed to provide me with unwavering support, compassion, and motivation, I will always value it.

Not to forget, I would really like to acknowledge and extend my thanks to my informants, who, despite their busy schedules, have given me all the dependable and precise information that helped me reach the objectives of this study. A significant number of informants from various parties were interviewed, including government authorities (Ministry of Home Affairs, Ministry of Human Resources, Immigration Department), representatives of non-governmental organisations (MTUC, SUHAKAM, SUARAM), academicians, and Indonesian embassy officials. I sincerely appreciate your cooperation, and I thank you.

Last but not least, many thanks to all of my relatives, friends, PhD mates and acquaintances such as USM librarians, IPS staff and school staff who assisted me in whatever way, directly or indirectly to finish my thesis. I am greatly indebted to all for

their warm and kindly help whenever I needed it. I am very thankful to every one of you who has contributed valuable prayers, guidance, comments, advice and moral support in any respect towards the completion of this study.

Lastly, there is an endless list of people to whom I am deeply grateful. It was impossible to name each one individually. So, as a meagre thank you for their assistance in seeing my thesis through to completion, here is a little acknowledgement.

Thank you everyone; I am so thankful for that! May Allah bless all!

(NOR SAKINAH OMAR, USM LIBRARY, 2023).

TABLE OF CONTENTS

ACKNOWLEDGEMENT	ii
TABLE OF CONTENTS	v
LIST OF TABLES	viii
LIST OF FIGURES	ix
LIST OF ABBREVIATIONS	x
ABSTRAK	xiii
ABSTRACT	xiv
CHAPTER 1 INTRODUCTION	1
1.1 Introduction	1
1.2 Research Background.....	4
1.3 Problem statement	9
1.4 Research Objectives	10
1.5 Research Questions	11
1.6 Research scope	12
1.7 Chapters Organization.....	13
1.8 Research Significance	14
CHAPTER 2 LITERATURE REVIEW	16
2.1 Introduction	16
2.2 Definition of the keyword (Illegal Immigrants).....	21
2.3 Definition of the keyword (Migration Policy)	35
2.4 Definition of the keyword (Policy Transfer Approach).....	50
2.5 Conceptual Framework	57
2.6 Previous Studies and Research Gaps	60
2.7 Conclusion.....	71

CHAPTER 3	METHODOLOGY	73
3.1	Introduction	73
3.2	Qualitative Case Study (Research Design)	73
3.3	Research Instrument and Technique	77
3.3.1	Documentary Research	78
3.3.2	Semi-structured Interview	80
3.3.3	Research Informants.....	82
3.4	Data Collection Process	86
3.5	Research Sites	88
3.6	Qualitative Data Analysis.....	89
3.6.1	Document Analysis	90
3.6.2	Thematic Analysis.....	91
3.7	Conclusion.....	94
CHAPTER 4	RESEARCH FINDINGS	96
4.1	Introduction	96
4.2	Main Problem: Limited Success of Policy’s Mechanisms.....	96
4.3	Finding Research Question 1: Why is the inflow of illegal immigrants in Malaysia still on rise?.....	99
4.3.1	Theme 1: Government's Dilemma	99
4.4	Finding Research Question 2: How far the Malaysian government control and overcome the issues of illegal immigrants?	109
4.4.1	Theme 2: Current Policy and Improvement.....	109
4.5	Finding Research Question 3: What are the limitations and the drawbacks of migration policies in Malaysia?	133
4.5.1	Theme 3: Policy Constraints and Limitations	133
4.6	Finding Research Question 4: What mechanisms are being developed from other countries to improve migration policy in Malaysia?	153
4.6.1	Theme 4: Development of the Learned Policy from Other Nations.	154

4.7	Finding Research Question 5: How does the Malaysian government apply the policy transfer approach to improve its migration policies?	159
4.7.1	Theme 5: Policy Learning and Benchmarking.....	159
4.8	Conclusion.....	168
CHAPTER 5 DISCUSSION AND ANALYSIS.....		170
5.1	Introduction	170
5.2	Analysis Theme 1: Government's Dilemma.....	170
5.3	Analysis Theme 2: Current Policy and Improvement.....	174
5.4	Analysis Theme 3: Policy Constraints and Limitations	186
5.5	Analysis Theme 4: Development of the Learned Policy from Other Nations.	196
5.6	Analysis Theme 5: Policy Learning and Benchmarking.....	203
5.7	Conclusion.....	208
CHAPTER 6 CONCLUSION AND RECOMMENDATIONS		210
6.1	Introduction	210
6.2	Research Summary.....	210
6.3	Research Contributions	218
6.4	Research Limitations.....	220
6.5	Research Recommendation	224
REFERENCES.....		226
APPENDICES		
LIST OF PUBLICATIONS		

LIST OF TABLES

	Page
Table 2.1 List of Policy’s mechanisms in managing the illegal immigrants (PATI)	40
Table 3.1 Seven steps of Thematic Analysis.....	93
Table 4.1 Summary of the Findings (Themes).....	168

LIST OF FIGURES

	Page
Figure 2.1 Conceptual Framework: Malaysian Migration Policies Towards Illegal Immigrants.	57
Figure 3.1 Summary of Research Design.....	76

