



## MODERN SLAVERY AND FORCED LABOUR: AN OVERVIEW OF INTERNATIONAL LAW, THE MALAYSIAN LAW AND ISLAMIC LAW PERSPECTIVES

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**Abstrak:** Paper ini bertujuan untuk memberikan gambaran tentang perbudakan modern dan kerja paksa di bawah perspektif hukum internasional, hukum Malaysia dan hukum Islam. Penelitian ini menggunakan metode doktrinal melalui analisis hukum dan tinjauan karya-karya masa lalu, serta metode sejarah yang membantu menjelaskan pandangan para komentator dan sarjana dalam hukum internasional dan hukum Islam yang dihubungkan dengan ide-ide untuk memahami masalah dalam konteks lokal. Penelitian ini menyimpulkan bahwa ada kekurangan definisi yang jelas tentang perbudakan modern secara universal, yang membuat sulit untuk mengidentifikasi apakah eksploitasi pekerja, hanya merupakan pelanggaran hak atau sampai batas tertentu merupakan perbudakan atau kerja paksa atau perdagangan orang sebagaimana diatur oleh hukum Internasional atau hukum Malaysia. Namun demikian, hukum Islam belum banyak memberikan penekanan pada definisi, melainkan memberikan perbaikan dan pedoman dalam melindungi pekerja dari penindasan dan perbudakan, seperti mengatur hubungan antara majikan dan pekerja sesuai dengan kriteria hukum yang tepat untuk menjamin pemenuhan hak sehingga tenaga kerja tidak berubah selalu menjadi arena perbudakan modern.

**Kata kunci:** perbudakan modern; buruh paksa; Hak Asasi Manusia; hak buruh dalam Islam; perdagangan orang

**Abstract:** The paper aims to provide an overview of modern slavery and forced labour under international, Malaysian and Islamic law perspectives. It employs doctrinal methods which mainly focus on library-based research through legal analysis and review of past works, as well as the historical and explanatory method that help explain the views of commentators and scholars in international and Islamic law. It then connects ideas to understand the issue in the local context. This paper concludes that there is a lack of a clear definition of modern slavery universally, which makes it difficult to identify whether the exploitation of the workers, is amounting to merely a violation of rights or to some extent is amounting to slavery or forced labour or trafficking of persons as demarcated by either International law or the Malaysian law. Nevertheless, Islamic law has not given much emphasis on definition, rather it provides remedy and guidelines in protecting workers from oppression and slavery such as regulating the relationship between the employer and the worker according to the precise legal criteria to guarantee fulfilment of rights and non-aggression so that labour does not turn into a new arena of modern slavery.

**Keywords:** Modern Slavery; Forced Labour; Human Rights; Labour Rights in Islam; Human Trafficking

## Introduction

The notion of slavery which commonly refers to the concept of ownership or forced labour has been a major theme in how the concept is understood from the western view. According to Brown and Ali (2017) even defining slavery through the concept of ownership, freedom and exploitation led to more complex questions than answers. They also pointed out that the definition might be different from the custom and culture of different states.

The history of slavery traverses many cultures, religions and nationalities since ancient times, including in Babylon, Greece (Sparta and Athens) and China. The Code of Hammurabi in the 18<sup>th</sup> Century acknowledged the right of free men to own slaves. It further gave the right to a father as an owner of the children to hire them out to work, arrange their marriages and even sell them. The resistance and struggle of enslaved people, the advent of the industrial revolution, the demand to set slaves free, and sought to end the slave trade led to the emergence of various campaigns and movements for the abolition of slavery. Although the practice of traditional slavery had gradually been abolished, it now appears that slavery continuously exists in its modern forms (Bondarian, 2015). Forced labour, human trafficking, debt bondage, forced prostitution, child labour are among the most common form of slavery in the modern-day. In fact, it is estimated that 1 in every 150 people of Commonwealth countries lives in conditions of modern slavery (Walkfree.org, 2020).

