

FULL VERSION OF RESEARCH REPORT (ZURAINI AB HAMID)
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Project ID/Title:

RIGS16-058-0222/ Fundamental Framework for Strengthening Human Trafficking Victims' Rights in Malaysia

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Abstract:

Despite the achievements of 19th-century abolitionists, currently, human trafficking is the fastest growing criminal enterprise in the world. The Trafficking in Persons (TIP) reports from 2012 until 2016 states that Malaysia has issues in three (3) main areas in combatting human trafficking. They are related to the laws and policies, the enforcement and the prosecution in handling human trafficking. The reports further mentioned that the major criteria which contributed to Malaysia's positioning in the low tiers in the TIP were due to its ineffective of laws and policy in protecting the trafficking victims. This criteria has resulted to Malaysia's worst position at Tier 3 in the TIP 2014. The latest TIP report 2016 has disclosed that the government of Malaysia has been continuingly giving poor treatment to the victim. The existing policy has increased the risk of exploitation on the victim by the employer when they are incapable of paying the immigration

fees. Refugees in Malaysia also have lack of formal status or the ability to obtain work permits under the Malaysian law, making them vulnerable to trafficking. Many have incurred large smuggling debts where the traffickers used as a subject of debt bondage to some refugees. It is clear that Part V of the ATIPSOM 2007 provides protection for trafficking victims, but its adequacy in protecting the victims is still in doubt. Instead of having extensive efforts, comprehensive laws and a group of enforcement bodies in Malaysia, the fight against human trafficking is a never ending battle. In this study it is found that there are many efforts should be taken by the government of Malaysia in order to improve its legal, policies and institutional frameworks that promote and protect the rights of human trafficking victims.

Key words: Human Trafficking Victim, Malaysia, International law, Human Rights

Introduction/Background:

Despite the adoption of international legal frameworks and enacting domestic legislations by Malaysian government to protect human trafficking victims, there are several issues and problems ahead. Although their implementation claimed to be comprehensive, there are still doubt on its adequacy to keep up with the latest development of human trafficking. According to the TIP reports from 2011 to 2016, Malaysian government has not effectively investigated and prosecuted human trafficking cases, misidentified the trafficking cases as other criminal violation, are not experienced in anti-trafficking procedures, do not have any standard operational procedure in handling the issue, misconduct and irresponsible to the victims. This problems will lead towards continuous problems suffered by human trafficking victims in Malaysia where improper laws, policies and institutional frameworks fail to address those concerns. The main objective is to

propose a comprehensive legal framework and efforts governing human trafficking victims in Malaysia. Thus experience from selected jurisdiction like Australia is necessary since the country has maintained its position at Tier 1 in TIP report since 2004 until now. The outcome of this research will be on the improvement of legal, policies and institutional frameworks that promote and protect the rights of human trafficking victim in Malaysia

Objectives:

- i) To investigate the laws, policies and institutional framework from international jurisdiction that suit Malaysia in protecting and fulfilling the rights of human trafficking victims.
- ii) To construct suitable legal, policies and institutional framework in protecting the rights of human trafficking victims in Malaysia.

Methodology:

This research will employ doctrinal type of research where the analysis of laws, policies and institutional framework through primary and secondary legal and non-legal documents. Besides, qualitative research such as semi-structured interview will be used in this research.

Findings:

- 1) Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM 2007) is the principle Act that provides protection for trafficking victims. The issue of human trafficking victim and protection also is supported by other (12) supplemented Acts in Malaysia including Federal Constitution of Malaysia, Immigration Act 1959/63 [Act 155], Customs Act 1967 [Act 235], Evidence Act 1950 [Act 56].

- 2) Malaysia should not focus entirely on prevention laws, but attention also must be given to the protection of trafficking victims. Malaysia should comply with the domestic laws and “3P” paradigm which is outlined by Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime 2001 (UN TIP Protocol).