LIST OF ABBREVIATIONS

PATI	Pendatang Asing Tanpa Izin
ILO	International Labour Organization
LFS	Labour Survey Force
PLKS	Pas Lawatan Kerja Sementara
MOHR	Ministry of Human Resources
MOHA	Ministry of Home Affair
SUARAM	Suara Rakyat Malaysia
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia
FIDH	International Federation for Human Rights
MTUC	Malaysian Trades Union Congress
RELA	Jabatan Sukarelawan Malaysia
NGO	Non-Governmental Organization
IKMAS	Institute of Malaysian and International Studies
UKM	Universiti Kebangsaan Malaysia
USM	Universiti Sains Malaysia
US	United States
UK	United Kingdoms
UN	United Nations
ICMPD	International Centre for Migration Policy Development
EU	European Union
ECOWAS	Economic Community of West African States
IOM	International Organization for Migration
TIP	Trafficking in Persons
B4G	Back for Good
ATIPSOM	Antipemerdagangan Manusia dan Antipenyeludupan Migran
COVID-19	Coronavirus disease
MCO	Movement Control Order
FOMEMA	Foreign Workers' Medical Examination Screening System in Peninsular Malaysia
UNHCR	Nations High Commissioner for Refugees
STO	Sistem Temujanji Online
KLIA	Kuala Lumpur International Airport

KDN	Kementerian Dalam Negeri
KSM	Kementerian Sumber Manusia
NIISe	National Integrated Immigration System
JIM	Jabatan Imigresen Malaysia
DBKL	Dewan Bandaraya Kuala Lumpur
JKKK	Jawatankuasa Kemajuan dan Keselamatan Kampung
PH	Pakatan Harapan
PN	Pakatan Nasional
PDRM	Polis Diraja Malaysia
PBT	Pihak Berkuasa Tempatan
JKKPA- PATI	Mesyuarat Jawatankuasa Kabinet Mengenai Pekerja Asing dan Pendatang Tanpa Izin
MITI	Ministry of International Trade and Industry
MPIC	Ministry of Plantation and Commodities
MAFI	Ministry of Agriculture and Food Security
KKR	Kementerian Kerja Raya
MOU	Memorandum of understanding
G-2-G	Government to Government
CLQ	Centre Labour Questers
CLAB	Construction Labour Exchange Centre Bhd
EIS	Employment Insurance System
SOCISO	Social Security Organisation
MRC	Migrants Research Centre
ILMIA	Institute of Labour Market Information and Analysis
DOSM	Department of Statistics Malaysia
H1N1	Influenza A virus
AMKA	The Family-Owned Company
GLC	Government Linked Companies
MOTAC	Ministry of Tourism, Arts, and Culture
BPA	Border Protection Agency
ICA	Immigration & Checkpoints Authority
SIP	Sistem Insurans Pekerjaan
TTPA	Trans-Pacific Partnership Agreement
DGICM	ASEAN Directors-General of Immigration Departments and Heads of Consular Affairs Divisions of the Ministries of Foreign Affairs
SOMTC	Senior Officials Meeting on Transnational Crime

ASEAN	Association of Southeast Asian Nations
FWCMS	Foreign Workers Centralized Management System
SMO	Maid Online System
OCS	One Channel System
CUEPACS	Congress of Unions of Employees in the Public and Civil Services
GOF	General Operations Force
AKSEM	Agensi Kawalan Sempadan Malaysia
SBA	Single Border Agency
RCI	Royal Commission of inquiry
MPOA	Malaysian Palm Oil Association
MARQIS	Jabatan Perkhidmatan Kuarantin dan Pemeriksaan Malaysia
IRIS	International recruitment Integrity System

PENGURUSAN DASAR MIGRASI PENDATANG ASING TANPA IZIN DI MALAYSIA MELALUI PENDEKATAN PEMINDAHAN DASAR

ABSTRAK

Malaysia telah lama bergelut dengan isu kebanjiran pendatang asing tanpa izin. Pertumbuhan ekonomi negara yang pesat dan daya tarikan sebagai destinasi pekerja asing menjadi pemacu yang mendorong kebanjiran ppopulasi ini. Secara khusus, tesis ini mengkaji mekanisma dasar terhadap pendatang asing tanpa izin di Malaysia, terutamanya kepada mereka yang bekerja di sini. Faktor yang menyumbang kemasukan PATI seperti permintaan ketara terhadap pekerja asing yang sah dan tidak sah, kos yang tinggi untuk proses pengambilan pekerja asing sah, penyalahgunaan kuasa di kalangan pegawai kerajaan, dan keunikan lokasi geografi Malaysia. Elemen ini telah diklasifikasikan sebagai "dilema kerajaan" kerana ia tidak dapat ditangani dengan berkesan disebabkan oleh batasan dan kelemahan dasar kerajaan terhadap golongan ini. Kajian ini telah mengenal pasti mekanisma daripada negara lain melalui pendekatan pemindahan dasar. Agensi sempadan tunggal dan sistem levi pelbagai peringkat yang masih dalam fasa perancangan dan kerajaan mengambil pelbagai langkah untuk menganalisisnya secara menyeluruh. Kerajaan sedang membuat penambahbaikan ke atas dasar sedia ada, termasuk pendigitalan pengurusan migrasi, menyepadukan perancangan dengan agensi dan rakyat, mengukuhkan MOU dengan negara penghantar, pembaharuan undang-undang semasa untuk aktiviti pekerjaan yang lebih baik dan penyertaan NGO dalam mengawal hak dan kebajikan pekerja. Oleh itu, boleh disimpulkan bahawa kerajaan Malaysia sememangnya mengamalkan pendekatan pemindahan dasar dalam usaha membendung isu pendatang tanpa izin di Malaysia melalui pembelajaran dasar dan penanda aras.

