

# Amnesty for Undocumented Migrants in Malaysia: Policy Development and Implementation since 2011

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## **Abstract**

Labour migration is a persistent phenomenon in Malaysia, driven by a profit-making motive and over-reliance on foreign workers. The state has resorted to large-scale amnesty programmes as its main migration control measure to reduce the number of undocumented migrants. This article analyses the development of the labour amnesty policy, with a specific emphasis on its post-2011 development. It aims to examine the rationales, challenges, and perceptions of the stakeholders (the host country, migrant workers, and industry) in these amnesty programmes. Based on document analysis of official documents, parliamentary debates, press statements, and secondary literature, this paper surveys the implementation of amnesty initiatives introduced since 2011 (6P Programme, Three-Plus-One Programme, Back-for-Good Programme and Illegal Immigrant Recalibration Plan). From the enforcement perspective, amnesty is a pragmatic approach to deal with the issue of foreign workers working without documentation. Amnesty offers an urgently needed solution to handle the uncontrollable influx of undocumented migrant workers and the socioeconomic costs associated with hosting many foreigners. However, from the economic perspective, amnesty is deemed an ad hoc solution, which fails to tackle the root problems of Malaysia's labour migration management in the long term; the dependence on foreign workers, the unscrupulous recruitment system, the employers' preference for foreign workers, profit-making agents, and profiteering of the labour migration industry.

**Keywords:** Amnesty; Foreign worker; Labour migration; Legalisation; Voluntary repatriation.

## **INTRODUCTION**

This paper examines the historical development of the labour amnesty policy by focusing on its development after 2011. It answers a few questions. How have the host country, migrant workers, and industry players responded to the various amnesty programmes? What are the limitations of the amnesty programmes? What are the views of pro-amnesty and anti-amnesty groups? Malaysia acknowledges the necessity for temporary labour migration to remedy labour shortages in the nation. In practice, the country's low-skilled labour approach alternates between offering a consistent supply of cheap labour and taking action against undocumented workers. The state has used periodic amnesty and regularisation programmes as a policy tool

to manage undocumented migration due to the increasing demand for migrant labour and the significant number of undocumented migrants (Kaur 2014, 345). The number of migrant workers registered under various programmes is as follows, 483,784 (1992), 554,941 (1996), 413,812 (1997), 187,487 (1998), 439,727 (2002), 398,758 (2004), and 175,282 (2007) (Kassim and Mat Zin 2011, 18). In addition to these attempts to regularise the status of foreign workers, the state also launched a series of initiatives intended to persuade foreign workers to leave the nation through voluntary repatriation (amnesty) programmes. The new amnesty measures include the 6P Programme (2011), Three-Plus-One Programme (2014), Back-for-Good Programme (2019), and Illegal Immigrant Recalibration Plan (2020) (Anderson 2020, 8; Low 2021, 357).

Undocumented migrants who participated in the amnesty programmes are allowed to return to their home countries without being subject to legal prosecution for breaching immigration laws. Migrants who did not take part in the state's amnesty programme would be subject to detention, prosecution, and deportation. Amnesty thus can be defined as the state's pardoning of immigration offences (Garcés-Mascreñas 2012, 96–8; Kassim and Mat Zin 2011, 21-2). Meanwhile, legalisation (or regularisation) provides undocumented migrants with temporary legal status. Legalisation denotes the issuance of a work permit to undocumented migrants, who overstayed their work permits and/or enter the country illegally. In the Malaysian context, legalisation does not imply that foreign workers or their dependents will be granted residency or citizenship (Kaur 2014, 53-4; Parliamentary Debates, House of Representatives, 22 November, 18-19). From the perspective of migrants' welfare, legalisation has enabled undocumented migrants to gain formal employment and protection under labour regulations. Legal employment requires employers to provide each foreign worker with health insurance coverage, standard housing, amenities, compensation for workplace injury, medical benefits, and minimum wage, consistent with Malaysian labour laws (World Bank 2013, 104–8).

Muhyiddin Yassin, the then Minister of Home Affairs (MOHA), acknowledged that legalisation would convey the wrong message that it would be permissible to hire foreign workers without documentation who would later be given legal status. The Ministry of Home Affairs opposed granting a regular amnesty, but the government was forced to give in. If amnesty and voluntary repatriation were not implemented, enforcement and forcible deportation would not be able to reduce the number of undocumented migrants (Parliamentary Debates, House of Representatives, 30 October 2018, 99). The then Deputy Minister, Mohd Azis Jamman stated, "The frequent holding of the legalisation programme can become a bad culture for the country" (New Straits Times 2018). However, pro-amnesty groups disagreed that immigrants were taking advantage of the amnesty exercises. Instead, irregularity in Malaysia is caused by the inefficient recruitment process and the poorly executed rehiring programmes. Ceasing legalisation and blaming the undocumented migrants for their illegal status showed that the ministry was in denial over the root cause of the problem; the unethical recruitment system (Chow 2018).

The Malaysian government's approach to managing foreign workers illustrates the country's core conflict between meeting the demands of the labour market and restricting the immigration of undocumented migrants. The national security framework dominated immigration enforcement activities, but Malaysia's economic dependence on foreign labour necessitated a consistent foreign worker policy implementation (Nesadurai 2013, 103). The goal of labour migration management in Malaysia is to control the influx of foreign labour, reduce undocumented immigration, and safeguard Malaysian workers in the local labour market. Labour market imbalances, national security concerns, international relations, lobbying by migrant rights groups, and the adverse effects of undocumented migration have all impacted the labour migration policy (World Bank 2013, 114). To be profitable and

competitive, key growth sectors, including palm oil, construction, and labour-intensive manufacturing industries, primarily rely on foreign labour. Despite the far-reaching economic consequences, Malaysian foreign labour policy has been limited. Foreign workers' policy has been seen as a temporary phenomenon without sufficient integration with the national development goals (Abella and Martin 2016, 92). Policies to control labour migration have remained ad hoc since they were introduced as an "interim solution" to address labour shortages more than 30 years ago. The policy framework has extensively used a quota system for the entry of migrant workers and measures to regularise migration through temporary amnesty. Amnesties are followed by extensive enforcement operations to imprison and repatriate undocumented migrants. The entry of migrant workers is regulated to meet employers' immediate labour needs rather than allowing longer-term settlement (Harkins 2016, 2).