As opposed to the act of slavery, the notion of human rights has become increasingly important as early as the 17<sup>th</sup> and 18<sup>th</sup> centuries during the Age of Enlightenment and the American and French Revolution, at least in the Western's view. The post-world war era has seen States' inclination to cooperate for peace of the world by upholding and respecting the sanctity of human life and the equal rights and dignity of all human beings.

Meanwhile, Bellah (1970) in view that, Islam has already regulated the importance of recognising the equality of man and woman as well as anti-slavery act since the 7<sup>th</sup> century. Although the prohibition of slavery, during that time, is not a direct abolition, there was a gradual order of Islamic teaching to restrict and eliminate the practice of slavery. For

example, in several verses in the Quran and the tradition of the prophet SAW, there are repeating orders to treat the slave humanely, and a person is encouraged to free his slave(s) as a means of fulfilling *kaffārāt* (penalty) (Hamid, 2017; Ze'evi, 2009). The prophet Muhammad SAW himself has made a slave his *ṣahābah* such Bilāl ibn Rābah. This indicates that the efforts to eradicate and prevent slavery were encouraged in Islam since the revelation of the Quran, far before the western notion of human rights and anti-slavery existed. The 1990 Cairo Declaration on Human Rights in Islam also supported this in Article 11(a) which provides: "Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty." In a hadith narrated by Ibn Mājah (2443), the prophet Muhammad SAW said "Give the worker his wages before his sweat dries." This hadith shows that Islam honours the worker and acknowledges a decent labour practice.

In the United Nations System, the right to work is considered one of the indivisible rights of a person. Labour rights are at the forefront of the modern human rights movement as they were among the issues brought during the early human rights campaigns decades ago. The 1948 Universal Declaration of Human Rights (UDHR) in Article 4 states that "no one should be held in slavery or servitude, slavery in all of its forms should be eliminated." According to SJoseph (2010), although the UDHR, International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) are considered as the crux of reference to the provisions of human rights in International law, the focus discussions on issues of labour rights faced by workers and employers around the world, tend to have been mainly responded by the International Labour Organization (ILO) through international labour standards. The ILO is among the earliest human rights instrument in the world. It was founded in 1919 by the Treaty of Versailles and later expanded as the 1930 ILO Convention on Forced labour to respect human rights, particularly on the right to work and to promote social justice that implies respect for human rights, human labour conditions, decent living standards, positive employment prospects and economic security.

The paper aims to provide an overview of modern slavery and forced labour under international, Malaysian and Islamic law perspectives. It

employs doctrinal methods which mainly focus on library-based research through legal analysis and review of the literature. The paper begins with an introduction to the historical background of modern slavery and forced labour as elaborated in this part before moving to the discussion within the international law framework. It then connects ideas to understand the issue within the Malaysian legal framework. In the third section of the paper, the discourse on modern slavery and forced labour are viewed from the lens of Islamic law, in particular, the priority of protecting labour rights. Then the nexus of all the three perspectives of law are analysed in the fourth section to clarify the central argument in the discussion. Finally, the paper concludes the overall discussion to hook important points and lay suggestions that need to be highlighted. The paper is significant as it helps readers understand the issue of modern slavery and forced labour from three perspectives namely International law, Malaysian law and Islamic law.

### **Modern Slavery and Forced Labour within the Ambit of International Law**

The discourse over forced labour, human trafficking, child labour, and sex trafficking often connote the umbrella term of ‘modern slavery.’ Unfortunately, the term modern slavery is still ambiguous under international law. The definition of ‘slavery’ per se was formally introduced in the 1926 Slavery Convention, an international treaty created under the Leagues of Nations, the predecessor of the United Nations. Slavery was defined under Article 1 as:

“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

The aim of this Convention was to suppress slavery and slave trade which were rampant during that time. The United Nations was mandated to regulate issues of contemporary slavery through the 1953 Slavery Convention. This convention was later amended by a Protocol and the definition of slavery was further extended in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (OHCHR official website). Article 1 provides the following definitions:

- (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

- (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with the intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

This Convention formally defined several practices similar to slavery including debt bondage, servile marriage and child exploitation. Despite some provisions describing slavery, it may be emphasised that modern slavery is not defined and not legally considered as a term under international law (Siller, 2016). A legal determination of slavery is based entirely on identifying one's exercise of '*powers attaching to the right of ownership*' over another as stated in the 1956 Supplementary. In contemporary society, such exercise of powers to the right of ownership as defined earlier is very scarce and hard to ascertain across international boundaries and cultures nowadays. Thus, according to Siller (2016) and Gallagher (2010) the use of 'modern slavery' as an umbrella term for all slavery-like acts such as trafficking of persons, exploitation, forced labour and others may cause the state of flux. Siller (2016) also suggested that 'international criminal justice necessitates abstention from perpetuating ambiguity in law with such undefined and unregulated concepts as 'modern slavery' and instead, advocates that actors practice with specificity.' It may be said that the umbrella term of modern slavery must be used carefully. Although the general language of the term is explicable, it may give implications to the law and criminal justice system.

Unlike modern slavery, the term forced labour has been widely and specifically discussed in the international arena since 1930 under the International Labour Organisation (ILO) and the 1957 ILO Abolition of Forced Labour Convention. Despite commonly assimilate or put under the umbrella term of modern slavery, forced labour has been defined in Article 2 of the 1930 Forced Labour Convention as;

"...forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

It was argued that the 1930 Convention was drafted to meet certain historical agenda with an intention to make the act of forced labour as a penal offence in which any member of the Convention has an obligation 'to ensure that the penalties imposed by law are really adequate and

strictly enforced' (Article 25, ILO Convention 1930). All Member States have the obligation to "respect, promote and realize" the elimination of all forms of forced or compulsory labour. The discussion over what constitutes forced labour was not stopped there. Due to the rising trend in trafficking for labour exploitation, forced labour was incorporated as one form of exploitation enclosed in the 2000 UN Trafficking Protocol. This Protocol provides the first internationally agreed-upon and broad definition of trafficking of human beings (Ollus, 2015). Trafficking in persons;

“...shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Art. 3a).

Later in 2014, the ILO adopted a Protocol on Forced Labour, as an effort to link between trafficking and forced labour. Both the definition of trafficking and the definition of forced labour include the element of a means to achieve exploitation. This was a starting point in which the discourse of forced labour was seen in a different context from the discussion in 1930 and 1957. Forced Labour in the current context emphasised human trafficking as a security threat of an organised crime. Ollus (2015) argues that ‘trafficking for forced labour does not necessary entail organized crime involvement, nor is it necessarily related to illegal entry and illegal migration.’ It is noteworthy that although the context and forms of forced labour have changed it does not redefine forced labour.

In the contemporary world, forced labour often involves migrant workers who are vulnerable people who lack rights and benefits. This is what Ollus (2015) describes as a blurred division between deserving victims and illegal or unwanted migrants. The migrants themselves may thus be regarded both as a risk (to the State) and being at risk of exploitation (Lee, 2011). This is also agreed by O’Connel (2010). Ollus (2015) also highlights that ‘some legal practitioners have testified that the definition of forced labour is difficult to grasp and apply in cases of

trafficking-related to the exploitation of migrant workers.’ Hence, the dilemma faced by the government to combat the act of forced labour, trafficking in person or exploitation of the migrant workers in order to protect the rights and freedom of this vulnerable people, in one hand; and to protect the state’s border from illegal immigrants and transnational crimes, in another hand, portrays the difficulties of applying the laws and enforcement in this area.

