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Economic Efficiency and Ethics: A Case Study of Forced Labor in Malaysian Electrical and Electronics Industry

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Master of Science in International Development Studies

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I, (name), declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

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Abstract

In this thesis, there are five chapters. The first chapter is introduction on this thesis, including problem statement and justification, objective and research questions and methodology. The second chapter focuses on the concept and issues in forced labor, starting with historical context of forced labor, then followed by the international context from ILO, the clarification on forced labor, human trafficking and slavery, and at last, I will present empirical studies on the issues in forced labor. The third chapter is about ethics, economic efficiency and justice. There are three sections in this chapter. The first section is about empirical review of business ethics. The second section I will use Kantianism, utilitarianism and virtues of ethics to analyze the relationship between ethics and economic efficiency. The third section I will focus on Rawls' distributive justice and procedural justice to clarify the relationship between economic efficiency and justice. The fourth chapter is the case study of forced labor in Malaysian E&E industry. Firstly, there will be an introduction on the E&E industry, including its development and foreign workers who are working in the industry and their labor standards. Secondly, I will present the issues of forced labor in the E&E industry, on both immigration policies and forced labor practices at company level. At last, I will use the theoretical framework in chapter two and chapter three to analyze ethical consideration and justice in the E&E industry. The last chapter is the conclusion of this thesis.

Abbreviations

CEM	Contract Electronic Manufacturers
E&E	Electrical and Electronics
FDI	Foreign Direct Investment
FIZ	Free Industrial Zone
FTZ	Free Trade Zone
ILO	International Labor Organization
LMW	Licensed Manufacturer Warehouse
MOHA	Ministry of Home Affairs

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1. Introduction

1.1 Problem statement and justification

As known to all, forced labor is a global challenge. Although a precise data collection on the global scope of forced labor is impossible due to the worldwide statistical inconsistencies, it could be estimated that about 24.9 million people were trapped in forced labor which hinders sustainable economic growth and it is globally condemned (ILO, 2017). The ILO estimates that victims of forced labor lose about US\$21 billion a year in unpaid wages and illegal recruitment fees (ILO, 2009). The loss of money affects not only the livelihoods, but also human development of the most underprivileged and vulnerable people in the world. Like Karl Marx says, being forced labor means that one cannot be satisfied with himself and freely develop his physical and mental energy (Marx, 1844). According to his theory of alienation, forced labor makes one only can operate his animal functions and loses his humanity. Government and societies are harmed as well because the loss of money bypasses national tax systems. It is not just individual loss, meanwhile it also contributes to poverty and the widening of the gap between haves and have-nots. Taking effective measures to eradicate forced labor fits the nature of target 8.7 of the Sustainable Development Goals: *“take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms”* (Gleason & Cockayne, 2018).

In this thesis, there are five chapters. The first chapter is introduction on this thesis, including problem statement and justification, objective and research questions and methodology. The second chapter focuses on the concept and issues in forced labor, starting with historical context of forced labor, then followed by the international context from ILO, the clarification on forced labor, human trafficking and slavery, and at last, I will present empirical studies on the issues in forced labor. The third chapter is about ethics, economic efficiency and justice. There are three sections in this chapter. The first section is about empirical review of business ethics. The second section I will use Kantianism, utilitarianism and virtues of ethics to analyze the relationship between ethics and economic efficiency. The third section I will focus on Rawls' distributive justice and procedural justice to clarify the relationship between economic efficiency and justice.

The fourth chapter is the case study of forced labor in Malaysian E&E industry. Firstly, there will be an introduction on the E&E industry, including the its development foreign workers who are working in the industry and their labor standards. Secondly, I will present the issues of forced labor in the E&E industry, on both immigration policies and forced labor practices at company level. At last, I will use the theoretical framework in chapter two and chapter three to analysis ethical consideration and justice in the E&E industry. The last chapter is the conclusion of this thesis.

1.2 Objective and research questions

The principle objective of this thesis is to explore the relationship between economy efficiency and ethics by using doing a case study on forced labor in Malaysian E&E industry. There are two research questions: (a) How are different perspectives on ethics (Kantianism, utilitarianism and virtues of ethics) reflected in laws and practices relevant to forced labor in the Malaysian E&E industry? Do certain practices conform to law but not to ethical standards and vice versa? What are the key similarities and differences between ethical perspectives in this context? (b) How do processes and outcomes relevant to forced labor in the Malaysian E&E industry violate basic tenets in the different perspective on justice? In what ways do ethics and law feed into these outcomes?

1.3 Methodology

This paper was completed using mainly desk review of existing resources. The viewpoint is based on an extensive set of literature review on outsourcing trends, characteristics and underlying theories in combination with anecdotal accounts from practitioners in the electrical and electronics (E&E) sector as well as personal emic observations of management styles embedded within the socio-cultural context of a developing country.

2. Concepts and issues in forced labor

This chapter discusses the concepts and issues of forced labor. Beginning with the concepts of forced labor, it provides a clearer path for the further exploration. The first section tries to explain the concept of forced labor from a historical perspective, with the history of forced labor from bonded labor in Ancient History to work camps and Nazi Germany and Soviet Union work camps. The second section discusses the ILO definition of forced labor, including its elements and indicators. After that, it will discuss the definitions and overlaps between forced labor, human

trafficking and slavery are discussed. Finally, I will present several issues related to forced labor, including “race to the bottom” in terms of labor standards, forced labor and outsourcing, wage differentials and compensating differentials, and at last, corruption and law enforcement.

2.1 Historical context

Forced labor is a term that goes throughout mankind history in various form and often simultaneously existed in all continents. Historically, forced labor were commonly existed in the form of slavery and slavery-like practices.

Take Europe for instance. In the Ancient History, forced labor often existed in the form of bonded labor in both Ancient Greece and Ancient Rome. It became an essential part of the social-economic activities in Ancient Greece after the establishment of cities (Cuffel, 1966). At that time, extreme poverty or debt often resulted in bonded labor. The heaviest form of bonded labor was paramonē, which means indentured labor. Under paramonē, a person was categorical free, but his/her freedom was severely restricted by his/her “master”. It referred to a legal obligation that a person remained belong to someone, whether under surety, in contract for services or in contract for loan (Samuel, 1965). In most cases, the relationship between slaves and “master” remained valid until the latter’s death (Kamen, 2013). Like other forms of forced labor, paramonē also included punishment, especially physical punishment. Paramonē was widely existed in Ancient Greece that there was little people condemned it. The first condemnation recorded in history was raised by the Stoics (Roberts, 2007).

In ancient Rome, bonded labor was called nexum. Similar to paramonē, a person was considered as a free man, but he was bonded as a surety for a loan. Although nexum was abolished by the Lex Poetelia Papiria in 326BC, the violation of human dignity was not recognized at that time. Silver (2012) emphasized that the purpose of the abolishment was to prevent physical injury of the person who was involved in debt bondage. Marcus Tullius Cicero considered the abolishment as a mere political mean for the patricians to appease the common people (Brunt, 1971).

There was another form of forced labor that existed in Ancient Greece called chattel slavery in which a person was basically equivalent to private property. In other words, if a person was chattel slave, he could be traded at the market or even taken in war. The number of chattel slaves were not

in great numbers and existed only among the upper classes in the Greek city-state of Sparta (Oliva, 1972). It was more popular in the 19th century's United States as a mean of enslaving Africans and African Americans since the passage of the Thirteenth Amendment in 1865.

In the Middle Ages, another form of forced labor called serfdom was founded across rural parts of Europe which was closely related to manorialism. A person had the risk of becoming a serf if he suffered from a few years of crop failure, a war or he was threatened by a local magnate.

Serfs had more freedom than slaves, but less than free labor. Compared to free labor, serfs were tied to their lords' fields which could be sold, bought and traded. Serfs could not leave the fields on which they had to work for their entire lives for the lords. After death of a serf, his/her status was inherited by his/her posterity. In other words, both individuals and their future progeny were bonded once they were trapped in serfdom.