MANAGING THE MIGRATION POLICIES OF ILLEGAL IMMIGRANTS IN MALAYSIA THROUGH POLICY TRANSFER APPROACH

ABSTRACT

Malaysia has always struggled with the issue of illegal immigrants. The fundamental factors behind this population inflow are the country's rapid economic growth and its attractiveness as a destination for foreign workers. This thesis specifically studies Malaysia's policy mechanisms towards illegal immigrants, particularly those who work here. Factors contributing to the influx of illegal immigrants include strong demand for both legal and illegal foreign workers, high costs for the process of employing legal foreign workers, abuse of power among government officials, and Malaysia's unique geographic location. All these elements have been termed "government dilemmas" since they cannot be properly handled due to the limitations and weaknesses of government programmes aimed at this group. This study uncovered mechanisms from other nations using a policy transfer approach. The single border agency and multi-level levy system are still in the planning stages, and the government is taking several steps to thoroughly examine them. The government is making improvements on the existing policies that include the digitalization of migration management, integrating planning with agencies and citizens, strengthening the MOU with the sending nations to achieve a win-win solution, implementing legal reforms for better employment activities, and including NGOs in governing the workers' rights and welfare. Therefore, it is concluded that the Malaysian government is indeed practicing a policy transfer approach in attempting to curb the issue of illegal immigrants in Malaysia through policy learning and benchmarking.

CHAPTER 1

INTRODUCTION

1.1 Introduction

Malaysia's fast economic development programmes and sustained high economic growth rates over than three decades resulted in an influx of migrant workers to meet the expanding demand in the Malaysian labour market (Navamukundan, 2002). Thus, this situation has caused the presence of illegal immigrants that motivated by various pull and push factors of their origin countries as well as in this country.

In Malaysia, these groups of people are known as “Pendatang Asing Tanpa Izin (PATI)” or illegal immigrants and they have become the “public enemy number two” (Suriati et al., 2017). Despite the negative sentiments, these illegal immigrants who reside in this country and hold the status of foreign workers have made great contributions to the success of Malaysian economics especially at the macro level. The increase in migrant workers needed to fill the growing demand in some sectors of the Malaysian labour market was brought on by Malaysia's continuous high economic growth rates over the period of around three decades (Piper, 2005).

As for the Malaysian government, they planned to limit the migrant workers in this territory due to the national security and political stability as stated by the former Prime Minister, Tan Sri Muhyiddin who believed that the influx of illegal immigrant in Malaysia remains as a national issue which has not been tackled completely (Bernama, 2019). Besides, addressing this issue can be a really challenging task due to various problems regarding illegal immigrants and many other unprecedented issues that have happened since a long time ago.

Despite the efforts taken by the government to stem the expansion of illegal immigrants, the number of them continues to escalate. According to Loh, Simler, Wei & Yi (2019), it is estimated that the number of illegal immigrants is around 1.23–1.46 million while the unofficial data suggests as many as four million of them. Historically, the exact numbers of illegal immigrants are uncertain from many decades ago as mentioned by Nayagam (1992) it is believed that there is a sizable community of mostly illegal foreigner who are migrant workers but the true figure is unknown.

A report in 2020 claimed that “this expatriate labor force is made up of 2.27 million legally working and another 2.5 to 3.37 million illegal foreign one” (Murray, 2020, para. 3) who wrote, “the employers’ association in a statement on April 19, 2020 there were approximately 3.3 million illegal immigrants compared to 2.2 million documented workers in Malaysia” (Malay Mail, May 2020). These statements show that the number of illegal immigrants remains high regardless of the available preventive measures taken by the government and they are far from being effective and to a certain extent called to be limited success (Kassim, 2000; Abdul Rahim et al., 2012).

Malaysia has had experiences in managing the influx of illegal immigrants and its government continues to seek better approaches in curbing their existence in the country. The measures and instruments to regulate the flow of immigrants are changing from time to time by taking into consideration short-term and long-term needs. Policy making has been influenced not only by the nature and characteristics of illegal immigrants, but also by the current political, economic and social situations in the receiving countries. These factors have been the “reason” for the government to implement migration policies from time to time.

The fact that the government continues to be burdened by the influx of illegal immigrants especially when there is public outrage over the issue. It can't be denied that the past procedures were successful in keeping foreign workers registered, but they do not provide long-term solutions to the country's illegal immigration problem. For the last three decades, several scholars have criticized the Malaysia government for the lack of clear-cut policies and limited effective mechanisms on foreign workers resulting in the increased number of illegal foreign workers and uncontrollable and sickening problems (Abdul Rashid Abdul Aziz et al., 1999; Kassim, 1987, 1997; Pillai, 1999).

As reaffirmed by Rahim et al., (2012), the introduction of the policy by the government to regularize and register the illegal immigrants in order to prevent them from entering the country had "limited success". Although the previous reports on the number of illegal immigrants in the country seem promising, the actual figures of the illegal immigrants remain disputable because the government does not agree with the statistics provided by certain organizations including those that have been reported in the newspapers, according to the several informants of this study.