### **Modern Slavery and Forced Labour under the Malaysian Legal Framework**

Malaysia has signed and ratified the ILO Convention on Forced Labour in 1957 but yet to ratify the Forced labour Protocol. The recent report by ILO on Situation and Gap Analysis on Malaysian Legislation, Policies and Programmes, and the ILO Forced Labor Convention and Protocol (ILO Gap Analysis 2019), has demonstrated the commitment of Malaysia to comply with the international obligations particularly for the purpose of eliminating the risk of forced labour and human trafficking. As a dualist country, the government must make sure that once Malaysia ratified an international treaty, parliament must be ready to enact laws relating to the subject matters in the treaty or make necessary amendments to the laws in order to give effect and implement similar provisions in the said treaty.

So far as modern slavery is concerned, Article 6 of the Federal Constitution, provides that ‘no person shall be held in slavery and all forms of forced labour are prohibited except for compulsory national service and work or service carried out by persons as a consequence of a court conviction.’ The term slavery is not defined in Federal Constitution, it is however recognised as a criminal offence. Under the Malaysian Penal Code, slavery is defined as ‘importing, exporting, buying or disposing of a slave.’ Although the Penal Code criminalizes those who ‘unlawfully compels any person to labour against the will of that person,’ it is rarely used in practice to deal with forced labour cases because of its moderate penalty.

In the case of *Barat Estates Sdn Bhd & Anor v Parawakan Subramanian & Ors* (2000) 1 MLRA 404, the court states that the term ‘no persons’ in Article 6 to include all persons regardless of citizens and non-citizens as well as migrant workers; legally or illegally. The court also upheld that the right



of an employee in "...compelling an employee to work for a particular employer, without affording him a choice in the matter, is merely one form of forced labour." This means that a person or employee's freedom and rights to choose his/her employer must be recognized. Forced labour as a specific offence is introduced in the proposed amendments to the Employment Act, which shows the government's recognition that some forced labour cases fall outside the ambit of trafficking.

Due to the current trend of forced labour that usually involves human trafficking and cross-border crime, Malaysia has enacted the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (ATIPSOM) Act in 2007. This Act has broadened its scope of application beyond the territorial boundaries of Malaysia, regardless of the nationality or citizenship of the offender (Hamid et.al, 2018). The ATIPSOM includes slavery or slavery-like practice as an 'act of exploitation.' This includes forced labour. It is interestingly to note that, the term 'any illegal activities in the Act show the flexibility of interpretation of crime that may be included and considered as exploitation under the Act (Hamid et.al, 2018). In practice, the ATIPSOM will also involve other laws and regulations such as Immigration Act 1959/63 [Act 155], Malaysian Maritime Enforcement Agency Act 2004 [Act 633], Customs Act 1967 [Act 235], Penal Code [Act 574], or Prevention of Crime Act 1950 [Act 297]. Nonetheless, according to the ILO Gap Analysis 2019, one of the shortcomings of the ATIPSOM is that the definition of coercion in the ATIPSOM is narrow and not in line with the realities of modern forms of exploitation which will cause difficulty for the prosecution to prove.

In the case of *Public Prosecutor v Ganis A/L Letchumanan* [2019] 5 LNS 4, the accused was charged under the ATIPSOM for trafficking 15 persons for forced labour in the palm plantation in Perak. Section 13 read as follows:

'Any person, who traffics in persons not being a child, for the purpose of exploitation, by one or more of the following means:

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power;

- (g) abuse of the position of the vulnerability of a person to an act of trafficking in persons; or
- (h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person,

commits an offence and shall, on conviction, be punished with imprisonment for a term not less than three years but not exceeding twenty years, and shall also be liable to fine.’

Since there is no clear definition of forced labour in the statute, the court merely referred to the meaning of forced labour in the Macmillan Dictionary and the Wikitionary website. As a means of comparison, the court also referred to the ILO Convention. The court then decided that the prosecution team must prove that the accused persons had exploited the victims as forced labour under section 12 of the ATIPSOM in which they were not able to prove. The court also quoted the case of *PP v Boon Fui Yan [2015] 7 CLJ 374*, where an act cannot be said to befall within the concept of ‘forced labour’, if she was not coerced into it or if she consented to continue working for the accused. The case demonstrates the importance of having a clear definition of forced labour.