Compared to slaves, serfs were allowed to have their own lands and plant their own crops to maintain their own subsistence. The surplus of the crops was allowed to sell on the markets. Although it was rare but sometimes serfs could be so rich that they were even richer than free labor and redeem their freedom (Bailey, 2014). One thing should be noticed is that the ownership of these lands still belonged to the lord that serfs could not abandon the lands without permission nor sell them on the market (Kahan, 1973). In addition, in return for their contribution to their lords, serfs were also entitled to protection and justice by their lords. Although serfdom exhibited a degree of reciprocity between serfs and lords, it is no doubt that serfdom was slaver-like practice that deprives one's freedom. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery also prohibits serfdom as it is slavery-like practice same as debt bondage and human trafficking (United Nations, 1956).

In the later Middle Ages, serfdom became rare in Western Europe due to the development of towns and improving economy. In the Eastern Europe, serfdom lasted until the mid-19th century. The main reason of the abolishment is similar to bonded labor. Rather than the recognition of human rights and dignity, governors were afraid of the social instability that brought by the serfs. Domar and Machina (1984) indicat that the fear of a large-scale revolt by the serfs, changing cultural sensibilities, financial needs, and military needs promote the abolishment of serfdom.

In the early industrial Britain, the Master and Servant Act fostered the exploitation behavior in working class. The act was considered heavily biased towards employers. According to this Act, if employees breach their contracts in hope of higher wages, employers may use prosecution to retain labor (Naidu & Yuchtman, 2013). In 1864 alone, there were 10,246 working men were imprisoned at the suit of their employees (Jones, 1867). Specifically, the coal mining, iron, and textile industries have the most suited cases (Naidu & Yuchtman, 2013). In addition, this Act was also used against the trade union for collective bargaining of better working conditions until the establishment of the first United Kingdom Trade Union Act in 1871.

This Act had greatly influenced the employment laws in the commonwealth countries such as Australia, Canada, New Zealand in the 19th century and even South Africa in the late 1970s. In Australia, there were penalties for the employers who left their job without permission. From 1835 to 1845, about 20% of the prisoners were suited for offences including leaving their employment without permission and being found in the hotels (Turner, 1969)

In the first half of the 20th century, most of the researches of forced labor focused on the labor camps under certain totalitarian regimes. The labor camps of Nazi Germany and Soviet Union are deemed as typical examples of forced labor.

Forced labor in Germany existed in the shape of *arbeitslager*, which means labor camp in German. After the First World War, *arbeitslager* became a tool to develop economy and promote self-discipline, community spirit and national pride to the military (Mikaberidze, 2018). With the rise of the Nazi party in 1930s, it was operated under SS-Business Administration Main Office. *Arbeitslager* gradually became a place to coerce workforce into heavy work. Forced labor under Nazi Germany was considered as economic exploitation in conquered territories.

To fulfill the high demand of labors, Nazi Germany abducted 12 million people from almost 20 countries, two-thirds of which were from Central Europe and Eastern Europe (Herbert, 2000). Those countries were treated as labor pools for Germany. Usually, labors in the camp were those who were regarded as undesirable elements (*unzuverlässige Elemente*) for the regime, for instance, homeless, homosexuals, criminals, political dissident and Jews (Mikaberidze, 2018). At its peak, forced labor contributed to 20% of the German work force.

Many labors in arbeitslager died from malnutrition, mistreatment and tortures. In addition, due to the “Final Solution” raised by the Nazi, millions of Jewish were sent to extermination camps after their hard works in the labor camps. To develop the economy after war, as stated in the London Debt Agreement of 1953, the compensation for forced labor was postponed indefinitely (Herbert, 2000).

As a labor pool for the Nazi Germany, arbeitslager served many German corporations and war industry. More than 2,000 German companies benefited from forced labor, including IG Farben, Thyssen, Krupp, Bosch, Daimler-Benz, Demag, Henschel, Messerschmitt, Siemens, and even Volkswagen (Buggeln, 2014). For example, by the end of 1943, the value of IG Farben was worth about three billion Marks (equivalent to 12 billion 2009 euros). All methanol and lubricants, 80% of explosives and 35% of sulfuric acid in the Nazi military were manufactured by IG Farben (Jessberger, 2010). Among its workers, almost half of them were slave labor or conscripts, including 30,000 Auschwitz prisoners. In addition, one of the arbeitslager camps called Mittelbau-Dora camp played a notable role in the production of the world's first long-range guided ballistic missile V-2 (Mönch, 2001). Forced labor camps under Nazi regimes helped the ruling class maintain a high living standard and create huge profits. In the final stage of WWII, almost the whole portion of German economy was contributed to the military section. For the prisoners in the camp and their families living on the conquered territories, it was the exploitation of human rights and dignity with no doubt.

As for the Soviet Union, forced labor existed in the form of Gulag labor camp system. The system was formerly known as a judicial punishment during the Russian Empire and the Tsar, which was established by Vladimir Lenin in 1918 and reached a high capacity from 1930s to early 1950s under Joseph Stalin. The exact number of population in the camp is controversial, varied from 14 million to 25 million (Conquest, 1997) (Gheith & Jolluck, 2011). There were over 3,000 camps in Soviet Union, many of which were located at mining and industrial towns and cities in northern and far eastern Russia (Applebaum, 2007).

The labors can also be treated as prisoners to some degree. They were sent to the camps for different reasons, like common criminals, wealthy peasants (kulaks), and Soviet dissident who

were suspected as the enemy of the nation. During the Second World War, soviet soldiers were also be sent to the camps if they were army deserters.

The working condition in the camps was quite harsh. Prisoners normally had to work 14 hours per day, seven days per week, all year round. During winter, labors were lack of adequate clothing. According to official archival data, the average mortality rate in the camp was about 8.85% (Wheatcroft, 1999). Most of them died from overwork, malnutrition and diseases.

After Joseph Stalin's death in 1953, due to Khrushchev Thus, millions of prisoners were released from the camp. The size of Gulag camps shrank at that time. In 1987, the last Gulag camp was eliminated by Mikhail Gorbachev.

The camp served as a free source of labor to the weak economy of Soviet Union and created the so called "camp economy". Before the Second World War, Gulag provided 46.5% of the nation's nickel, 76% of its tin, 40% of its cobalt, 40.5% of its chrome-iron ore, 60% of its gold, and 25.3% of its timber (Ivanova, 2000). During the Second World War , labors also constructed railways and produced tank, aircraft, armaments, and ammunition to support the war. Labors in Gulag had also developed several important infrastructures in Russia, for instance, the White Sea-Baltic canal and Kolyma Highway. Despites all these "achievements", the productivity of the camp is debatable. The productivity in Gulag was from half of the free labor who were malnutritional. To meet the high demand of workforce, labors had to work harder and longer with lower food ration, which made the situation stuck of labor worse.

The labor camps in Nazi Germany and Soviet Union are not just the extreme examples of the pursuit of economic efficiency, but the political repression as well. On June 27th, 1957, ILO adopted Convention No.105 in order to abolished camps of forced labor because of the ignoring of human rights and dignity, which could be concluded from the above Nazi Germany and Soviet Union examples. The convention prohibits forced labor as a means of political coercion, labor discipline and social discrimination, as a method of economic development, and as a punishment of involving in strikes (ILO, 1957).

2.2 International context

As a United Nations agency, ILO defines forced labor at a supranational level, which is universally adopted. As early as 1930, ILO concluded forced labor as “*all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily*” (ILO, 1930). The prohibition of forced labor has several exceptions: (a) compulsory military service, (b) normal civic obligations, (c) prison labors under certain conditions, (d) work in emergency, situations, (e) minor communal services (ILO, 2007).

In June 2014, in order to address human trafficking and slavery-like practice of forced labor, ILO adopted Protocol of 2014 to the Forced Labor Convention and Forced Labor (Supplementary Measures) Recommendation No.203 as two new supplements. Compared to the initial convention, the new supplements emphasize the importance of the new protocol and indicates that the background and forms of forced labor have changed dramatically since 1930. In addition, ILO also recognizes that forced or compulsory labor violates human rights and dignity. Forced labor comes with coercion and self-sacrifice of a worker and the extraction of maximum amount of surplus value.