The Ministry of Human Resources (MOHR) believes that the state's dependence on foreign workers is temporary, and employment prioritises local workers. Most foreign workers are concentrated in dirty, dangerous, and difficult (3D) jobs less favoured by local workers, especially in the manufacturing, construction, and agricultural sectors. The problem over the past three decades has persisted to the point where undocumented immigrants have become traders, and some are self-employed in the country (Parliamentary Debates, House of Representatives, 11 July 2013, 4-5). The lack of a comprehensive foreign labour policy has encouraged the illegal entry and employment of foreign workers. The state relies highly on them, yet the flawed recruitment system allows many parties to profit. The foreign labour influx will be permanent if it continues to be driven by profits (Lee 2017, 566). Malaysia's Immigration Department is committed to eliminating undocumented migration. Enforcement activities, including raids, arrests, detentions, and deportations, have been carried out on a vast scale to reach the goal of "zero illegal migrants" (Low and Mokhtar 2017, 149). In its election manifesto, the Pakatan Harapan government, which won the 14th general election in 2018, promised to reduce the number of foreign workers (both legal and illegal) from six million to four million during its first five-year term. The employers' preference for foreign workers has adversely affected the wages of local workers (Pakatan Harapan 2018, 75-6).

This paper is divided into five sections. First, it surveys the global literature on amnesty for undocumented migrants. This is followed by an examination of the labour amnesty regime in Malaysia from a historical perspective. Then, it analyses the implementation of post-2011 amnesty programmes focusing on four case studies; 6P Programme, Three-Plus-One Programme, Back-for-Good Programme and Illegal Immigrant Recalibration Plan. The discussion section compares the views of both the pro-amnesty and anti-amnesty groups. Finally, it concludes by summarising the use of amnesty as a migration control strategy. This research draws on legal texts, Hansard documents (1998-2021), English-language online news, press statements by trade associations and civil societies, and secondary literature. The collected data was examined using document analysis. The analytical approach included the systematic process of locating, selecting, evaluating, and synthesising data from diverse texts (Bowen 2009).

## LITERATURE REVIEW

In liberal states, partial amnesty is necessary based on moral and pragmatic arguments. It is morally wrong to treat migrant workers who provide labour and contribute to society as outsiders and subject them to deportation. Based on the moral argument, states profit from migrant workers' labour yet treat them as outcasts. Pro-immigrant advocates recognise the moral claim of immigrant membership in the society and oppose the use of deportation. They call on the government to acknowledge its responsibility and honour migrant workers'

significant contributions (Bosniak 2012, 436–7). From the pragmatic perspective, amnesty benefits society because having a huge population of foreigners is detrimental to society in terms of its negative effects on security, healthcare, and maintaining the rule of law (2012, 439). Pro-immigrant progressives' advocates believe amnesty is essential and an indispensable part of the solution to the problem of undocumented immigration. Regularisation (legalisation or amnesty) eliminates an illegal status (2012, 433-435). Amnesties signify the failure of governments' attempts to control undocumented migration. It is tantamount to rewarding individuals who break the law (Maas 2010, 237). States resort to large-scale amnesties due to humanitarian concerns, labour market needs, and the absence of administrative competence to handle labour migration (2010, 232). Foreigners can turn into irregular migrants for a variety of reasons. Irregularity is often caused by their inability to comply with the law; the law created the status of irregularity. Migrants become irregular as a result of the law rather than their intention to break it. This migration control should be based on pragmatic attempts rather than criminalising irregularity. The principled opposition fails to consider the realistic alternatives to amnesty; mass arrests and mass deportation, which are ethically, economically, and practically unreasonable (Kraler 2009, 31-32).

Scholars examining the impact on undocumented migration are concerned about whether regularisation programmes constitute a pull factor that encourages further undocumented migration and whether these programmes encourage immigrants with expired permits to stay to wait for the next amnesty. Regularisation programmes have not addressed the nature of undocumented migration. They assume that legalising migrants would solve underground employment (Levinson 2005, 9; Sunderhaus 2007, 72). Regularisation may not have a significant impact on the labour market and reduce the underground economy. Such programmes have increased daily paid labour and informal employment. Underground employment has persisted due to employers' reluctance to pay higher wages to legalised workers, the high demand for labour, and networks within the underground economy (Levinson 2005, 8). According to Sunderhaus, regularisation is a pragmatic approach as deportation alone is impossible due to ethical, practical, and legal obstacles (2007, 72). Sunderhaus calls for an analysis of the interdependence among migration policy, the regularisation programme, and other policy areas for successful migration management (2007, 74–5).