Regarding the current situation, the Malaysian government never stops tackling this problem and is critically looking for better alternatives to reduce the number of illegal immigrants. Berita Harian reported that the Immigration Department of Malaysia aimed to free the state from illegal immigrants by 2020 and the initiative was known as "sifar PATI" [zero illegal immigrant] and one of the mechanisms to achieve this target is to grant amnesties for the foreign workers so that they do not fall into illegal immigrants (Bernama, 2019c).

Other than that, the government also introduced 6P programme, Integrated Ops 6P and other several code-named raids and operations to arrest the illegal immigrants. However, the inflow of illegal migrants is still increasing. Past studies attempted to identify the limitations of and challenges in implementing these policies (Kassim & Mat Zin, 2011; Kassim, 2014).

The issue of illegal migrants is serious because it affects a country politically, socially and economically. Therefore, this thesis discusses the existing migration policies focusing on the mechanisms taken toward illegal immigrants in Malaysia which have been claimed to be less effective because of several limitations and challenges faced by the government throughout the implementation and enforcement of its migration policies.

Simultaneously, this research is aimed at identifying and investigating the instruments or mechanisms in migration policies that have been learned (benchmarking/ lesson drawing) from other countries using a policy transfer approach. Finally, this research attempts to analyse the existing migration policies that have been implemented here through a policy transfer approach in tackling illegal immigrant issues of this country.

1.2 Research Background

The frequency of highlights in local newspapers and social media related to the issue of illegal immigrants speaks volumes about this problem. It is a complex issue that has gradually become a nuisance to the political and social stability of the country in which can be observed through social problems that have occurred within the Malaysian community since the mass influx of illegal migrants back in the 1980s. The

negative impacts of the influx of illegal immigrants in Malaysia has raised many social problems in Malaysia including high rate of crimes, diseases and security issues (Kanapathy, 2008).

According to Misman et al., (2017) about 11.2% of all crime cases included foreigners, according to the crime index as a whole. There are various kind of cases reported that involving illegal immigrants, such as violent crime events namely murder, assault, rape, conning activities and run businesses using fake business licenses. Thus, the rising inflow of illegal immigrants in the county is detrimental to its public safety and security. This is corroborated by (Kassim, 1997; Kanapathy, 2006) who claim that the presence of many illegal immigrants has created enormous problems especially the ones related to security and political stability.

To address these, the Malaysian government introduced the migration policies to control and solve the social problems caused by these illegal immigrants. However, there are a number of challenges in the implementation of the migration policies in Malaysia as discussed in the previous studies. Among the earlier policies are Ops Nyah, Ops Nyah 11 as well as selected deportations. After that, the government regularized amnesty programmes, seasonal raids, operations and deportations again.

Unfortunately, these policies were not really effective in many ways due to weak implementation and enforcement of the policies by the authority. Kassim (1998) claimed the existing policies are not effective mechanisms to reverse the uninterrupted inflow of illegal foreign worker which had festered to levels of seemingly unmanageable proportions. She added that this is because the poorly implemented procedures and regulations over the decades have often been intolerant, piecemeal, messy and confusing.

Initially, the policies have changed due to the conditions of the labour market which related to the country's economy, security and sometimes because of the response of public opinions as well as the industry pressure. As mentioned by Anderson (2020) the Malaysian government was unable to entirely control migration and finding a clear policy goal to control the illegal immigrants when both programmes, deportations and regularizations, have been seen as complex measures to its implementation. He added that the variety of policies deployed by the Malaysian government reveals the concept of 'control' within migration remains slippery. This situation shows that when there are no comprehensive and effective systems in place to solve and manage this population in this country, immigration enforcement is ineffective.

Abdul Rashid Abdul Aziz, (1999), Kassim, (1987; 1997) and Pillai (1999) criticized the Malaysian government due to the lack of clear policies on foreign workers for the last three decades mostly on the limitations and the loopholes of the migration policies. For example, Kassim (1997) said that between January 4, 1989 only a few of the plantation owners complied with the government directive. The federal government had to extend the legalization processes twice, initially from July 4, 1989 and July 3rd, 1989 to May 11, 1990 and later extended to May 11th, 1991.

This situation shows the unclear purpose of the policy implementation when the government changed their policies from time to time which has confused both, employers and employees. It is reviewed because the government's laws and practises regarding illegal immigration and foreign labour confound because of their inconsistency, outrageousness and U-turn policy.

Scholars also claim that this action by the government can be called as an ad-hoc policy when those programmes change over time although the goal of the policy is to get rid of the illegal immigrants (Anderson, 2020; Devadason & Meng, 2014; Loh et al., 2019). Therefore, the need to enhance the policies related to illegal immigrants is timely and always relevant to the current situation because the scholars have discussed it since 2000s. For example, Abdul Rashid Abdul Aziz et al., (1999) emphasized the need to review migrant labour policies and strategies so that they would be more consistent, transparent, and effective.

One of the approaches that has become a rational choice for most developed countries and most significantly provides a rigorous set of guidelines in forming a policy is known as Policy Transfer Approach (Mokhtar, 2008). It is about exporting policies from one country to another country in order to solve similar problems. The proper meaning of policy transfer is “a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and or place is used in the development of policies, administrative arrangements and institutions in another time and or place”(Dolowitz, 1996, p. 344).

Policy transfers approach is not a totally new approach. It has appeared over the past decades as one of the international supports to help the policy makers around the world in formulating the best solutions for policies to their countries. Mokhtar (2008, p.19) mentions that, “policy makers all over the world draw lessons both from their own country’s experience and the practice of other nations in seeking best practice for the betterment of their own”. Hence, this thesis is to investigate and analyse the existing migration policies which have gone through the process of policy transfer approach during their implementation.