It is important to clarify some specific details of the concept to eliminate the misunderstandings. The ILO definition includes three elements. Firstly, it refers to work or service in all sectors without any exemptions. Forced labor occurs in both formal and informal sectors globally. Forced labor is classified mainly in three categories: (a) forced labor imposed by state authorities, (b) forced labor imposed by private agents for sexual exploitation, (c) forced labor imposed by private agents for labor exploitation (ILO, 2017). The sectors of forced labor exploitation from the largest proportion to the smallest are domestic work, construction, manufacturing, commercial agriculture and fishing, accommodation and food service activities, wholesale and trade, personal services, mining and quarrying and at last, begging. Due to different development status, circumstances may vary from region to region. One thing should be noted is that forced labor not only occurs in developing countries, but also in developed countries. A study shows that evidence of forced labor can be found in advanced economies such as France, Germany, the Netherlands, Sweden etc. (Clark, 2013). In 2014, developed countries have made US\$46.9 billion profit from forced labor, which accounts for more than 30% of the global amount (ILO, 2014). Most of them work in private sector

such as agriculture, construction and domestic service. Thus, forced labor is an issue that should be concerned globally.

Secondly, forced labor is not specifically related to gender, age or nationality. Instead, the common ground of the vulnerable groups is that they lack the access to certain resources to get a decent job. For example, Allamby et al. (2011) indicates that the reason of the vulnerability of forced labor in Northern Ireland is not their social status as migrant workers, instead, it is their lack of social network and language barriers. Knowing the wages are lower than average and working overtime, migrant workers cannot cease employment, instead, they have to tolerate fear and intimidation. Limited access to resources means limited choices. If victims or potential victims of forced labor have limited choices, it will be difficult for them to escape from the identity. Nevertheless, it is also important to notice that in ILO definition, forced labor cannot simply be equal to work exploitation like low wages and poor working conditions, nor the unsatisfaction of pure economic needs (Andrees & Belser, 2009). For example, the market theory of wage determination believes that wages are determined by supply and demand on the market. It is possible that people work in an exploited condition but with well-paid wage.

At last, instead of concerning about work exploitation, forced labor violates freedom of choice by means of coercion. Coercion means that it treats the subject as mere tools without humanity, as mere tools lacking of the capacity to choose for themselves (Arnold & Bowie, 2003). As a full capacity human being, everyone should have freedom of choice. Freedom of choice means the right of individuals to determine their actions. The decision should be selected from at least two different options, unconstrained by external parties (Bavetta, 2004). Victims of forced labor are working under the threat of penalty and coercion, which leave them no room to choose. Coercion is a particular system of labor stimuli that limits workers' freedom of choice of how to behave in the labor sphere by using negative impetus or penalties such as the threat of worsening the worker's situation (Ozernikova, 2004). The prerequisite of forced labor is that the labor relationship is either under pressure or in a free manner but later becomes coercive (Skrivankova, 2010). ILO also points out that *"many victims enter forced labor situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labor"* (ILO, 2009). Even the clearest formulas of consent may not be valid if it consists of ignorance, duress, misrepresentation, or pressure (O'Neill, 1985). Thus, in some circumstance, initial consent does

not mean people would not become forced labor. Judging one is forced labor or not is to see whether he/she has the freedom to make his/her own choice. In the theory of capitalism, compared to serfdom and slavery, people are able to commodify their labor and have the freedom to sign a contract with a purchaser of labor in the premise of an agreed wage (Strauss, 2012). An agreed wage does not mean satisfaction from both sides. Due to various pressure like difficulties of finding another position, pressure of raising a family, people may have to take a job with lower salary than expected.

In summary, forced labor is a broad and complex concept, although the definition is only one short sentence, more detailed supplements are necessary in order to clarify. To better identify and prosecute cases of forced labor, ILO (2012b) has developed a set of indicators from the theoretical and practical experience of the ILO's Special Action Program to Combat Forced Labor: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; excessive overtime.

Nevertheless, there are some grey areas between legal concepts and practices which are tricky to measure. So far, there is little consensus on what constitutes freedom of choice. Economists argue that forced labor will continue fostering in society where people have an intrinsic need to work. Brass (2004) points out that unfreedom is the nature of labor market in advanced capitalist economy. In addition, some scholars point out that except for freedom of choice, everyone also have the freedom of contract. As long as both parties of the contract agree, and it has no negative results on others, they should not be restricted by the government. For instance, one question is always asked in regard to freedom of choice: if a poor man is willing to work under exploited conditions because it is better than no job, does it go against freedom of choice? Obviously, such arguments are opposed to government regulations.

2.3 Forced labor, human trafficking and slavery

Forced labor, human trafficking and slavery are often mentioned together as they often exist simultaneously and violate fundamental human rights.

In order to develop a comprehensive legal and policy framework to eliminate forced labor, ILO has adopted a broader definition of forced labor. Except for the above-mentioned three elements, ILO indicates that forced labor also includes human trafficking, slavery and other slavery-like practices (ILO, 2012a). As such, forced labor is closely related to human trafficking and slavery. Victims of forced labor may also be the victims of human trafficking and slavery.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children defines human trafficking as criminal offences with the action of recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim, and for the purpose of exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices and the removal of organs (United Nations, 2000). Same as forced labor, human trafficking is a criminal offence as well which provides a large profit for traffickers and the trafficking networks. All of its purposes are covered by the ILO forced labor definition except for the removal of organs. The purpose is also the criteria for distinguishing between trafficking in human and smuggling. If the potential victims have never been placed in exploitation or other involuntary situations, then it is just smuggling. The ILO Committee of Experts on the Application of Conventions and Recommendations also indicates that there is a link between the purpose of human trafficking and forced labor, the definition of forced labor should be the umbrella term for trafficking in human (ILO, 2007).

As for slavery, League of Nations (1926) defines slavery as *“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”* United Nations (1956) defines the forms of slavery as serfdom, debt bondage and adoption or marriage for the purpose of slavery. Slavery violates fundamental human rights and deprives human dignity. For the slave himself, he is socially dead and does not have the right to any legitimate social order (Patterson, 1982). Unlike forced labor, the prohibition of slavery is absolute. In contemporary society, slavery is basically eliminated. However, there are other slavery-like practices which are called modern slavery. Modern slavery is considered as the result of economic vulnerability. Society with lack of infrastructure, little access of livelihoods, conflict, inequality or poor education is the breeding ground of modern slavery. The forms of modern slavery include forced labor, debt bondage, forced and early marriage, human trafficking, decent-beased slavery, child slavery and

other slavery-like practices (ILO, 2017). Under some circumstance, forced labor can develop “*into conditions analogous to slavery*” (United Nations, 1956). Thus, modern slavery is a catch-all term for forced labor and human trafficking.

Forced labor, slavery and human trafficking have become synonymous and interconnected. However, the relationship between them are contentious as well. Some scholars argue that the definitions are over-broad, many reports, articles and law fail to differentiate between forced labor, slavery and human trafficking. For instance, for the victims of forced labor but who are not trafficked, Skrivankova (2010) argues that it has disadvantage to these people because there is risk of being excluded from legal protection and assistance where there is no stand-alone labor offence. As for the nature of modern slavery, Bales (2004) believes that instead of the slave’s master exercises the rights to ownership, modern slavery is related to exploitation and illegal control. This means that the definition of modern slavery also covers forced labor and human trafficking. Modern slavery is a derivative of traditional slavery, thus, it should not lose the characteristic of owned and be owned. In a recent judgement, the European Court of Human Rights affirms that “*although the applicant was... clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense, in other words that Mr. and Mrs. B exercised a genuine right of legal ownership over her, thus reducing her to the status of an ‘object’*” (France, 2005). Jordan (2011) argues that the idea of Bales does not have anything creative as it is similar to ILO definition of forced labor and would make people confused. Many prefer to use slavery as a catch-all term because it emphasizes the brutal reality and human suffering (Androff, 2011).

To a certain degree, it is essential to avoid conceptual conflation and bring conceptual clarity to this global issues. Every country or every region has its specific history and culture, forced labor, slavery and human trafficking may differ worldwide. Nevertheless, forced labor, human trafficking and slavery are interrelated. Although there may have situations like one may be the victim of forced labor but not trafficked, but we cannot exclude the cases which victims suffer multiple offences as well. In order to address the local and global exploitation, except for clarifying the concepts, it is more important to formulate strategies based on local realities.