There are two contrasting rationales of regularisation, humanitarian regularisations, driven by a human rights rationale, and non-humanitarian regularisations, driven by a regulatory, labour market-oriented rationale. Humanitarian and human rights-based regularisation addresses policy failures in the asylum system and responds to specific and exceptional situations (such as war refugees), as well as an alternative to deportation. In contrast, regularisation-based labour market logic intends to re-regulate and regain control over the labour market in achieving the aims of combating the informal economy, ensuring compliance with tax and social security obligations, enforcing labour standards, fighting against workers' exploitation and vulnerability, and promoting the integration of regularised migrants (Kraler 2009, 16–7). Globally, amnesties are effective in reducing the number of undocumented migrants and are beneficial to the economy. In their research, Aguiar and Walmsley find that amnesties (in the US) positively impact the labour force and the economy, but the benefits reduce over time (Aguiar and Walmsley 2013, 253). Amnesties are unlikely to curb the influx of undocumented workers or meet the need for cheap labour in the long run. Expanding the number of foreign workers' permits to meet the labour force's needs over time would be a preferable alternative (2013, 232). A Turkish case study by Ozcurumez and Yetkin shows that regularisation measures have limited effectiveness due to the foreign workers' and employers' preference for underground employment, which explains why the Turkish policies on undocumented migration have not worked. Their choice to remain unregistered renders all policy initiatives inapplicable (2014, 453–4).

In Shah's comparative research on the amnesty programmes of Kuwait and Saudi Arabia, the latter is more successful than the former because the latter covers a wider range of participants, including foreigners with no residency or work permits, those working for employers different from their sponsors and those engaged in trades (2014, 8). Shah suggests that the success of amnesty programmes can be enhanced by diversifying the range of eligible undocumented migrants (rather than focusing on the overstayers), improving surveillance, securing the cooperation of employers, and having adequate field staff members and facilities to handle such programmes (2014, 10). Devillanova, Fasani, and Frattini examined the Italian amnesty's economic consequences for undocumented immigrants. They suggested that having a legal status has substantially increased the employment rate among such immigrants. From the labour market perspective, it is desirable because amnesty has enhanced the labour market integration of undocumented immigrants, safeguarded their civil rights, and prevented their exploitation in the labour market (2018, 877–8). Regularisation based on employment distinguishes migrants who deserve a legal status from those undeserving. Migrant regularisation affects different levels of their civic membership and integration based on employment. Employment-based regularisations in Europe, such as in France, Spain, and Austria, serve as requirements for foreigners to obtain temporary residence permits to reside in those countries legally and might pave the way to acquire citizenship rights (Chauvin, GarcésMascareñas, and Kraler 2013, 118–20).

## **LABOUR MIGRATION AND AMNESTY IN MALAYSIA: A HISTORICAL OVERVIEW**

Malaysia has become a destination for economic migrants from neighbouring nations since the 1970s. The rise of the manufacturing, agricultural, plantation, construction, and service sectors, along with the advent of industrialisation, has resulted in local companies relying on foreign labour, primarily from Indonesia (Kaur 2015, 79). The arrival of migrant workers was unregulated in the 1970s, with no channels for legitimate labour recruiting and companies using private contractors to recruit employees. Only in the 1980s did the government interfere in the labour market, attempting to restrict migrant workers' admission by signing bilateral memorandums of understanding with countries of origin, beginning with Indonesia in 1984 (Kassim and Mat Zin 2011, 16–8; Kaur 2015, 83–5). The 1984 Medan Agreement (with Indonesia) failed to manage the illegal entry of many Indonesian workers who preferred private brokers to official channels due to the cost factor (Jones 2000, 19). The thriving migration industry has been due to a combination of various factors. These include acute labour shortages and the demand for cheap labour, wage disparities between Malaysia and its neighbouring countries, a weak recruitment system with the extension of brokers, the activities of recruitment agencies and social networks, and the privatisation of recruitment, resulting in increased cost of legal employment and the commercialisation of recruitment processes (Garcés-Mascareñas 2012, 49, 72; Jones 2000; Kaur 2014, 345–350). Legal migration is costly for foreign workers because the business-to-business approach in the recruitment process involves third parties, such as outsourcing companies and private employment agencies. High migration costs borne by the workers incentivise illegal entry, and debt bondage incentivises overstaying (World Bank 2015, 56). Legal migration does not necessarily connote safe migration due to the role of private actors in the migration industry (Nguyen 2021, 141).

Garcés-Mascareñas' research demonstrated the limited results of the regularisation programmes implemented in 1989, 1991, and 1996. The responses from employers and migrants themselves were not encouraging. The number of undocumented migrants who participated in these programmes was far less than the estimated number of undocumented migrants. The 1996 programme only registered 423,180 workers, whereas the government

estimated that over one million undocumented migrants were in the country. The red tape and bureaucracy involved in the host and the home countries encouraged the emergence of intermediaries in facilitating the process. Their involvement further increased the financial costs borne by workers. In some cases, workers were cheated by fraudulent agents (2012, 90–3). The regularisation programme has been subjected to widespread criticism since its introduction in 1989. Regularising undocumented migrants is tantamount to recognising them. Trade unions and opposition parties have denounced the government for “violating its own immigration laws” (Garcés-Mascareñas 2012, 85). According to Kassim and Mat Zin, legalisation and amnesty are “problematic”. Legalisation does not cover the self-employed undocumented migrants and their dependents who are not employed. Many migrants could not afford to be legalised. It was financially costly for the migrant workers, who shouldered the annual payment of the levy and several administrative fees before 2010. Compared to legalisation, the amnesty or voluntary return programme covers all immigrants, including their dependents. The social cost of returning home is high for long-term migrants, who have settled down, own businesses and have several locally-born children, which explains why some migrants have not taken up the amnesty offers (2011, 23–6). For Jones, the legalisation programmes have not addressed the problem though they are considered “useful”. Immigrants have continued to enter the country illegally on speed boats, and private recruiters in Indonesia have continued to supply migrants to agents. The stream is the result of the following reasons, the wage differential is attractive, the business of people smuggling is lucrative, hiring foreign workers is much cheaper than employing locals, and the bureaucratic mechanism is inept. Labour migration has become a lucrative business, portrayed by Jones as “making money off migrants” (2000, 34–35). In the Malaysian context, the regularisation and legalisation strategy does not align with the state’s attempts to prevent undocumented migration for two reasons. The legalisation policy first functions as a registration and monitoring mechanism. Giving foreign workers a temporary work permit and legal status essentially only registers undocumented workers. If their work permits weren’t renewed yearly, they would lose their legal status. Secondly, legalisation initiatives cannot replace a sound foreign worker policy. Giving temporary work permits to undocumented foreign workers is a short-term measure that does not meet the long-term demands of the labour market (Low 2021, 374).