From the discussion, it is suggested that the important concepts in determining and curbing forced labour and human trafficking such as coercion, fraud, exploitation etc., must be clearly stated and defined in the statute to ensure the concept used is consistent with international law. In the absence of the clear meaning and application of the concept, there will always be a dispute on the issues of what must be measured; what would be the best solution; and who must be blamed or responsible for each and different situation.

### **The Protection of Rights of Labour from the Islamic Law Perspective**

Islam plays a vital role in the protection and promotion of labour rights. In a hadith narrated by Abū Hurayrah (Ra) in which Allah is said to be against three persons on the Day of Resurrection, and one of them is a person who employs a labourer and gets the full work done by him but does not pay him his wages (Ibn Mājah). It means that an employer who has not paid his employee wages is not considered as doing a criminal act rather it is a breach of rights of the employee which will be sanctioned in the Day of Resurrection. Clearly, Islam encourages an employer to be kind to his employee and treat them with dignity and

respect (Mas'ūd, 1998). This certainly shows the prohibition of slavery and forced labour in Islam.

Islamic law regulates the relationship between the parties to the contract, the worker, and the employer, whether it is a company or a state. This is so that the worker, who is the weak side of the contract, does not fall prey to turning him into something like a slave, because the worker is often forced to obtain money to support himself and his family. It is worth noting that Islamic law regulates the relationship between the worker and the employer in a way that guarantees the rights of both parties without injustice or discrimination. Therefore, there are several forms of protecting workers from the oppression of companies and employers, (Ibn al-Ḥusayn, 2000) and these images lie in the following:

First, the form of speculation (*Mudārabah*), and this form regulates the relationship between the owner of the money and the worker, through the participation of the business owner with his money and the worker with his effort in investing and developing the money (al-Sarkhasī, 1993). There are criteria for this situation, which are as follows:

The criterion of loss: If it occurs, it is borne by the owner of the money, not the worker, because the worker has made effort, time, and hardship without compensation. Otherwise, (al-Zuhaylī, 2001) this would be a form of modern slavery, and therefore the owner of the money is the one who bears the loss to protect the worker from oppression and enslavement.

The negligence and infringement criterion: If it is proven that the worker has done some negligence and infringing, then in this case he bears the responsibility and must compensate the owner of the money (Wizārat al-awkāf, 1427H).

Profit criterion: In this case, the profit is made between the contracting parties, the owner of the money, and the worker, according to the agreement and the contract concluded between them. (al-Sarkhasī, 1993).

In short, following the criteria for regulating the relationship between the employer and the worker, it was clear that Islamic law has regulated the relationship between the contracting parties: the employer and the worker, according to precise legal criteria that guarantee fulfilment of

rights and non-aggression, so that labour does not turn into a new arena of modern slavery.

Second, the form of watering (*musāqah*): This form can apply to farms in Malaysia and the world, and it represents a partnership agreement between the owner of the farm with ready trees and the worker, where the worker's task is to take care of the farm by watering and caring for its trees in return for a certain share of the fruits such as a quarter, or the price, or a sixth Or in return for a specific fee, according to the contract concluded between the two parties: the company and the worker (al-Nawāwī, 2005).

Third, the form of the farmer (*al-muzāra'ah*): this also can be applied to farms in Malaysia or other countries, and this picture is an agreement and partnership between the owner of the agricultural land devoid of planting and trees, so that the worker's task is to cultivate the land and take care of it and water it in return for a certain share of the output of the land, such as a quarter or a third, for example, or the stipulation of the output of specific areas of land and not others, which shall be for the worker and the output of other areas shall be for the owner of the farm (Alamrani, 2000).