2.4 Issues in forced labor

As mentioned above, forced labor is problematic and hinders global sustainable development. In recent years, it has been highly debated. In Jens Lerche's words, forced labor "*has received an unusual amount of official attention during the last few years. Official commemorations of the abolition of slavery are very much in vogue*" (Lerche, 2007). In the discussion of forced labor, there are a few issues on forced labor that should be taken seriously. In order to most effectively explore these issues, a subset of literature has been selected to present the empirical studies and discuss specific and general solutions.

2.4.1 "Race to the bottom" in terms of labor standards

The term "race to the bottom" firstly emerged in the United States during the late 1800s and early 1900s when states tried to attract firms by charter competition. Justice Louis Brandeis describes this phenomenon as "race to the bottom" (Meisel, 2004). In 1933, this concept received formal recognition by the US Supreme Court in a decision of Justice Louis Brandeis (Kelly, 2001). Schram (2000) indicates that for some time, this term is used to describe how vulnerable the United States federal system is in the face of interstate competition. In recent years, the term has been used to describe a similar competitive state where a company, a state or a nation attempts to undercut the competition's price with lower standards. For example, one nation may relax regulation in order to attract foreign investment, or one company may reduce its products' price by undercut its cost of production such as labor's wage, raw materials price etc.

In terms of labor standards, "race to the bottom" is often related to FDI. Mehmet and Tavakoli (2003) indicate that FDI is closely related to "race to the bottom" in regard to labor standards. The article presents a quantitative approach to analyze the elasticity of demand for labor from four Asian economies (China, the Philippines, Singapore, and Thailand). Figures show that as a consequence of FDI inflow, employment flow from high-income countries to labor-abundant economies. In the wake of FDI inflow, labor market becomes more elastic which pushes wages downward toward minimum or subsistence level. As a result, labor standards in host countries are declined. Specifically, Duanmu (2014) also found that the tendency of "race to the bottom" is highly inconsistent by investigating the effect of differential labor standards on the location choice of greenfield FDI from Brazil, Russia, India and China. The race to lower standards is related to

capital mobility and path dependency. In order to improve the ability to arbitrage, lower labor standards would be attractive if inter-country differences of labor standards exist. In other words, investors from developed countries are more likely to locate their firms in countries with lower labor standards.

The impacts of FDI on labor standards are controversial. Davies and Vadlamannati (2013) indicate that FDI puts labor standards in a vicious circle. In a world of increasingly global competition, nations relax labor standards so as to attract firms and investment. By using a spatial econometrics approach, Davies and Vadlamannati find that labor standards in one country are positively correlated with those elsewhere. If one nation reduces labor standards, other countries will reduce its labor standards in an even lower level in order to attract firms. As multinationals tend to invest in the countries with lower barriers, Davies and Vadlamannati estimate that the interdependence of labor standards across countries would force other countries to respond by applying much lower labor standards to avoid losing investment. Olney (2013) also finds that multinationals are likely to increase FDI in host countries with reduced employment protection rules. Labor standards have a significant negative impact on FDI. In specifically, if labor standards are high, it will have small impact on horizontal investment and a large, negative impact on vertical investment. As for the vicious circle, Sarna (2005) also states that although the relaxed labor standards may have seen a shortcut for developing countries to attract investment, the benefit may only limit to low-tech and labor-intensive industries. In the long run, this strategy may violate the human capital development of the host countries.

In contrast, Blanton and Blanton (2012) state that the impacts of employment protection rules are various on the economic development of the host countries. The article estimates the relationship between labor rights and FDI based on the legal framework as well as the extent to which these rights are actually honored in practice. Their findings show that there is a “race to the bottom” dynamic in the relationship between FDI and labor rights. Investors are drawn by the relaxed labor standards, but then FDI undermines labor rights afterwards. The relationship is significant, though its exact nature varies across sectors. Specifically, FDI has significantly negative impacts on the labor rights of primary sectors (such as extractive and raw materials industries) and services sector. In contrast, secondary sectors (such as manufacturing) FDI has a positive effect on labor rights. Blanton and Blanton find that investors are attracted to host countries that have a higher quality of

human capital. Although this preference does not translate into the support of higher labor standards, they found that in the manufacturing sector, the push for increased efficiency is benefit for further collective bargaining and labor rights. Thus, the term “race to the bottom” should not be too broadly construed, analysis should go far more from purely aggregate FDI data.

In order to protect labor rights when facing economics globalization, scholars have proposed several ways to address the “race to the bottom” issue. Acuff (2004) emphasizes that a new agreement should be created to protect labor rights. In the face of FDI, labor standards are being violated in Mexico due to the failure of law enforcement. The desire of foreign investment forces the government to make Mexico attractive by reducing labor standards and operating costs. In the agreement, any countries should not be excluded in order to avoid any unfair advantages. The agreement should put all firms stand on the same starting line and compete through high quality products, competitive wages and safe working condition. In addition, to protect labor rights, the agreement must address the issue of labor law enforcement. The article indicates that with the implement of the new agreement, Mexico would still be competitive due to its geographical advantage. The United States and Canada would still be the neighbor of Mexico and enjoy its cheaper labor, a hardworking labor forced and quality products. Meanwhile, Ngoc Tran (2007) shows a positive attitude that “race to the bottom” may not be the only solution when facing economic globalization. By conducting a case study in Vietnam, the author finds that there are alternatives to the “race to the bottom”. During the minimum wage strikes from 2005 to 2006, the well cooperation between labor organizing and spontaneous collective actions effectively pushed central labor unions and the state to reform policy changes on workers’ behalf. This case study emphasizes the importance of space for resistance.

Instead of working independetly, Chan (2003) stresses that the global south should cooperate to prevent the “race to the bottom”. The article takes the competition between China and Mexico for the North American apparel market as an example to state that currently countries of the global south is competing against others, especially in the laobr-intencive manufacturing. Although the competition has created enormous job position, labor standards are still declining, workers have not enjoyed any wage growth and their conditions are often appalling. Thus, instead of racing to the bottom, the global south shoud establish a broad agreement to set a floor to the competition for cheap labour in order to achieve a win-win situation.

2.4.2 Forced labor and outsourcing

Same as FDI, outsourcing is another choice for multinational firms to conduct foreign production. It refers to one company hires another company to be responsible for certain production activities that is or could be done internally (McCarthy & Anagnostou, 2004). Outsourcing can raise aggregate productivity by facilitating the division of labor between firms. The division of labor represents a substantial increase in productivity as well as the engine of economic development (Smith, 1827). When one worker focuses on one particular kind of work, he can handle it better and more efficiency than one person who does everything (Kant & Schneewind, 2002).

However, in contemporary society, in addition to the development of working efficiency, outsourcing can be related to forced labor as well. The most severe forms of exploitation are likely to occur in the outsourcing practices (N. Phillips, 2011). Posthuma (2010) indicates that by outsourcing, multinationals save the cost of retaining stable work force as well as have no responsibility for those workers with whom they have no direct employment relationship in host countries and escape the pressures of social compliance and the reach of regulation and monitoring.

Forced labor related to outsourcing often happens in developing countries. Morgan and Olsen (2015) stress that with the use of sub-contraction within outsourcing, the existence of forced labor can be disguised from those further up the supply chain simply, since the compliance on labor standards can be nominally demonstrated. Take the collapse of the Rana Plaza building in Bangladesh for instance. The collapse resulted in more than 1,100 deaths in 2013. The building contained several garment factories manufacturing products supplied to major western brands. Despite the fact that the building was unsafe, workers had to stay inside and continue to work.

In addition, N. Phillips (2011) finds that the in Brazilian cattle ranching, the issue of forced labor is mainly distributed in peripheral activities which are primarily manual and do not require any professional skills. For example, the deforesting and cleaning of land for new pasture. In these sectors, workers are deprived from work protection and labor rights. The same pattern can be found in other agricultural sectors such as sugar cane, soybean, cotton, and also in urban sectors such as garments.