Analysis of Hansard documents reveals a few limitations in the past amnesty programmes; the lack of a clear objective, no follow-up, agents’ involvement, and labour shortages. There were queries on the goals of the amnesty programmes. Amnesty programmes should be conducted based on the specific goal of ensuring that there would be no undocumented immigrants in the country rather than facilitating their temporary return home. For example, foreigners from Indonesia used the 2004 amnesty to go home for Hari Raya, and those from the Philippines used it to go home for Christmas. This programme became a pull factor for foreign workers who continued to stay in the country after their permits expired. Most did not renew their documents because they anticipated the government would offer another amnesty within two, three, or four years. The 2004 amnesty programme aimed to address the irregularity problem but failed because there was no follow-up action (Parliamentary Debates, House of Representatives, 6 December 2004, 19–20). The lack of follow-up resulted in the illegal return of many immigrants who were released through the programme. Those sent home in 2004 were the same people sent back in 2000. A follow-up programme that would take the fingerprints of all immigrants sent back is important to prevent them from returning. Without a follow-up, the 2004 programme would suffer the same consequences and fail to achieve the goal of ensuring that no undocumented migrants would enter and stay in the country illegally (Parliamentary Debates, House of Representatives, 6 December 2004, 20). Many of them returned to Malaysia via illegal entry than through the One-Stop Centres (OSCs), forfeiting the ultimate objective of amnesty. The 2004 amnesty

programme failed because of the discouraging response from immigrants who refused to use the OSCs established in Indonesia to facilitate their return to Malaysia for legal employment. As of 31 May 2005, 35,627 returnees re-entered the country legally using these OSCs compared to 382,000 immigrants (mostly Indonesians) who returned to their country under the 2004 amnesty programme. Most OSCs in Balawan, Dumai, Entipong, Jakarta, Mataram, Nunukan, Pari-Pari, Semarang, Surabaya, Tanjung Uban, Tawi-Tawi, and Upang, were closed due to the lack of response. The establishment of the OSCs and the implementation of the programmes to bring back the immigrants who had participated in the amnesty programme were agreed upon by Indonesia and Malaysia (Parliamentary Debates, House of Representatives, 22 June 2005, 80–2).

Agents' involvement was problematic. All legalisation programmes were conducted through agents, allowing many to profit. Third-party intermediaries played a prominent role in the legalisation process, with many foreign workers resorting to agents' services due to the complex procedures and the lack of facilitation, especially for applicants from rural areas. The Ministry of Home Affairs estimated about four million undocumented migrants in 2018, with the MOHA office in Putrajaya as the only place for legalisation (Parliamentary Debates, House of Representatives, 30 October 2018, 98). Another enforcement limitation involved ensuring a balance between security and economic needs. Several economic sectors would have to stop operating without foreign workers, who made up a significant portion of Malaysia's labour force. Malaysia faced a serious labour shortage problem, where foreign workers comprised 20% of its total labour force in the early 2000s. Over 380,000 workers left Malaysia under the 2004 amnesty programme, resulting in massive labour shortages. It was not the first time the industrial sector suffered from labour shortages because of mass arrests (Parliamentary Debates, House of Representatives, 4 April 2005, 31).

There were questions about whether past amnesty initiatives delivered their expected outcomes or met their initial objectives. The critics measured the programmes' results in terms of the number of undocumented migrants staying in the country. Despite many legalisation and amnesty programmes implemented by the government in 1989, 1991, 1996, 2004, and 2011, more immigrants were entering the country. As of 2016, the estimated number totalled 6.7 million foreign workers (Parliamentary Debates, House of Representatives, 15 March 2016, 117). However, the Ministry of Home Affairs (MOHA) measured the success or the failure of amnesty in terms of the number of undocumented migrants who successfully returned to their countries voluntarily compared to forced deportation. The total number of immigrants deported in 2005 was 20,000 on average. Meanwhile, 380,000 immigrants returned home under the 2004 amnesty programme. By this comparison, the MOHA considered amnesty a success (Parliamentary Debates, House of Representatives, 22 June 2005, 82). In addition, the MOHA viewed amnesty as more effective compared to the burdensome efforts and time spent by the enforcement authorities to run their immigration raids. For example, the enforcement operations without amnesty over nine months in 1998 only managed to arrest 66,540 people, with the spending of government funds to deport them. In contrast, the amnesty programme between 31 August and 15 November 1998 witnessed more than 187,000 immigrants who returned voluntarily at their own expense (Parliamentary Debates, House of Senate, 8 December 1998, 20–1). Forced deportation is a lengthy process since it involves challenges in verifying citizenship with the relevant embassies and acquiring proper papers. The determination of the prisoners' countries of origin directly determines the duration of their imprisonment in a detention facility. The primary obstacle encountered by enforcement agents is the acquisition of a document from the embassy of the detainee's country of origin. Adding to the complexity, inmates may confess their nationality, only to face non-recognition by their respective governments (Low and Mokhtar 2017, 152). In conducting immigration raids, enforcement agencies deal with various challenges such as document fraud and misuse,

financial constraints, and manpower limitations (Tedong et. al 2018, 151). Moreover, the government's forced deportation has profoundly impacted the transit zones in Sumatera and Kalimantan, ranging from humanitarian crises to inter-state conflicts. In 2002, the government deported 400,000 undocumented Indonesian workers to Sumatra (Belawan, Batam, and Dumai) and Kalimantan (Pontianak and Nunukan). The mass deportation to the transit zone of Nunukan Island in August 2002 resulted in a major humanitarian crisis in the home country because the transit infrastructures were ill-equipped and insufficient to accommodate the sudden influx of deportees. The deportees experienced poor lodging, lack of basic facilities, poor sanitation, and major illnesses, leading to the deaths of some deportees (Ford 2006, 241). The next section looks at the implementation and responses of the industry stakeholders and non-governmental organisations (NGOs) towards new amnesty initiatives.