It is worth mentioning, that Islamic law protects the rights of the worker from being subjected to slavery or coercion by the employer, and therefore it has given him the freedom to contract through the form of watering (*al-musāqah*) or the form of the sharecropper (*al-muzāra'ah*).

In addition, it is not permissible for the owner of the land to charge the worker with something outside the scope of the contract and the agreement between them, because contracts in Islam are considered the law of the contracting parties. If the employer demands the worker something else outside the scope of the agreement, there must be another agreement on the nature of the new assignment and the wages for the extra work in a fair way, otherwise, the matter will turn into coercion and enslavement of the workers.

Fourthly, the form of leasing: This is the common form in palm farms in Malaysia and other countries and in most companies in the world today, and this form is that the owner of the money agrees with the worker on a specific work in return for a daily, weekly, or monthly wage according to the agreement between the two parties (al-Shirāzī, n.d).

This form has standards defined by Islamic law that guarantee the protection of workers so that it does not occur to slavery, coercion, and exploitation by the owner of the company and the most importance of those standards are the following:

Work contracts standard: the work agreement must be clear and fair between the two parties so that the worker does not suffer injustice, and the owner of the company may not assign the worker to work outside the scope of the agreement and the contract concluded between them, and that the hours of work and rest are according to the custom in force so that the worker does not fall under oppression, slavery, and torture (Aleiz, 2020).

The wage standard: the wage must be appropriate for the work performed by the worker, and the employer may not delay the wage from the time specified in the contract, and the company may not reduce the wages agreed upon in accordance with the work contract unless there is a just reason in accordance with the standards recognized international humanitarian law (al-Jabbār, 2014).

Standard of guarantee: the worker is considered a guarantor to carry out his work according to the contract concluded between them, and just as the Sharia protected the worker from injustice, so it is not permissible for injustice to befall the employer. , it falls on the worker to guarantee and compensate the employer if the rights of the employer are preserved in Islamic law, and it is assumed that the rights of workers are also preserved so that the workers are not subjected to injustice, enslavement and oppression (al-Sharbinī, 1994).

It is worth noting that the previously mentioned standards are a guarantee of non-infringement of the rights of workers, their oppression, and oppression. Moreover, Islamic law also guarantees workers the right to sue if they are wronged and harmed by companies and business owners.

### **The Nexus between International Law, Malaysian Law, and Islamic Law on the Issue of Modern Slavery**

A review of the literature suggests that slavery and forced labour has existed since the *jāhiliyyah* period before the introduction of the Islamic social justice system. In the perspective of Islamic law, slavery is not legally defined as it commonly refers to the word *riqq* and the

practice of the people during that time who exercise ownership to their slaves. The Islamic law approaches in abolishing slavery gradually has led to a different understanding of slavery by western scholars such as Brown (2019) who argues that slavery is not seen in Islam as an intrinsic grave moral wrong but rather a misfortune. This is not true since the discursive traditions in the Quranic verses and the hadith of the prophet Muhammad SAW portrayed that slavery in any form is prohibited in Islam for it violating the human rights and dignity of a person. Basri (2012) pointed out that the wisdom behind the gradual abolishment of slavery in Islam is because slavery was a legal tradition and acceptable culture that had been practised by the people during that time. In fact, the prevalent practice of slavery existed even during the early 19<sup>th</sup> century as recorded by western scholars (Allain, 2009). Drastic enforcement of Islamic law in prohibiting slavery may cause difficulty to the people. Thus, the prophet Muhammad SAW had attempted to discourage slavery by suggesting and to some extent imposing the people to free their slaves as a sanction for those who caused unintentional murder, false testimony and *zihār*. Islamic law also encourages the employer to give a slave an opportunity to free himself (*mukātabah*) in which slaves are entitled to *zakāt* and they need no economic dependence from their master. This is in line with the principles of the *Maqāṣid al-sharīah* which put the protection of individual dignity as one of the purposes of Islamic law. Islamic law does not merely emphasise on what is the universal definition of slavery but more focus is given to the best way in resolving the issue.