In India, Philip finds that forced labor often occurs in the non-factory segments which are at the very last tiers of the outsourcing supply chain. Workers in these segments have to work under loose and verbal agreements with low labor standards. The subcontracting process in these segments is usually conducted through agents or contractors.

Labor contractors play an important role in outsourcing and they are the linkage between two firms. By conducting in-depth researches in South Africa and UK, Barrientos (2013) states that the relationships between contractors and labors is complicated, involving levels of gradation from better to worse. At the better end, contractors often have a paternalistic relationship with workers. Although the workers usually lack access to formal employment rights, they have a sense of belong to the contractors as well. At the worse end, the working conditions become progressively worse with exploitation and coercion.

Despite of forced labor in developing countries, outsourcing also results in labor adjustment in developed countries. By using plant-level data for the Irish electronics sector, Görg and Hanley (2005) find that outsourcing causes significant reductions in labor demands in developed countries in the short term. The reason is that employees who are laid off by their current employers are not able to switch into alternative employment immediately. In the medium or longer run, outsourcing may increase the quality of human capital. Head and Ries (2002) find that in Japan, skill intensity of employment in headquarters is increased due to the outsourcing in foreign affiliates. However, such effect does not appear in outsourcing between high-income countries.

As for the reason, Nolan and Bott (2018) explain that the incomplete laws and regulations at both domestic and international level makes workers vulnerable in the outsourcing process. In host country, laws may suffer from the access of resources, while at the international level, the limited enforceability options of laws also post challenges to monitor the action of multinationals in their supply chain. Thus, the article purposes that legislation should incorporate human rights as a mechanism for regulating forced labor in outsourcing. Regulatory frameworks should be built to use the leverage of individual stakeholders such as multinationals, governments, non-government organizations, consumers, labor unions and workers monito supply chain. In addition, Feasley (2015) suggests in order to eliminate forced labor, governments should imply disclosure regulations which forces multinationals to disclose the existence of forced labor in their supply

chains. For example, Feasley explains that in 1995, the Brazilian government created Special Mobile Inspection Groups to monitor forced labor cases through investigation, unscheduled visits and civil society cooperation. As a result, about 44,000 workers were rescued from forced labor between 1995 and 2012. In 2014, the government introduced legislation called “dirty list” which aimed to “name and shame” companies involved in forced labor. Once the companies are named on the list, they are impeded from financing opportunities. As for the likelihood of business opposition, government and society should work closely with business create positive incentives. Feasley emphasis that the example in Brazil shows the necessity of multi-party cooperation in eliminating forced labor in the supply chains.

2.4.3 Wage differentials and compensating differentials

Although there should be an equilibrium wage rate for all workers theoretically, we all know that in reality this is not the case; the wage of an engineer is different from the wage of a salesman, and workers in the same position earn different wages in Norway and Malaysia.

In his book *The Wealth of Nations*, Adam Smith concludes that there are two main factors contribute to wage differences between different occupations and employees (Smith, 1937). In general, these two factors focus on the relationship between wage rate and factors that influence wage rate such as unpleasantness, risk etc. First of all, Smith points out that the nature of the employments themselves arises wage inequalities. The study concludes that there are five principle circumstances that cause wage differences. First, workers have different psychological feelings, some occupations can be enjoyable, while others are boring. Employments which are dirty and disagreeable are paid higher wages. Secondly, the difficulty of mastering different occupational skills varies. Some professional skills are easy to learn and master, while others are difficult to master. Thirdly, the degree of occupational safety is different. Fourthly, workmen hold different responsibilities in different employments. At last, the probability of success is different. Another factor that contributes to a wage differential is government policies. Smith indicates that inappropriate government wage policies such as restricting competition between occupations and hindering the free flow of labor will spread a misleading information of the supply and demand relationship to the labor market. As such, these actions will lead to unreasonable wage differences.

Focusing on what occupations would have higher wages, Mill (1965) argues that the most unattractive employments have the lowest wages. Based on empirical fact, Mill finds that people engaged in unpleasant employments find better paying jobs often refuse their applications even though they are open to others. W. L. Miller (1981) also argues that it is impossible that a factor can dominate all circumstances that affected by it. Miller stresses that Smith oversimplified the difficulties involved that the movement toward full equilibrium would not affect all wages in the same way.

In reality, even if workers have the same ability and education, there will be wage differentials for different jobs. Excluding industry and regional monopoly factors, the differences are often related to the nature and conditions of the work. As such, there are compensating differentials which encourage workers to get involved in undesirable employments by offering additional amount of income (Rosen, 1986). Among those unattractive jobs, Lucas (1977) finds repetitive work has significant evidence of compensating differentials and somewhat smaller compensation for jobs with characteristics such as hazards, extreme temperatures etc. At the same time, in terms of the desirable job characteristics such as freedom to control hours worked, safe working conditions and employment and income stability, compensating differentials would be negative: that is, offering lower wages than other jobs (Duncan, 1976; R. D. Miller, 2004).

In the statement about compensating wage differentials, Smith and Stewart (1963) state that *“The whole of the advantages and disadvantages of the different employments of labor and stock must, in the same neighborhood, be either perfectly equal or continually tending to equality. If in the same neighborhood, there was any employment evidently either more or less advantageous than the rest, so many people would crowd into it in the one case, and so many would desert it in the other, that its advantages would soon return to the level of other employments”*.

However, Eberts and Stone (1985) argue that despite tradeoffs between wages, fringe benefits, and working conditions in theoretical literature, there is little empirical verification of compensating differentials in reality. In empirical tests of compensating differentials, the article stresses that not only the attributes of individual workers, but the characteristics of the employers such as financial status, product market conditions, bargaining strength should also be taken into account. The reason is that if these variables are omitted, the result of compensating differentials will be

attenuated or even reversed. By conducting a survey across public school districts and teachers in New York State in the mid-1970s, the study finds that compensating differentials had significant effects for district-related variables such as enrollment, operating budget, and the teacher share of the budget. Similarly, based on a survey among a large panel of workers in Sweden, Duncan and Holmlund (1983) find it is critical that a wage change formulation should take the worker reports of their own job characteristics into account. Using the agricultural sector as an example, W. L. Miller (1981) adds more details such as differential rates of natural increase, migration, rates of growth and union action. At the end, the wages would adjust until the difference in wages compensate for all these factors.

2.4.4 Corruption and law enforcement

As discussed in section 2.4.2, law enforcement plays an important role in eliminating forced labor. However, the efficiency and effectiveness of law enforcement are restricted to corruption. World Bank (1997) defines corruption as “*The abuse of public office for private gains. Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets or the diversion of state resources.*”

Some countries have the reputation for corruptness and, Fijnaut and Huberts (2002) find that most of them are developing countries because economic failure, poverty, poor conditions for human development and corruption are interrelated. In addition, countries which are going through systematic reform like privatization, liberalization and democratization have higher possibility for corruption (Kpundeh & Hors, 1998). Heywood (1997) emphasizes that a combine of social, economic, political, organizational and individual factors causes corruption in a country. Among them, social factors like the values and norms of politicians and civil servants, the organization quality of public sector and the relationship between the state and the business sector play a more important role in explaining corruption (Fijnaut & Huberts, 2002).

As the relationship between corruption and law enforcement, the structural impediment of the law enforcement system makes it more vulnerable to corruption than other social systems: “*the judiciary is probably the weakest link in the control chain, since it is unable to convey to society*

the message that crimes of corruption are actually punished. The individual institution charged with mounting cases- police, public prosecutors and courts- don't work in an integrated fashion." (Transparency International, 2001). In addition, McCafferty, Souryal, and McCafferty (1998) state that the conflict areas in law enforcement such as the processes of administration and management, police discretion, stakeholders' reluctance to apply all the laws, the code of silence, racism and sexism also make law enforcement vulnerable to corruption.