## **POST-2011 AMNESTY PROGRAMMES**

### **6P Programme or Total Solution, 2011-2013**

In 2011, the largest legalisation programme, called 6P, was launched between 1 August 2011 and 30 November 2013, intended to use a biometric database to regulate over two million undocumented migrant labour population. When foreign workers signed up for the scheme, they had to have their fingerprints taken, which enabled surveillance, monitoring, and combating problems (such as fake identity documents and modern-day slavery) and protecting undocumented migrants against human traffickers and unscrupulous employers. Registered immigrants were either legalised and absorbed into the workforce or returned home if they failed to secure a job. According to the then Minister of Home Affairs, Hishammuddin Hussein, the amnesty programme was a practical approach (Herald Sun 2011). It successfully enhanced national security through monitoring and enforcement over foreign nationals, addressing the problem of forged identity by registering biometric fingerprint data, and collecting RM629,065,191 in tax revenues from the successful levy imposition on employers. Of the 1,303,126 registered immigrants, 503,161 were legalised, and 330,770 voluntarily returned to their home countries (Parliamentary Debates, House of Senate, 16 December 2013, 18–9). The 6P initiative, also known as the total package solution, comprised six steps – registration, legalisation, amnesty, monitoring, enforcement, and deportation. Under the biometric registration phase, 1,303,126 undocumented migrants registered in the national data system. Based on the biometric fingerprinting statistical data, the undocumented migrants' profiles were identified as follows, Indonesia (49.1%), Bangladesh (20.5%), Myanmar (11%), India (4%), the Philippines (3.7%) and other countries (11.7%). Male migrant workers comprised 75% of the total undocumented migrants (World Bank 2013, 124–5). At the end of the 6P programme, Malaysia recorded 1,303,126 undocumented foreign workers (as of August 2012) compared to 1,525,944 legal foreign workers (as of March 2013) and 6.5 million Malaysian citizens working in the private sectors (Parliamentary Debates, House of Representatives, 11 July 2013, 3–4).

The Malaysian NGOs challenged the role of outsourcing firms in the 6P initiative. Instead of the immigration department managing the programme, the MOHA assigned some registration and administration activities to outsourcing firms. These businesses demanded hefty fees ranging from RM3,000 (US\$920) to RM4,000 (US\$1,230), plus an extra RM300 (US\$92) for registration in the national biometric system. The minimum pay for workers was RM900 (US\$280). After paying the brokers, there have been instances when workers were not registered in the system. Consequently, they accepted work licenses from shell companies (registered businesses with no actual operations) and afterward sought employment opportunities. More than 30,000 workers were defrauded under the 6P scheme by businesses



engaging in unlawful activities, claims a Malaysian NGO, Tenaganita (Fernandez 2014). Migrant Care, another NGO, criticised the amnesty programme for its inadequate preparation and poor implementation. The use of several private agencies to register workers was open to exploitation and became an instant gold mine for local brokers who act as agents for illegal workers in processing their registrations (Asean Affairs 2011).

After receiving money, third-party agents took the undocumented workers' passports and promised them legal work permits. If these workers filed a police report, the agents threatened to report them to the Immigration Department for their illegal status. Following the reported incidents, agents were no longer allowed to process the work permits. Instead, employers claiming to have been cheated were allowed to register their workers under the Special Programme for Managing Illegal Immigrants (PKPP), provided the employers lodge a police report (Asia One 2013). The three-month PKPP special programme (21 October 2013–20 January 2014) was set up to assist employers who were cheated by agents or intermediaries (Malaysia, 2013b, 18–9). Under PKPP, 18,573 immigrants were legalised in addition to the existing 503,161 immigrants, totalling 521,734 immigrants legalised under the 6P (Parliamentary Debates, House of Senate, 16 December 2014, 71). Undocumented migrants failing to participate in the 6P legalisation programme were subject to a nationwide enforcement operation called Ops 6P Bersepadu (6P Integrated Operation). On September 1, 2013, the government initiated 6P Integrated Operation intending to prosecute 45,000 non-compliant employers and apprehend 400,000 undocumented workers. The high-profile operations were carried out in squatter settlements, plantations, entertainment venues, and massage parlours. The goal of immigration raids was to ensure that Malaysia was clear of undocumented migrants and that all foreign workers had legal documents (Low 2017, 114-15).

### **Three Plus One Programme, 2014-2018**

In 2014, the government initiated a voluntary return programme called the Three Plus One (3 + 1). Through the programme, participants were charged a fine of RM300 and a special pass fee of RM100 and excluded from punishment for immigration offenses. Their biometric details were obtained, and they were placed on a five-year entry ban list (Parliamentary Debates, House of Representatives, 22 November 2018, 17). Under the scheme, the following immigration offenses were pardoned, illegal admission into the country without a proper visa and passport, and overstaying or visitors using social permits to enter the nation. Whether they had been arrested or had willingly surrendered, the scheme was utilised to send the migrant workers back. Indonesians made up the bulk of people deported under the 3 + 1 Programme, followed by those from Myanmar, Bangladesh, India, and Nepal (Parliamentary Debates, House of Representatives, 28 April 2016, 5). As 840,000 undocumented migrants were repatriated and RM400 million in penalties were collected, the four-year initiative (June 2014–August 2018) was deemed successful (Kumar 2019).