In the context of employment, Islamic law depends on the exchange of benefits on clear contracts, including hiring people to do some work. Islamic law does not consider the wage-earner to be a slave to the employer or the company, but rather a free person with full human rights, and is linked with the employer by a work contract only (Aleiz, 2020). For the worker that the employer wronged him, took his right, and used him without paying him what they agreed upon in the contract, the Islamic law considers this behaviour unjust, and he has the right to take his grievance to court (al-Jabbār, 2014).

On the other hand, international law and Malaysian law classify the worker who was exploited by the employer, or the company in which he works, as a victim of slavery or human trafficking (Hamid et.al, 2018)., It is important to determine whether an act falls under the definition

of slavery or forced labour before a perpetrator is convicted. However, in reality, it is very difficult to identify the existence of elements such as coercion, fraud, exploitation etc. when prosecuting perpetrator because it is very subjective. In the absence of the clear meaning and application of the concept, there will always be a dispute on the issues which to some extent led the acquittal of the perpetrator from punishment. That's why Islamic law focuses more on the practical solution to address the slavery issues including emphasising a clear guideline in safeguarding and protecting the labour rights and utilizing the government fund or *zakāt* to support the victims (Basri, 2012).

From the researcher's point of view, the fight for the best definition of slavery or forced labour at international and Malaysian law may not solve the underlying issue behind the act of slavery as it takes different dimensions. Subsequently, it may cause people's or workers' rights lost due to the inability to identify the situation according to precise legal frameworks and criteria under international and local laws that enable victims to sue and claim their rights and appropriate compensation as a result of the damage sustained (Decaux, 2009). Islamic law classifies such practices as injustice, and that a person is a free person with full capacity and has the full right to file a lawsuit to the judiciary within the framework and standards of contracts concluded between the two parties.

## Conclusion

In conclusion, the lack of a clear definition of modern slavery or forced labour universally makes it difficult to identify whether the exploitation of workers is amounting to merely a violation of rights or to some extent is amounting to forced labour or modern slavery as defined by international law. The dilemma faced by the local government to combat modern slavery, forced labour, trafficking in person or exploitation of the migrant workers in particular, in order to protect their rights and freedom, in one hand; and to protect the state's border from illegal immigrants and transnational crimes, in another hand, portrays the difficulties of applying the laws and enforcement in this area. Although the influx of migrant workers has been seen as a threat to national security, it is also important for the government to ensure the laws and national policy on migrant workers is in compliance with international standard of labour practice to prevent modern slavery,

forced labour and at the same time give due attention to the issue of human security.

It is noteworthy that Malaysia joined the global community in pledging its commitment to eradicate forced labour, modern slavery and human trafficking at the United Nations General Assembly in New York. Similar to other States, the struggle to totally eradicate modern-day slavery as an offence threatening State security is unsettled until today. Thus, it is suggested that the Malaysian law on slavery-like practice and forced labour is to undertake a comprehensive review. This is important in order to ensure the incriminating process against the perpetrator is efficient and at the same time the protection of the victim's rights, are equally been taken into consideration. The definition or the elements stated in the local statute must be practical and able to be enforced to uphold justice for the victims. International law and other countries' law may be a source of reference for a model law in eradicating modern slavery and forced labour, however, it must suit the local circumstances. As far as Islamic law is concerned, it provides guarantee and precise standards to protect workers so that workers would not become victims of injustice, enslavement, and oppression, and in order to regulate the relationship between employers and workers in a fair manner. This is also in line with the notion of decent labour practice advocated by the ILO.

In conclusion, it is worth mentioning that while the definition of forced labour under international law can be considered relevant until today, it needs to be reinterpreted in accordance with the domestic context. Meanwhile, Islamic principles and teaching in dealing with workers or subordinates can be a guiding principle for the best practice in protecting their rights and eradicating modern slavery and forced labour.

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