Conclusion:

Malaysia's diligent efforts is proven when addressing the crime by proclaiming the ATIPSOM 2007 as the principle written law, supplemented by other Acts. Though, a good legal framework is insufficient without strong coordination among the stakeholders. The protection can be successfully given to the trafficking victims if there is mutual cooperation between the state government, enforcement bodies and non-governmental organizations. Malaysia should not focus entirely on prevention laws, but attention also must be given to the protection of trafficking victims because it is one of the reasons that contribute to Malaysia’s failure to be in Tier 1 of Trafficking in Persons report.

Output:

- i) **Articles published by the international journal, indexed under Google Scholar and counted in MyRA and recognized by RMC.**
 - a) Zuraini Ab Hamid, Noor Shuhadawati Mohamad Amin, Norjihan Ab Aziz (2017). The challenges faced by the enforcement bodies in Malaysia on human trafficking. *International E-Journal of Advances in Social Sciences*, 7 (3). pp. 146-151.

- b) Zuraini Ab Hamid, Norjihhan Ab Aziz, Noor Shuhadawati Mohamad Amin (2017). The effectiveness of trafficking in persons report in combatting human trafficking. *International E-Journal of Advances in Social Sciences*, 3 (7). pp. 293-299.

ii) Articles published by refereed journal/ non-indexed

- a) Zuraini Ab Hamid (2016). The effectiveness of anti-human trafficking laws in Malaysia: with reference to Australia. *Malayan Law Journal*, 6. pp. 1-6.
- b) Khairil Azmin Mokhtar, Zuraini Ab Hamid (2016). Incorporating the United Nations protocol on trafficking in persons in the Malaysian legal framework. *IUM Law Journal*, 24 (2). , pp. 377-396. ISSN 0128-2530

iii) Seminar Paper (ISI Conference Proceedings Citation Index)

- a) Zuraini Ab Hamid, Noor Shuhadawati Mohamad Amin, Norjihhan Ab Aziz (2017). The challenges faced by the enforcement bodies in Malaysia on human trafficking. *International Conference on Education and Social Sciences (Istanbul, Turki)*, ISBN: 978-605-64453-9-2
- b) Zuraini Ab Hamid, Norjihhan Ab Aziz, Noor Shuhadawati Mohamad Amin (2017). The effectiveness of trafficking in persons report in combatting human trafficking. *International Conference on Education and Social Sciences (Istanbul, Turki)*, ISBN: 978-605-64453-9-2

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- vii) Khairil Azmin Mokhtar & Zuraini Ab Hamid. (December 2014). Human trafficking from Shari'ah perspective. *Journal of Islamic Law Review*, Vol. 10, No. 2, 263-284.
- viii) Louise Shelley, "Human security and human trafficking" in *Human Trafficking and Human Security*, edited by Anna Jonsson, (London: Routledge Taylor & Francis Group, 2007), 10-23.
- ix) Prof Christopher Gregory Weeramantry, "Does International Law Matter?", *Malayan Law Journal Articles*, vol. 2, no. 58 (1993): 347-348.
- x) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, Supplementing the United Nations Convention Against Transnational Organised Crime, 2001 (Supplement No. 49 (A/45/49)).

- xi) Siddarth Kara, "Designing More Effective Laws against Human Trafficking", *Northwestern University Journal of International Human Rights*, vol. 9, no. 2 (2011): 1-28.
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- xiii) Trafficking in Persons Report 2013, U.S. Department of State, <http://www.state.gov/j/tip/rls/tiprpt/2013/210548.htm>
- xiv) Trafficking in Persons Report July 2015, U.S Department of State, <https://www.state.gov/documents/organization/245365.pdf> Zuraini Ab Hamid & Khairil Azmin Mokhtar. (June 2014). Human trafficking: The international, Malaysian legal framework and Shariah perspectives. *IUM Law Journal*, Issue 6, 279-296.