The voluntary return programme allowed the state to speed deportation proceedings without holding the offenders who would otherwise be charged with immigration offenses and have court hearings. It reduced the backlogs in the detention facilities and financial costs because the deportees paid for their own airfare (Parliamentary Debates, House of Representatives, 25 November 2014, 98). In comparison to the regular deportation procedure, which is costly and time-consuming owing to challenges in confirming the deportees' citizenship status from their various embassies, amnesty for individuals who surrendered willingly to be sent back was significantly easier (Malaysian Insider 2014). The voluntary return programme was useful in counteracting document-forgery syndicates. Among the Filipino migrants in Sabah, there were widespread cases of fake endorsements on Philippine passports, including validity extensions and embassy officials' signatures. Their government

thus urged Filipinos to process their documents directly with the embassy and avoid engaging any third-party services. The migrants with expired documents responded positively to the voluntary return programme, which charged a reasonable fine and discouraged them from returning home via the back door (Fabian 2018).

Under the Three-Plus-One amnesty programme, foreign workers who did not meet the eligibility criteria for the Rehiring Programme (a legalisation programme) were repatriated. Employers who failed to legalise their workers faced legal consequences. Ops Mega 3.0, a nationwide enforcement operation initiated by the Immigration Department on July 1, 2018, aimed to apprehend errant employers and “flush out” unauthorised immigrants (Low 2021, 362). Following the end of the 3+1 Programme on 30 August 2018, the Immigration Department stepped up its enforcement efforts beginning 31 August, marking Malaysia’s Independence Day. In conjunction with this celebration, the department pledged to liberate the country from undocumented migrants. Legal actions, including imprisonment and fines, would be taken against those arrested (Shah 2018). According to Tenaganita, past amnesty and legalisation initiatives have shown to be failures, causing hundreds of thousands of migrant workers to lose thousands of ringgit each, without gaining any advantages. A significant number of these individuals are still in a state of uncertainty, with many being arrested and imprisoned after paying substantial fees for legalisation through agents. The entire expense must be incurred by the industries that need the workers (Das 2020). Glorine Das, the executive director of Tenaganita, has called on the government to cease using undocumented migrant workers as ATMs. The 3+1 Programme resulted in the government collecting RM400 million in fines. The next amnesty programme called Back for Good, imposed a RM700 fine on surrendered migrants. For migrants who earned lower than the monthly RM1,100 minimum wage, the fine was hefty. The amount of RM700 was sufficient to cover two months’ rent in Bangladesh and to support a family of five for a minimum of two and a half months in Nepal (Malaysiakini 2019).

### **Back for Good Programme, August – December 2019**

A few months after the end of the Three-Plus-One amnesty programme, the MOHA announced the new Back for Good (B4G) programme in July 2019. Unlike previous amnesty offers, this five-month programme (August–December 2019) was undertaken only by the Immigration Department, without any intermediaries. The participants in this voluntary repatriation were fined RM700, placed on a blacklist, and prohibited from entering the nation again. Like previous programme, B4G granted amnesty to foreign nationals who have overstayed their visas as defined by Section 15(1)(c) of the Immigration Act of 1959/1963 or as defined by Section 6(1)(c) if they lack appropriate travel papers. Given that these workers were in Malaysia unlawfully, the government would not resolve any wage disputes between them and their employers. Despite its reluctance, the government acknowledged that there were just too many undocumented migrants in the nation (Kumar 2019; Loo 2019). The B4G programme gave undocumented migrants a chance to return home without paying for questionable services from syndicates. Instead of going via the regular channels, many overstaying migrants had purchased fraudulent immigration entrance and departure stamps from syndicates. The Immigration Department did not engage third parties in this amnesty programme to eliminate abuse and fraud cases. Undocumented immigrants dealt directly with the department to get legal documents and pay the fine. They had one week to depart the country after receiving authorisation from the Immigration Department. The programme did not apply to those held in detention depots. Besides decreasing the number of undocumented migrants, it reduced the cost of depot management (Anis 2019). In 2019, there were 14 detention depots nationwide, with the capacity to accommodate about 13,000 detainees. The monthly cost of food was

estimated at RM3.5 million. As of September 2019, 9,532 immigrants were awaiting deportation, which took between three weeks and four months, depending on the documentation process with the embassies involved (Star Online 2019a).

The B4G programme is only applicable in Peninsular Malaysia. Participants must provide proper travel documentation and purchase round-trip airline tickets (Parliamentary Debates, House of Representatives, 24 October 2019, 16). If they do not have a valid passport or do not have a passport at all, they need to refer to their respective country's embassy to obtain a travel certificate. The department set up more than 80 counters at immigration offices throughout Peninsular Malaysia to make this programme successful. Through the B4G programme, the government enforced the blacklisting of undocumented migrants and restricted them from entering the country (Parliamentary Debates, House of Representatives, 24 October 2019, 17-19). Out of the 195,471 undocumented migrants registered as part of the B4G amnesty programme, about 165,040 returned to their home countries. According to Khairul Dzaimie Daud, the then director-general of immigration, 30,431 migrants were still awaiting repatriation based on their flight dates. Most migrants enrolled under the scheme, primarily labourers, were from Indonesia, Bangladesh, and Myanmar (MalayMail 2020).