It is normal that the Malaysian government takes lessons or examples from other territories which have been facing similar issues. One of them is outsourcing which is considered as one of the lessons drawn from other countries and has been implemented here in Malaysia to recruit the labour migration. It is noted that the western countries like the UK and US have used outsourcing companies in recruiting their foreign workers. For example, as asserted by Menz (2011) the development in countries with different levels of privatization of migration management, including the UK, Australia, the USA, Germany, and the Netherlands.

According to Abdul Rahim et al., (2015) Malaysia has started introducing a new legislation that transformed the system of recruitment agencies to so-called outsourcing agents since July 2005. Basically, the purpose of outsourcing is to perform better, in their specific competencies and deal with shortage of skills or expertise. It is an attempt by the government to manage the labour migration echoing other countries who have done it for better outcomes. However, what has been exercised in other states is not necessarily successful when implemented in own countries. For instance, the government has recently brought up various issues involving the outsourcing corporations, it appears that Malaysia presents outsourcing as a troublesome process.

Based on the former Minister of Human Resources, M Kulasegaran said that the government is urged to remodel the old labour hiring system because it is seen to have various issues, especially third-party monopolies (Kosmo, 2022; My Metro, 2018). In another statement, he urged to have a more systematic policy to ensure the hiring of foreign workers in line with labour requirements in the marketplace and to ensure transparency in the recruitment process of migrant workers into the country in accordance with the procedures.

This scenario is one possible example of the policy transfer approach practiced in Malaysia. To prove further, this thesis aims to investigate and analyse the existing migration policies towards illegal immigrants that exist through policy transfer approach. The related and relevant informants have been approached to in order to get better understand of the issues.

1.3 Problem statement

Illegal migration is an inevitable phenomenon in many countries including Malaysia. Despite many strict policies introduced; the number of illegal immigrants keeps on growing. There are a number of academic debates and intellectual research have been conducted in discussing and understanding this issue. Clearly, the solutions to the problem remain vague because the previous and current alternatives are still ineffective and incomprehensive.

For example, the unsolved issues related to migration policies towards illegal immigrants in Malaysia are as follows; 1) the recruitment process for legal foreign workers is complicated and expensive, which leads to the inflow of illegal immigrants (illegal foreign workers) in this country. 2) illegal foreign workers are hired in the industry and unable to receive privileges such as worker's rights due to forced labour conditions that violate their human rights. 3) the immigration enforcement could not solve the issue of illegal immigrants when there are no comprehensive and effective mechanisms that could not control the population in this country.

Indeed, these issues have caused a complex problem for the government in controlling the influx of illegal immigrants and managing the foreign workers in Malaysia. This is the real situation in this country, which has practical issues that

should be identified immediately by the government. There are several scholars discussing the similar kind of issue as the Malaysian government does not have a comprehensive legal and policy framework to regulate the recruitment, admission, placement, treatment, and repatriation of migrant workers (Avila et al., 2015; Kassim & Mat Zin, 2011; Kaur, 2014; Ullah, 2007). Meanwhile, many other scholars highlighted the limitations and loopholes of the current policy (Abdul Rahim et al., 2015; Ullah, 2013; Kassim & Mat Zin, 2011; Kassim, 1997, 2005; Hedman, 2008).

Generally, they claim that the Malaysian government does not have comprehensive and effective migration policies on illegal immigrants. Therefore, this thesis is to investigate the challenges and loopholes encountered by the government when implementing the migration policies in order to manage illegal immigrants. On the other hand, it is also interesting to understand this issue from the the government's side when they disagree with the statements made by the other parties including what has been reported in the newspapers.

Certainly, there is a plethora of studies highlighting the issues of illegal immigrants as well as the migration policies in Malaysia. However, there is the paucity of literature that examines the migration policies that exist through a policy transfer approach in curbing the problems of illegal immigrants in Malaysia. Thus, this is the empirical issue that will be explained further in the thesis in which highlighted the research gaps from the previous literatures. This thesis is different because it examines the existing migration policies related to illegal immigrants and investigates the practice of policy transfer approach adopted by the Malaysian policy makers.

1.4 Research Objectives

In order to meet the research aim, the study attempts:

1. To analyse the factors contributing to the illegal migrant issues in Malaysia.
2. To study the making, implementation and the actors of migration policies in Malaysia.
3. To investigate the limitations and drawbacks of migration policies related to illegal immigrants in Malaysia.
4. To identify the improvements of the state's migration policies that using policy transfer approach.
5. To analyse how policy transfer approach has been deployed by the Malaysian government?

1.5 Research Questions

From the aforementioned problem statement, there are several research questions can be discussed:

1. Why is the inflow of illegal immigrants in Malaysia still on rise?
2. How far the Malaysian government control and overcome the issues of illegal immigrants?
3. What are the limitations and the drawbacks of migration policies in Malaysia?
4. What mechanisms are being developed from other countries to improve migration policy in Malaysia?
5. How does the Malaysian government apply the policy transfer approach to improve its migration policies?

1.6 Research scope

This research is confined within several scopes which are time period, geographical areas and target population. The scope of time is referring to the years of study to take place. The years that are considered in this research are from 1982 until 2022. It is because of the first migration policy in 1982 with the formulation of the committee for recruitment of foreign workers. Several previous studies have mentioned the establishment of the committee for recruiting foreign workers was the first migration policy implemented by the Malaysian government (Abdul Rashid Abdul Aziz, 1999; Kassim, 1997, 1998; Pillai, 1999).