Braziller (1972) points out that corruption in law enforcement agents is not just a few "rogue cops" in the "rotten apple theory", it is more like an institutional problem. In the article, one psychiatrist who worked extensively with law enforcement officers stated that only 5% of all police know how to perform their duties professionally, about 60% are wobbly and have a breaking point which need leadership and supervision, the rest 35% are not suited to police work. Thus, how the leaders handle the wobbly group determines the effectiveness of law enforcement. McCafferty et al. (1998) indicates that the performance of law enforcement officers reflects the leadership of that institution. In specifically, law enforcement departments in smaller cities have a lower tendency to have corrupt officers because the institutional leader has higher possibility to scrutinize individual officers closely. In addition, Sundström (2015) points out that if corrupt behavior happens in the top management of the enforcement chain, it will be more costly for individuals to resist the temptation and remain honest because signal from above suggest that it is safe and acceptable to enrich your pockets.

In terms of forced labor, there are many examples that can explain the relationship between corruption, law enforcement and forced labor, especially in human trafficking. In a report from the United Nations Office on Drugs and Crime, Skrivankova, Dell, Larson, Adomeit, and Albert (2011) states that "*trafficking in persons and corruption are closely linked criminal activities*", especially corruption related to "*law enforcement and criminal justice actors*". A study undertaken by Zhang and Pineda (2008) finds that corruption is more strongly related to human trafficking rather than poverty. Although most of the researches show that human trafficking is rooted in poverty, the study states that corruption creates a regulatory or socio-legal environment for the successful and continuous operations of human trafficking in both sending and receiving countries. A vivid example is a case study undertaken by Guth (2010) in Philippine. The author points out that an estimated three million people are in high risk of being trafficked at any given time in

Philippine although the Philippine government passed an Anti-Trafficking in Persons Act of 2003 (Republic Act 9208), and many government agencies cooperate with non-government organizations. In six years' time, only twelve individuals have been convicted under R.A. 9208. The major reason is that the law enforcement agents have difficulties in implementing programs due to pervasive corruption at the government level. In a research in Philippine, Lintner (2016) concludes that many Philippine National Police, immigration officials, and even elected officials have corrupted relationship with organized crime groups (e.g. Yakuza or Triads).

The issues of forced labor reveal that contradiction exists between economic efficiency and ethics. On one hand, the pursuit of economic efficiency and the limitation of law enforcement contributes maximum benefit to the enterprises by providing low labor standards. On the other hand, the profits are founded upon the violation of moral standards and integrity. A further discussion would focus on the contradiction between ethics, economic efficiency and justice.

3. Ethics, economic efficiency and justice

3.1 Review of business ethics

There are various definitions of ethics. Kidder (1995) states that ethics *“included such phrases as 'the science of the ideal human character' or 'the science of moral duty’*. Paul and Elder (2003) define ethics as *“a set of concepts and principles that guide us in determining what behavior helps or harms sentient creatures”*. Churchill (1999) considers ethics is a common ability to solve ethical problems: *“ethics, understood as the capacity to think critically about moral values and direct our actions in terms of such values, is a generic human capacity”*.

In terms of business ethics, it is a form of applied ethics that seek to find a solution of moral or ethical problems economic behavior in economic activities. It applies to all business activities regardless of size or location and is relevant to the conduct of both individuals and organizations (Arnold & Bowie, 2003). Business ethics refers to the sum of moral principles of ethical relationship, ethical awareness, ethical standards and ethical activities contained in the production, operation, management and activities of the enterprise. De George (1987) concludes that business ethics focuses on 3 level of economic actives. From its largest perspective, business ethics focuses on the macro-level's activities within the economic system: morality, immorality as well as

possible justification. The second level is the study business within the free enterprise system which mostly concerns about corporations, followed by the study of unions, small businesses, consumerism and various business practices. This level of study has gained the greatest attention from scholars. The third level is the study of morality of individuals in economic and business activities.

In general, the goal of business is to make every effort to maximize economic efficiency which is separated from moral principles. De George (2011) calls this separation “*the myth of amoral business*”. According to the myth, people in business are concerned with economic interests. Moral principles are out of place in business because it is much easier and more comfortable to deal with money. The myth states that it does not mean businessmen are immoral, they are just amoral, which is, not taking moral principles into account. In Adam Smith’s word, “*people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices*” (Smith, 1950). Mainstream economists consider this goal is equivalent to rational behavior. This material success sought after by business also meets Max Weber’s description of Zweckrational, which refers to technocratic thinking that only focuses on finding the most efficient way to achieve a goal (Elwell, 2005).

From Amartya Sen’s view, the pure pursuit of economic interest refuses the role of ethical considerations in actual decision-making. Sen (1999) points out that the mainstream economics usually equals rational behavior with self-interest maximization and treating any behavior that deviates from self-maximization as irrational behavior. He also argues that the deep questions raised by the ethics-related motivation and the ethics-related social achievement motivation should have an important place in modern economics, and the study of economic activities should combine with the ethical and political studies. By the study of economics inequality and poverty, Sen emphasizes the importance of equality, democracy, and freedom in economic activities. In addition, Sen indicates that economics come from the combination of ethics and engineering. However, modern economics focuses more on engineering which only cares about the most basic logical issues, but not the ultimate goal of human beings, and what can cultivate human virtues or how one should live. Human goals are directly assumed, and the next task is just to find the most appropriate means for these hypothetical goals. As such, it is necessary to apply moral principles in business and create a better connection with the stakeholders.

A typical example to demonstrate the ethical issues in business is the Ford Pinto case. The study from Birsch and Fielder (1994) has provided details of the case. The Ford Pinto was subcompact car that was manufactured by Ford in the 1970s. It was a popular model except that the fuel tank was at the back of the car that once the car was rammed, the fuel tank could easily explode. As such, some people were killed, some severely injured. Victims of the accidents took Ford to court and it turned out that Ford had long been known the vulnerability of its fuel tank. The reason that they did not modify the design was that Ford had conducted a cost-benefit analysis to determine whether they should put in a special shield to protect the fuel tank and prevent it from exploding. Birsch and Fielder points out that in the analysis, Ford calculated that the costs for the modification were US\$137 million, while the benefits turned out to be only US\$49.5 million, including US\$36 million compensation of 180 people's deaths, US\$12.06 million of 180 injuries and US\$1.4 million to replace 2,000 vehicles which were without the safety shield. As the benefits were far less than the costs, Ford decided not to install the device. This cost-benefit analysis is controversial because it has included the measure of the value of life. From economic perspective, Ford has done what it could be done to maximize its profits. However, ethically speaking, is it right to put a price tag on human life? If it is not right, who should be blamed?

Most of the views consider Ford should be blamed because it did not choose to do the right thing that they could have done. Most models of ethical decision making assume that people should recognize the ethical dilemma when they are confronted with one (Kohlberg, 1969). Ford knew they came across ethical issues when they were conducting the analysis, but they turned to protect they economic interests at last. On the other hand, De George (1981) claims that as least the engineers in Ford should not be blamed because although engineers should be involved in setting safety standards and producing cost-benefit analyses, it is not necessary. He explains that firstly, the acceptability of the risk is not an engineering problem, and secondly, an engineering cost-benefit analysis does not cover all the factors that are needed to make a policy decision. As for Gioia (1989), he claims that although people in charge of important decisions are expected to involve in active and logical analysis, the complicated context of the decisions and their necessary reliance on schematic processing is likely to preclude such expectation. In other words, what Ford has done is unethical, but it is understandable.

There is a clear distinction between ethics and law. Ethics is the judgement about what is right and what is wrong, while law is about what is lawful and what is unlawful. The importance of this distinction is that often there are business activities which appears to be acting lawfully but unethically. Murphy (1988) uses price negotiation as an example to explain that unethical but legal issues may occur when one of the participants has much more power than the others. In a trade between a large department store chain and a small candy producer, the latter one is told that they should either accept the 30% discount or lose the partnership with the chain. From ethical view, the chain does not act morally as it suppressed the right of negotiation of the small candy producer. However, this action is legal and from the chain's point of view, it makes effort to save its cost which is absolutely rational.

Ehrlich (2005) finds that many companies fail to make ethical judgment on this distinction: “...*legal issues have been misnamed as ethical issues.... Enron, WorldCom, Adelphia Communications, Tyco International, and Global Crossing involved fraud, insider trading, and breaches of fiduciary duty*”. To address this issue, Pearce (2013) conducts an empirical research study which involves 252 practicing managers. Pearce asks them to make judgement on 12 newsworthy business events. He concludes that the key to make ethical judgement is to attach importance to ethical and legal values in judging business issues. As such, the study indicates that managers may be able to create a sense of shared values among employees with the help of moral principles and increase the attention on the ethical values in future judgement.