Civil society organisations oppose the B4G programme because amnesty does not solve the main causes of undocumented migration, mainly the flawed recruitment system that exploits migrant workers. Without a comprehensive labour policy on migrant management, migrant workers are overcharged by agents, trapped in debt bondage, and abused by employers. Sending back undocumented foreign workers and bringing in new legal foreign workers seem just as illogical, wasting financial and administrative resources. Therefore, amnesty should be implemented with rehiring programmes, whereby workers with expired permits could be absorbed into the workforce. Amnesty is a “cosmetic solution to the problem”, according to North South Initiative, a non-governmental organisation (Leong 2019). For the industry and trade unions, amnesty is an ad hoc solution to the irregularity crisis. The Malaysian Trades Union Congress and the Malaysian Employers Federation have urged the government to resolve the labour shortage problem in the country holistically by devising a proper system, without the involvement of intermediaries, to prevent the state's continuous reliance on foreign workers (Aswad 2019). The B4G initiative of the Immigration Department has been criticised by a civil society organisation - Centre for a Better Tomorrow - as a backward step that would only exacerbate the country's growing problem with undocumented immigration. Undocumented labourers' expectations that there will ultimately be a route out have only been strengthened by the government's tendency to continue employing amnesty over time. Given the implementation of several amnesty programmes, it is difficult to hold migrant workers responsible for trying to enter Malaysia without the necessary paperwork and waiting it out until the next amnesty programme (Prakash 2019).

Employers and trade associations have called on the government to develop comprehensive measures to deal with foreign employees who are working illegally. According to the Malaysian Employers Federation, Malaysia has been battling undocumented foreign workers for years, requiring greater enforcement and legislation to be resolved. According to the Malaysian Vegetable Farmers' Association, the industry has been experiencing a labour shortage for some time. Since the locals avoid working on farms, there is currently no short-term or long-term alternative (Star Online 2019b). Despite frequent policy alterations, the fundamental migration control strategy remains substantially unchanged. While various amnesty, regularisation, and raids are used by the Malaysian authorities, each category has minimal variation. The time, harshness of fines, and methods varied slightly amongst programmes, but the nature of the multiple amnesty programmes was largely the same. Although the designation was altered and the penalty was marginally raised, the Three-Plus-

One Programme and the Back for Good programme were essentially equivalent (Anderson 2021, 95).

### **Illegal Immigrant Recalibration Programme, 2020-2021**

A new programme called the Illegal Immigrant Recalibration Programme was introduced less than a year following the B4G programme to reduce the number of undocumented migrants. The Programme, initiated on 16 November 2020, comprised two key components, the Return Recalibration Programme and the Labour Recalibration Programme. Under predetermined conditions, the Return Recalibration Programme allowed undocumented migrants who stayed in the country unlawfully and overstayed to return to their home countries voluntarily. Meanwhile, the Labour Recalibration Programme legalised foreign workers currently residing illegally in the nation and who may be hired by firms that qualify. The initiative fostered cooperation between the Labour Department, Immigration Department, and other relevant organisations without the involvement of vendors or other parties. Employers in the four industries (construction, manufacturing, plantations, and agriculture) were allowed to apply for the Labour Recalibration Programme (Parliamentary Debates, House of Representatives, 14 September 2021, 27; New Straits Times 2020).

Initially, the Illegal Immigrant Recalibration Programme was initially implemented from 16 November 2020 until 30 June 2021. It had been extended to 31 December 2021 by the Cabinet to support the execution of the National Covid-19 Immunisation Programme (Sun Daily 2021). Only those from fifteen countries; Indonesia, Thailand, Cambodia, Myanmar, Laos, Vietnam, Philippines, Nepal, India, Pakistan, Sri Lanka, Bangladesh, Turkmenistan, Uzbekistan, and Kazakhstan were eligible to participate, and they must not be on the Suspect List and Black List. They must have a negative result for the COVID-19 test and be certified fit to work. Their employers must contribute to the Social Security Organisation for workers and pay the application fees. The eligibility requirements include undocumented foreign workers who commit an offence under Section 15(1)(c) under the Immigration Act 1959/63 or an offence under Rule 39(b) of the Immigration Regulations 1963. Each application was subject to a security deposit of RM500, recalibration fees of RM1500, and other fees such as visa and levy (Immigration Department 2021).

The participation of undocumented foreign workers in the Labour Recalibration Programme was encouraging. Workers who registered for the Programme were interested in working with any hiring employers (Parliamentary Debates, House of Representatives, 2 November 2021, 2). The government highlighted that providing legal employment to undocumented migrants would not affect Malaysian citizens' access to the labour market. Some foreign workers came to this country with valid documents and lost job opportunities because employers who brought them in at high cost had gone out of business. Thus, the government recalibrated by keeping them in the workforce or allowing them to return home. Some foreign workers entered the country in the condition of COVID-19, and they wanted to return with their family members (Parliamentary Debates, House of Representatives, 30 November 2021, 101). As of 31 December 2022, a total of 418,649 undocumented foreign workers registered for legalisation under the Labour Recalibration Programme while 295,425 workers returned to their countries of origin under the Repatriation Recalibration Programme. The programme brought in more than RM700 million for the government through the legalisation fees collected from the employers (Chan, 2023; Tan 2023).

On 10 January 2023, the government reintroduced the Labour Recalibration Programme 2.0 (RTK 2.0) intending to meet the country's need for foreign workers. RTK 2.0 assisted firms in recruiting undocumented migrants already in the country, which is less expensive than paying recruitment agencies to bring in foreign workers from source countries.