Besides, the study also is tied to a geographical area. The location of the study is Peninsular Malaysia. This research focuses on the Peninsular because it develops more rapidly than East Malaysia, thus requires a greater number of foreign workers which eventually leads to the problems of illegal immigrants. Besides, the jurisdiction on illegal immigrants is separated between peninsular Sabah and Sarawak when immigration powers are given to Sabah and Sarawak to control the right of entry and residence in the States and matters connected to it.

Last but not least, the target population of this study focuses on officials who work with the Malaysian governments especially on the immigration matters and some from non-governmental organizations whose job scope is closely related to the issues of illegal immigrants and foreign workers. Not to forget, the other researchers who are in this field also have been interviewed. Hence, the scopes of this study are those aspects that largely related this research's objectives.

1.7 Chapters Organization

This research is done to examine the migration policy of illegal immigrants in Malaysia. By using a policy transfer approach, this study is identifying the existing policies that have been learned from other countries. This research is also investigating the government's efforts in tackling the illegal immigrants in this country. At the same time, the challenges and limitations of the mechanisms in the migration policy has been highlighted for a better implementation of the policy in the near future.

This thesis is segmented into six chapters. The first chapter illustrates the introduction of the study which includes introduction, background, problem statement, research questions, research objectives, scope, and the significance of the study. This chapter is briefly explained each of the aspects and it functions as the introducing the thesis.

The second chapter discusses the literature reviews in great detail including the definitions of each keyword such as 'illegal immigrants, migration policy, and policy transfer approach. There is a review of the previous studies done by other scholars in order to identify the research gaps. Besides, the conceptual framework is also discussed here to explain the focus of the thesis.

The next chapter elucidates the research methodology and the theoretical framework. It meticulously explains how the study took place, highlights what methods the researcher used in conducting, collecting data for the research and elaborates on how the data were analysed.

Meanwhile, Chapter Four presents the findings and results. The purpose of this chapter is to demonstrate the collected data by reporting them into several styles of

writing. Besides, this chapter also discusses the themes or categories that emerged from the words, phrases and sentences that have been collected from interviews, observations and document analyses.

Moving on, Chapter Five includes data analyses and discussions of the findings. This chapter explains in detailed about the interpretation of the results and summarises the results based on the research objectives. Finally, the last section provides the conclusion and recommendations for future work based on this thesis.

1.8 Research Significance

This research is significant because the issues revolving around illegal immigrants in Malaysia are crucial thus requiring attention from the whole nation especially the government and the people of this country. The Malaysian government is facing several challenges and limitations in the implementation of the policies which has caused little effectiveness in the policy's goals. Due to the mass influx of illegal immigrants in Malaysia, the government is challenged to clarify the actual figures of the illegal immigrants and to reduce the number.

It is also noteworthy that there has been very limited empirical study involve the policy transfer approach in Malaysia especially in term of migration policy of illegal immigrants. Therefore, this research is identifying and analysing the practices that have been learned from other territories in which directly or indirectly the government has performed the policy transfer approach. As a result, there is a significant absence in the literature review covering these topics, and this thesis seeks to fill such gaps.

Furthermore, this thesis is trying to suggest better improvements in the migration policy by revisiting the literature and providing insights, comments and suggestions. Therefore, it can be beneficial to the Malaysian government in enhancing the policy because some comments and suggestions regarding the issue come from the related departments and agencies which can be helpful in the near future.

This study is significant to the society because they are expected to be more cognizant of and sensitive to the issue. It is necessary for the whole community to support the government and other agencies in making this nation safe. Finally, this study is also significant to the author as one of the requirements to complete her PhD as well as one of the ways to fulfil her interest of doing research in social sciences, in particular related to public policy.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

Malaysia is one of the receiving countries that has been burdened with the problem of huge influx of illegal immigrants for such a long time. It happens because Malaysia has become a popular destination for many foreign workers since its rapid economic development. It is important to note as the Malaysia economic growth has become such a main pull factor for encouraging the inflow of foreign immigrants, especially the migrant workers. As a result, Malaysia's reliance on foreign employees has been linked to the presence of illegal immigrants in the country.

Garces Mascarenas (2012) claimed that the Malaysia economic growth continued to depend on a continuous supply of cheap labour and the severe labour shortage caused by the country's steady economic expansion over the last three decades. Besides, the labour shortage is usually attributed to the issue of locals being choosy and do not want the "3D jobs" (dirty, degrading and dangerous). Therefore, the economic growth which has led to labour shortage in certain sectors has given the opportunity to the foreign workers (legal and illegal) especially from ASEAN countries to enter, stay and work here for such a long time.

Nonetheless, there are many other factors besides the economic growth that attracted the foreign workers to stay in Malaysia such as political stability, socio-cultural as well as the geographical location (Hamzah et al., 2020). It shows that these are the series of Malaysia's attractions that call the foreign workers, legal and illegal to be here. However, the prominent pulling factor in Malaysia as the receiving country is the economic development which has created job opportunities for foreign workers.

Moreover, most of them migrate to get out of poverty and look for jobs in other countries like Malaysia.

