PROTECTION OF TRAFFICKED VICTIMS: A COMPARATIVE STUDY BETWEEN MALAYSIA AND THE UNITED STATES OF AMERICA

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

Abstract

This research is regarding the protection provided to the victims of human right trafficking. The law which we are focusing in this research is the law provided in Malaysia, Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). Comparison was made with law in United States of America which is Victims of Trafficking and Violence Protection Act (TVPA) 2000.

In this research too, the scenario of human trafficking in ASEAN region are also being highlighted. Various countries around ASEAN are being discussed by providing an overview of human trafficking activities in each countries. Each country are being classified in different tier according to their efforts in combating the issue of human rights based on the Trafficking in Person (TIP) Report.

This research focus on various types of protections which are being protected by the law in both countries in term of shelters, medical assistance, civil remedies and also legal assistance. Comparison were made in order to identify the lacunae in Malaysian law and highlight the strength of the law which are being provided in United States.

Lastly recommendation were made at the end of this research on what efforts the Malaysian government and authorities can do in order to be more effective in tacking the issue of human rights in Malaysia. Particularly in safe guarding the rights of the victims of human trafficking.

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INTRODUCTION

1.1 Research Background

Every year the United States Department of State will release Trafficking in Persons Report which will categorize countries around the world in 3 different Tiers. Countries which are listed in Tier 1 are considered as country that took the issue regarding human trafficking seriously and made a magnificent effort to overcome the problem. While countries that are listed in Tier 2 are considered countries complying with the minimum efforts to eradicate human trafficking problems. Malaysia is placed in Tier 2 in the report that has been released for the past 3 consecutive years. This clearly show that Malaysia has not taken any drastic actions to tackle the issue and has been neglecting this issue. Malaysia only react to overcome this issue when the country was placed in Tier 3 and ever since has come with a national plan which is entitled "PelanTindakanKebangsaanAntipemerdagangan Orang" to tackle this issue. Malaysia is consider lucky that it was not place back in Tier 3 for the past few years because they keep their standard just above the minimum standard required by the United States Department of State and because of this there is a need to review on the effectiveness of implementation of the law in Malaysia which is the Anti-Trafficking in Person and Anti-Smuggling of Migrants Act 2007.

Even though the victim's rights is embodied under the law of the nation, the implementation of it in practice would deprived their entitlement to that law. The question is this, what obligations do States owe to the victims of trafficking? While there seems to be a general agreement on the need for protection of victims, the precise contours and limits of that protection have not yet been firmly established. In order for the implementation to be successful, what regards a person as a "victim of trafficking "has to be identified. The Council of Europe Convention on Action against Trafficking in Human Being defined victim as "any natural person who is subjected to trafficking in human being". However, the process of identifying victims of trafficking is a complicated one. If such difficulties and delays result in