From 27 January 2023 through 31 December 2023 employers from eight industries (manufacturing, construction, mining, security guards, services, agriculture, plantations, and foreign maids) can apply for worker recruitment through RTK 2.0 (Sun Daily 2023). Under the new relaxed RTK 2.0., firms were able to hire foreign workers from fifteen source countries without having to follow pre-requisite hiring conditions compared to the previous recalibration programme, which was subject to strict conditions imposed by the government. RTK 2.0 was only a short-term solution to meet the demands of economic development (Chan 2023; Malay Mail 2023).

## **DISCUSSION: PRO-AMNESTY AND ANTI-AMNESTY GROUPS**

According to the pro-amnesty group, legalisation is a win-win situation, benefiting the nation, foreign workers, employers, and the economy. The government collects billions of ringgit in levy charges, the foreign workers are protected from abuse and exploitation, the employers find it more cost-effective to legalise and rehire their foreign workers compared to hiring new ones, and the economic profits from the temporary relief of labour shortages, especially in the 3D jobs, which are unappealing to local workers. Until a solution is found, “it is best to utilise those who are already in our country” (Ngeh 2019). For the industry players, restricting the influx of immigrants would be futile due to the strong pull factor for the labour market, local workers’ disinterest in low-wage jobs, and employers’ continued reliance on foreign workers. The Malaysian Employers Federation (MEF) and the Master Builders Association Malaysia asserted that foreign workers are necessary. A state policy has required employers to advertise any available positions for several months before resorting to foreign workers, but local workers have not responded to the offers. Legalisation of the existing foreign workers is thus a good move rather than bringing in new migrant workers (Firdaws 2016). Although the nation requires low-wage foreign labour to advance its economy and industry, the contemporary environment has evolved from satisfying a structural need of the economy to generating profits. To save operating expenses, many firms are employing foreign workers. The MEF questions if the state’s economy can thrive without the large intake of foreign labour because the administration “seems to have a loose hold” on the situation (Malaysian Trades Union Congress 2017).

For the government, amnesty was considered a pragmatic control measure that might solve, if not all, almost half of the issues confronting the administration. A considerable number of undocumented migrant workers were successfully legalised and accepted as documented foreign workers through several programmes, (i) the 6P Programme, with a total of 521,734 individuals; (ii) the Special Programme for Managing Illegal Immigrants (PKPP), with a total of 29,810; and (iii) the Rehiring Programme, with a total of 744,942. They were given legal documents, had their information entered into the national computer system, and had their legal status certified by the government (Parliamentary Debates, House of Representatives, 30 October 2018, 98 & 102). The Ministry of Human Resources viewed legalisation and amnesty as short-term measures. The long-term initiatives include implementing a minimum wage to lessen reliance on low-skilled foreign labour, promoting automation technology in the plantation and manufacturing sectors, utilising the industrialised building system technology (IBS) in the construction sector, and imposing hiring restrictions on foreign labourers where there is sufficient local labour supply (Parliamentary Debates, House of Representatives, 11 July 2013, 4–5). The shift to automation and mechanisation is a step toward reducing reliance on human labour. By restricting the percentage of foreign employees to 15% of the overall workforce in 2020, the 11th Malaysia Plan seeks to reduce Malaysia’s significant reliance on low-skilled foreign labour. Automation in labour-intensive industries, including agriculture,

manufacturing, and construction, which employ more than 30% of foreign employees, will be used to meet this goal (Economic Planning Unit 2015, Chapter 5).

Though amnesty and legalisation programmes could address the acute shortage of workers in some sectors, these exercises sent unhealthy signals to employers and foreigners. The government seemed to encourage overstaying in the country (Parliamentary Debates, House of Representatives, 22 November 2018, 16). Recognising, endorsing, and giving jobs to undocumented migrants are unfair to legal workers. If the government has made it easy for undocumented migrant workers, how about those who arrived legally? (Parliamentary Debates, House of Representatives, 22 November 2018, 103). The amnesty programme is frequently taken for granted by employers. When enforcement actions were taken, errant employers disobeyed the law and complained about labour scarcity. According to the Immigration Department, the long-standing issue of undocumented foreign workers in Malaysia were caused by businesses that harboured undocumented migrants (Sun Daily 2017). Recognising undocumented migrants and errant employers, without imposing any legal penalty, discriminates against people who abide by the law. Companies that follow the legal process pay thousands of ringgit to lawfully recruit foreign workers and have higher production costs. As a result, law-abiding employers become victims of the circumstance, while those who do not follow the law are granted amnesty, under different programmes (Parliamentary Debates, House of Representatives, 20 March 2017, 31).

## **CONCLUSION**

As the above discussion shows, there have been conflicting views on the use of amnesty as a migration control strategy. Civil society organisations are against amnesty initiatives due to its failure to address the root causes of undocumented migration, particularly the exploitative recruiting system that takes advantage of migrant workers. In the absence of a comprehensive labour regulation regarding migrant management, migrant workers are subjected to abuses by intermediaries and mistreatment by their employers. Repatriating undocumented foreign workers and recruiting new authorised foreign workers seem equally unreasonable, resulting in the squandering of financial and administrative resources. Amnesty is seen by the industry and trade unions as a temporary and improvised response to the issue caused by undocumented migration. Due to the existence of many amnesty programmes, it is difficult to hold migrant workers accountable for attempting to enter Malaysia without the documentation and waiting until the next amnesty programme. The amnesty exercises were implemented to address security concerns resulting from the heavy influx of migrants rather than solving the labour shortage problem. Amnesty as a migration control strategy may not sufficiently address the issues of underground employment, worker exploitation, fraudulent agents, high recruitment costs, workers exploitation, and other legal transgressions due to profiteering off the labour recruitment industry. The use of amnesty (and legalisation) as a policy tool to reduce the number of undocumented workers in Malaysia raises the question, of whether it addresses the main cause of undocumented migration.

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