With the development of economic globalization, the ethical problems in business has spread to developing countries through industrial transfer. At the international level, ethical issues related to multinationals such as bribery, child labor, human rights abuses, pollution, unhealthy working conditions, below living wages, and so on, have captured people's attention (De George, 2000).

3.2 Ethics and economic efficiency

As mentioned in section 3.1, the goal of a business is to make every effort to maximize economic efficiency. In micro-economic, economic efficiency is a situation where every resource is allocated in its best position and inefficiency and waste are minimal. In terms of the use of forced labor, it has contributed a large amount of profits for the employers through coercion and exploitation. In

this section, I will use several moral principles to discuss the justifiability of the existence of forced labor.

3.2.1 Respect for humanity

As mentioned in section 2.2, forced labor violates freedom of choice by means of coercion. Kantian ethics provide a philosophical ground for the discussion on coercion and the value of humanity.

In his humanity formula of categorical imperative, Kant (2008) says “*act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only*”. This formula indicates that one always uses a tool only for his/her self-interest, with no thought to the interest or benefits of the thing he/she is using. It makes sense that for an item, if it is useless to human, it can be discarded. However, this should never be the way we treat other people. Our existence is not a pure object that is used by others, we are the ends in ourselves and we should treat other people as ends in themselves regardless any circumstances. In Kant’s word, “*humanity itself is a dignity; for a man cannot be used merely as a means by any man...but must always be used at the same time as an end. It is just in this that his dignity...consists, by which he raises himself above all other beings in the world that are not men and yet can be used, and so over all things*” (Kant, 1797).

In regard to forced labor, at the company level, victims are treated as a means for their employers to generate profits same as other machines. It is not wrong to treat other people as a means to achieve a goal, but they should not be treated as the mere means that humanity is neglected. Those victims are human beings and they have humanity that machines and capital do not (Arnold & Bowie, 2003). The prerequisites of using other is that they agree to being used. However, victims of forced labor work involuntarily and are under the menace of penalties. At government level, the loosen of labor standards is used as a means to attract foreign investment. Human beings have autonomy that we are different from animals in the world. We are rational and autonomous that we have the ability to set our own goal and work hard for it.

Coercion in forced labor also means that the victims are manipulated which lead to the failure of conducting their free will. In Kantian’s view, in such case, those victims have lost their freedom. In view of this situation, O’neill (1989) concludes that “*positive freedom is more than independence*

from alien causes. It would be absent in lawless or random changes, although these are negatively free, since they depend on no alien causes. Since will is a mode of causality it cannot, if free at all, be merely negatively free, so it must work by nonalien causality... it must be a capacity for self-determination or autonomy”.

This view can also be applied to explain the ILO denial of the validity of initial consent: *“many victims enter forced labor situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labor”* (ILO, 2009). Although economists like Powell and Zwolinski (2012) argue that those workers signed the contracts out of freedom of contract, in many cases, the truth is many of them have to take up those exploited jobs or they will be trapped in poverty. In this circumstance, “freedom of choice” is equivalent to coercion.

In addition, deception in the recruitment process should also be taken into account. In Kant’s view, one cannot make his/her own decision if he/she is deceived because his/her judgement is based on false information. Positive freedom is autonomy that it should always follow the rules that one gives to himself/herself. At the same time, it is also immoral for the employers to deceive the workers. What makes an action morally valuable is the quality of the will. In other words, a person should do the right thing for the right reason. This reason itself grants the moral value to the action. Only reason that is done for the sake of the motive of duty has moral value. Apparently, by giving false promises of working condition, wages, the type of work, housing and living conditions or job location etc. on purpose, employers seek to hire someone with lower cost and generate higher profit. In Kant’s view, it is never morally permissible to cheat someone. Such false promises are out of the employers’ self-purpose instead of social responsibility. As such, these deceptive actions have no moral value.

One can be immoral even if he has done the right thing for *“a self-seeking purpose”* (Kant & Schneewind, 2002). In Kant’s word, *“an action from duty has its moral worth...in the maxim in accordance with which it is decided upon, and therefore does not depend on the realization of the object of the action but mere upon the principle of volition in accordance with which the action is done without regard for any object of the faculty of desire”* (Kant & Schneewind, 2002). Even though victims who have to continue working after they find out they are deceived can earn some

money to support themselves and their family, or even able to end poverty, the initial purpose of hiring them makes such action immoral.

3.2.2 The greatest good for the greatest number

For the supporters of forced labor, they may argue that the view in unilateralism supports the justifiability of the existence of forced labor, after all, “*the greatest good for the greatest number*”.

This phrase is paraphrased from the view of act-utilitarian Jeremy Bentham, the founder of modern utilitarianism. Bentham (2001) describes a fundamental axiom that “*it is the greatest happiness of the greatest number that is the measure of right and wrong*”. For utilitarianism, the right thing to do is to maximize utility. What is utility? Bentham indicates that it is a predominance of pleasure over pain, and happiness over suffering. Action should be measured by the joy it produces and happiness should be its ultimate goal. In his book *The Principle of Morals and Legislation*, Bentham (1996) states that “*nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think*”.

To determine whether an action has moral value or not, Bentham believes that it depends on the amount of pleasure or pain that it produced. As such, Bentham (1996) proposes a classification of pains and pleasures to work out the sum total of pain and happiness in any action. Bentham purposes that the value of a pleasure or pain is considered in the following circumstance: its intensity; its duration; its certainty or uncertainty; its propinquity or remoteness. Using the sum of all values of pleasure minus the one of pain, if the balance is on the side of pleasure, then it will be morally value.

From a business perspective, it is easier to use money as a measure to aggregate values and preferences for the determination of operational decisions. Like the Ford Pinto case mentioned in section 3.1, by doing cost-benefit analysis, Ford concludes that it would be happier not to install the safety shield because they can make more profits. After all, the purpose of all economic activities is to generate economic interests. From Ford’s view, its decision can lead to good result.

Therefore, it is a good decision. In addition, if the company fail to make profits, those who work in Ford will lose their job which would not maximize the total sum of well-being. In terms of forced labor, supporters also use the cost-benefit analysis to calculate how much profit it can generate. In other words, how much “happiness” it will bring to the employees. Every year, the “happiness” brought by the use of forced labor worldwide is equivalent to US\$150.2 billion (de Cock & Woode, 2014). In such case, the existence of forced labor seems reasonable. In modern world, as our ability to control the means of ending and preserving lives has increased, uncomfortable questions such as whether forced labor should be imposed for the sake of a probably happier world seems to be difficult to answer for utilitarianism (Shafer-Landau, 2012).

In this circumstance, I argue that the existence of forced labor still has no moral value, even under the utilitarianism context. Firstly, it is impossible to aggregate all values and preferences with a sole measure. For those victims of forced labor, the loss of freedom, or the pain that coercion and debt bondage brought to themselves and their families are countless with money. The prerequisites of the sum of happiness is that we should respect everyone just like we respect ourselves. Your interests are important, but so are the others. Bentham (1887) emphasizes that *“If it is a good thing to sacrifice the fortune of one individual to augment that of others, it will be yet better to sacrifice a second, a third, a hundred, a thousand, ...; for whatever may be the number of those you have sacrificed, you will always have the same reason to add one more. In one word, the interest of everybody is sacred, or the interest of nobody”*. The emphasis of overall benefit stresses that everyone should pursue their own interests ethically.

Secondly, instead of simply summing up the overall happiness, rule-utilitarianism emphasizes that it is more importing to make qualitative distinguish of happiness. Is the employers’ happiness equivalent to the one of the victims of forced labor? Instead of equally treating all forms of happiness, as a representative of rule-utilitarianism, Mill (1895) emphasizes the differences between happiness and contentment, *“it is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question”*. From his view, happiness as mental, moral, and aesthetic pleasures has higher value than contentment as inferior, depraved and unethical. In terms of forced labor, the so called “happiness” which is based on the pain of the victims of forced labor cannot even count as the real happiness. From Mill’s view, the

satisfaction of happiness should be based on a common rule that may bring the most benefits to the most people.