In addition, as stated by Loh et al., (2019) Malaysia has seen an increase of migrant worker inflows as a result of several contributing factors such as a fragmented immigration system with frequent policy changes, weak linkages between the immigration regime and market needs, a complex, lengthy foreign-worker recruitment process, and weak enforcement of immigration rules and regulations. In summary, illegality can be a tempting approach to get around the Malaysian 'foreign labour' laws Garcés-Mascareñas (2016) because illegal entry is frequently seen as a more convenient and cost-effective way to migrate to Malaysia.

Simultaneously, other criteria of an ideal country for the foreign workers to stay in are the strong national security, stable and sound government, high demand from employers, environmental and socio-economic and also the international migration network (Hamzah et al., 2020). The geographic proximity Garcés-Mascareñas (2012) cannot be denied as one of the main factors that attract the foreign workers to Malaysia especially those coming from ASEAN countries due to the geographical location that is so strategic when using the sea route (Hamzah et al., 2020). Therefore, their presence is visible to the Malaysian people, as outsiders' faces can be seen everywhere in Malaysia due to the rising inflow of these groups and to the extent they cannot be identified as legal or illegal foreign workers.

On the other hand, the huge inflow of foreign workers also can be justified by the pushing factors from their countries of origin or the home countries. For example, the case of Indonesian workers coming to Malaysia because of the low income and high unemployment in Indonesia as mentioned by Djafar et al., (2012) which

determine the causes of the international migration. Besides, the status of being "illegal" itself is appealing to the foreign workers once entering the country as they are not tied to any employers which enable them to shift works freely and their work is not taxed as well as no time limits for them to stay in Malaysia.

The arrival of foreign migration to Malaysia in accordance to the pushing factors from their own countries is actually more than seeking jobs, many of them also migrate to find peace, shelter, fleeing from political persecution, and conflict in the country (Hamzah et al., 2020). However, most of the illegal immigrants are derived from the status as foreign workers because they will join the Malaysia workforce to settle down in this country.

Consequently, the existence of illegal immigrants in Malaysia became a debatable issue which needed a comprehensive and effective management system to control their number from rising up to the extent that could terribly affect the political and social well-being of this country. Therefore, public outcry has become one of the “hammers” to the governments in an attempt to implement policy toward the illegal immigrants. It is noted that migration policy is a way of how governments react toward the international migration that involve the legal and illegal immigrants. Every government has its own migration policy in order to administer migration flow in their territories.

Generally, migration policy is a law executed by the government to control the whole issues related to international migration from various categories involving the people who come in and go out of the country. Specifically, there are other relevant laws like immigration policy and foreign workers policy to govern international migration including both legal and illegal foreign workers. Thus, in controlling the

booming of illegal foreign workers, Malaysia has legal law, namely “The Immigration Act 1959/63”.

The rule regulates the administration and placement of foreign workers. In 2002, this law was amended due to the increasing number of illegal foreign workers. The amended law emphasizes that foreign workers who do not qualify as workers, under Malaysian labour law, are regarded as illegal workers. However, the legal framework which was put in place unfortunately was not complemented by an effective mechanism to curb the illegal invasion of foreign nationals and to remove the large pool of these people which were already in the country (Kassim, 1993, 2000). Then onwards, there are several other mechanisms implemented by the government to manage the existence of illegal immigrants in Malaysia.

Previously, many studies on the topic of illegal immigrants that affect countries around the world were conducted by both local researchers and foreign authors. The most frequent studies of illegal immigrants in Malaysia were done by Professor Dr. Azizah Kassim and many of her articles related to this thesis. She also comments that the studies giving attention to illegal immigrants are numerous in different aspects (Kassim & Mat Zin, 2011). Meanwhile, Malaysian migration policy, according to Garcés-Mascareñas (2012) has aimed to open up admission while restricting membership. The foreign workers policy developed to manage the entry, stay, and repatriation of a foreign labour force that was in demand but undesired. The implementation and the enforcement of the migration policy are seen to be fragmented.

Among the policy’s challenges, one that has been discussed by the World Bank (2015) is that Malaysia’s economic immigration management system is fragmented when more than ten different ministries and departments are directly involved in the

approval of foreign workers. The issue arises when current foreign worker approval does not match labour shortages or market demands. Besides, many Malaysian academics have criticised migration policies as inconsistent, changeable, and ad hoc (Abella & Martin, 2016; Kassim, 1993, 1997, 1998; Garces Mascarenas, 2012; Kanapathy, 2004, 2008).

Malaysia is one of Asia's most populous receiving countries, relying heavily on low-skilled migrant workers which at last this group of people end up being illegal in this country. Until now, there have been heated debates in Malaysia about the figures of illegal foreign workers because there is no definitive estimate of the number and precise assessment about them. It is critical to the Malaysian government in finding the best solution to manage and control the existing illegal immigrants in this country. Their numbers are escalating from many years ago and nowadays fluctuate in accordance with the policy implementation towards them. Many parties have criticized the policy's mechanisms because of its limited success and little effectiveness (see Kassim, 1993, 1997; Rohani et al., 2012). The figures are also a debatable issue when several different numbers have been raised to calculate their existence.

Besides Malaysia, many other governments worldwide are struggling with the issues of illegal immigrants. They are looking for the best solution in nabbing the inflow of illegal immigrants in their countries. That's why migration policy is indispensable to the government in dealing with this kind of problem. The issue of illegal immigrants is a worldwide problem that many countries are grappling with in order to maintain control over their borders. Here, the role of policy transfer comes into its popularity when the practice is widely used across the world in many years to solve the nations' problem. Through a policy transfer approach, these nations are

trying to find the best solution by looking at each other's practices and measurements to solve the national problems. Especially, the practice is becoming more familiar to the development of policies, programs, innovations, ideologies, or information to spread from one nation to another (Dolowitz & Marsh, 1996).

Hence, this thesis is an effort to highlight the related issues by presenting various perspectives from several elite informants who are directly involved in the policy making, policy implementation and the policy enforcement. So that, there will be ideas and a clear picture of the system in managing the Malaysia migration policy in which involve the practice of policy transfer approach. This study is striving to analyse the policy mechanisms used by the government in managing the migration policy towards illegal immigrants and at the same time examine its limitations and challenges. Lastly, the practicality of the policy transfer approach will also be analysed in order to demonstrate the government's attempts to solve this issue.

Importantly, there are several keywords that are used in this study such as “illegal immigrants”, “migration policy” and “policy transfer approach” which are related to the research objectives. Many research studies have been reviewed and critically analyse the main viewpoints and important facts as they are related and connected to this thesis. Therefore, this chapter is summarising and analysing the literature as well as finding gaps in the previous studies that are relevant to this research.

2.2 Definition of the keyword (Illegal Immigrants)

Castles (2012) claimed that illegal immigration is a difficult issue to study. To begin with the definition of the term illegal immigrants, it is necessary to look at the

broader views. Internationally, the meaning of illegal immigrants shall differ from one nation to another according to their migration law. It can be looking at five major continents in the world which started from American countries. In United States, The America Legion (2010) identified the words “undocumented” and “illegal” are synonymous and describe those illegal immigrants as who enter illegally across the nation’s borders and those who enter legally and illegally overstay their visas.

The illegal immigrants also referred to those who violated the immigration laws. Title 8, Section 1325 of the U.S. Code – Improper Entry by Alien, stated that any alien who: 1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers; or 2) eludes examination or inspection by immigration officers; or 3) attempts to enter or obtains entry to the United States by a wilfully false or misleading representation or the wilful concealment of a material fact (The America Legion, 2010).

United States Immigration Services defined illegal immigration as Immigration across national borders in a way that violates the immigration laws of the destination country. It is like other definitions such as an illegal immigrant is a foreigner who either has illegally crossed an international political border, or a foreigner who has entered a country legally but then overstays his/her visa (Rezounni, 2010). They are primarily persons who entered the country secretly by evading an immigration service inspection. Illegal migrants are also the foreign-born persons whose mere presence in the United States is in violation of the law or who have violated a condition of a lawful entry (Chiswick, 1988).

People who live in a country without authorization from that country’s government are referred to in many ways. Often, they are called undocumented

residents and some other repeatedly used terms are irregular, illegal, non-status, or unauthorized. They are also identified as migrants or immigrants instead of residents. In recent ideology of illegal immigrants according to (Ramón A. Gutiérrez, 2019) there are 12 million undocumented Mexican-American immigrants living in the United States, which is referred to as illegal immigration in this country.

Meanwhile, Vollmer, (2011) asserted that the definition of illegal immigrants in the UK which represent the European Continent is typically referring to the cross-border flow of people who enter a country without that country's legal permission to do so. He explained further as the term 'irregular migrants' refer to the population of migrants who are not allowed to remain in a country because they lack the proper documentation or have overstayed their temporary visas.

On the other hand, Sigona & Hughes (2010) stated a lengthy definition of illegal immigrants by explaining one by one the reasons how someone can be illegal immigrants in the UK. The most common reasons for a person becoming an irregular migrant in the UK are: 1) Remaining after a permit has expired or after all requests to stay have been denied. 2) Breaking the law by entering the country by "fraud," which can range from using fake documents to lying about the real reason for travelling to the UK. 3. Giving birth: Unless one of the parents is not an irregular immigrant and is able or willing to "pass on" British citizenship or rights to remain, children born to irregular migrants frequently do not have any rights to remain in the UK. 4) Disobeying the terms of the leave, the requirement to stay, or the reason why the leave was given.

The International Centre for Migration Policy Development CLANDESTINO PROJECT FINAL REPORT (2009) differentiates between irregular foreign residents

and irregular foreign workers. The former live in EU countries without official permission, while the latter work without official permission. However, the Clandestino project does not cover people smuggling or trafficking. There are the Clandestinos list of the main types of irregularity:

- 1) Irregular foreign residents who are not irregular workers:
 - Regular registered foreign nationals with falsified papers.
 - Children without residence status.
 - Aged family members without residence status.
- 2) Irregular foreign residents who are also irregular foreign workers:
 - Foreign nationals without residence status in regular tax-paying jobs.
 - Tourists from non-EU countries in irregular unregistered jobs.
 - Foreign nationals without residence status in irregular unregistered jobs.
- 3) Irregular foreign workers who are not irregular residents:
 - Foreign nationals with residence status but without work permission are irregular.
 - Unregistered jobs foreign nationals with residence status and work permission in irregular unregistered jobs.

It is therefore necessary to add the following categories (ILO 2006; IOM, 2010). In practice, irregular immigration status involves a huge spectrum of breaching the immigration laws and there are various pathways that lead to irregular status. In the UK, as noted by Vollmer (2011) the most frequent method to irregularity is to be ‘visa overstaying’. These also include, among other terms like clandestine, illegal,