3.2.3 The golden mean between economic efficiency and ethics

The golden mean is a balance point between two extreme states, one of excess and the other of deficiency (Hauser, 1999). It appeared as early as in Delphic Maxim's theory and was emphasized by Aristotle.

Aristotle believes that as rational animal and social animal, human beings has special function which is using reason to get along with other people. A good or excellent person should perform this activity perfectly in accordance with the best and most complete virtue (Ameriks & Clarke, 2000). From Aristotle's view, virtue is "hexis", which is equivalent to excellence (Rodrigo, 2011). For example, a flautist can have virtue if he plays the flute well because it is a distinctive activity of a flautist (Warne, 2006). As human being, a virtuous person means that he performs the distinctive activity of being human well. In other words, a virtuous person knows how to manage himself, how to get along with others, he has excellent judgment, and he knows how to distinguish the right thing and the right time. This distinctive activity is a mean between deficiency and excess, which Aristotle considered as vices.

Although Aristotle does not state precisely the definition of a freeman, Walsh (1997) concludes from Aristotle's book *Politics* and states that a freeman not only has foresight to rationally choose means to given ends, but also has the capability to take actions to achieve his/her givens ends as virtue is a practical wisdom. Virtue can only be obtained through non-stop practice; it is something that we must practice obtaining. For anyone who does not have these characteristics, Aristotle identifies he is a natural slave who "*wholly lacking the deliberative element*" (Aristotle, 2006). Although it is controversial to define someone as a natural slave in modern society, Walsh points out that it is not necessary to reject Aristotle's view because one could agree with Aristotle's understanding of freedom while arguing that everyone is equal that no one should be excluded from the discussion of freedom.

There are two kinds of virtues, one is related to emotion and desire called moral virtues, the other one is related to mind called intellectual virtues. There are 11 moral virtues, they are courage,

temperance, liberality, magnificence, magnanimity, proper ambition, truthfulness, wittiness, friendliness, modesty and righteous indignation, while there are seven intellectual virtues, intelligence, science, theoretical wisdom, good sense, understanding, practical wisdom and craftsmanship (Ameriks & Clarke, 2000). Every moral virtue is a golden mean between excess and deficiency, in other words, every virtue has two antonyms. For instance, courage represents the golden mean of fear and confidence. If this feeling is excessive, it will be rashness. On the contrary, if it is deficient, it will be cowardice. In this circumstance, there is no difference between moral virtues and technical skills as every skilled workers know how to avoid the extreme states of excess and deficiency (Kraut, 2001).

In regard to business, its virtue is making profits because this is distinctive activity. As a teleology supporter, Aristotle favors the view that everything has its own function because this is the reason of its existence (Meyer, 1992). It should be noticed that illegal activities are obviously excepted because the existence of themselves is already the violation of Aristotle's virtue that mentioned in the last paragraph. It is a good thing if one can perform his/her function perfectly. This is different from utilitarianism's view of accumulating the greatest happiness for the great number.

The function of business is making money, not doing charity. Only those companies which can generate profits can claim they are good companies. Making profit is the golden mean between poor management and greedy. On one hand, in a deficient situation a company is unprofitable due to its poor management and cannot generate adequate profits to support its future development. On the other hand, in an excessive situation a company is so unscrupulous that it will do everything it can to make money, such as excessive cost-cutting. A greedy company means that it fails to direct the passion for possession towards the goal that it is reasonable to desire (Zamagni, 2011). At this stage, it is inevitable that firms would suppress labor costs to gain more profits. In other words, forced labor will appear in the excessive situation. As such, the golden mean of the virtue of business should be the balance point between avarice and unprofitability.

It should be noticed that Aristotle's classification is not fixed. In modern society, Peterson and Seligman (2004) develop six virtues based on Aristotle's theory, they are wisdom and knowledge, courage, humanity, justice, temperance and transcendence. From the business ethics perspective, I suggest that the virtue of justice is more necessary than others. Peterson and Seligman indicate that

the virtue of justice includes three strengths: citizenship, fairness and leadership which are grounded on societal norms and institutions and have intrinsically valuable from the ethical perspective. On one hand, everyone in business field is equal and should be treated fairly. On the other hand, leader in a company should play his/her role perfectly in bringing profits to the company. It is a process of social influence in which he can call up the aid and support of his/her subordinates in the accomplishment of the company's goal (Chemers, 2014).

In terms of being nurtured by societal norms and institutions, Alasdair MacIntyre, the modern proponent of Aristotle, has similar view that moral disputes are not happened solely, they are inherited from certain societies and historical memories. In his book *After Virtue*, MacIntyre (2013) says that *"I am someone's son or daughter, a citizen of this or that city. I belong to this clan, that tribe, this nation. Hence, what is good for me, has to be the good for someone who inhabits these roles. I inherit from the past of my family, my city, my tribe, my nation a variety of debts, inheritances, expectations and obligations"*. Compared to contemporary liberalism and individualism, MacIntyre's view on communitarianism emphasizes the interconnection between individuals and communities. Companies are a part of the society and have connections with other social individuals. Instead of pursuing profits without any restraints, companies should take social responsibility which fulfill their civic duties. It is an inescapable responsibility for the companies to take the social influences into account.

3.3 Economic efficiency and justice

Justice is one of the most fundamental social, ethical, and moral principles we deal with every day. There is no fixed definition on justice because it is impacted upon by different fields, such religion, law, social ethics and fairness. In regard to economic efficiency and ethics, the discussion in this chapter will focus on distributive justice and procedural justice.

3.3.1 Distributive justice

As mention in section 3.2.3, Peterson and Seligman (2004) consider justice as one of the six virtues in modern society based on Aristotle's theory. From Aristotle's view, distributive justice should be merit-based that it depends on contribution. Justice is giving people what they deserve. *"Justice involves two factors—things and the persons to whom the things are assigned—and it considers that*

those who are equal should have assigned to them equal things” (Barker & Stalley, 2009). The ground of deserve depends on the specific resource that is being distributed. In regard to business activity, it refers the person who works harder should be paid more. Like Kantianism, John Rawls critiques Aristotle’s view as the violation of the fundamental rights of human beings: *“Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override... The rights secured by justice are not subject to political bargaining or to the calculus of social interests”* (Rawls, 2009f).

In Rawls’ word, *“justice is the first virtue of social institutions”* Rawls (2009f). He concludes his theory with the name *justice as fairness* because *“it conveys the idea that the principles of justice are agreed to in an initial situation that is fair”* (Rawls, 2009g). This theory aims to describe just arrangement of a society’s basic structure including political institution, legal system, economy, family etc. (Rawls, 1958). It should be noticed that his view on fairness is different from common egalitarianism which advocates the removal of economic inequalities in the society. Rather, Rawls indicates that society is inherently unfair, and it should not be eliminated because this unfairness is the incentive that contribute to development of our society. Rawls considers a society under equalitarianism is utopian that it is in a certain sense beyond justice (Rawls, 2009a).

The prerequisite of Rawls’ theory is based on a hypothetical social contract. From Rawls’ view, there is no need for an actual social contract to shape principles of justice. An actual social contract, like a commercial agreement, binds both party by a consent-based and benefit-based agreement. This agreement may not be performed perfectly due to differences in negotiation power and contract understanding between the two parties. For example, in regard to labor contract, there is a possibility that a worker signs an unequal contract because of language barrier or his/her level of education. In many circumstances, it is this unequal contract that put a person in the risk of becoming a victim of forced labor. As such, Rawls purposes that justice should be based on a hypothetical social contract which is derived from the veil of ignorance.

The veil of ignorance is a way to derive the basic rights that everyone in the society should respect. Behind the veil of ignorance, *“no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like...the person in the original position have no information as to which*

generation they belong.” (Rawls, 2009g). Unlike utilitarianism, people behind the veil of ignorance will not agree to the view of “the greatest good for the greatest number” because once the veil is lifted, people hope to be respected and living with dignity even if they are part of the minorities.

Modern philosophers critique that only a less strict and looser “veil of ignorance” should be assumed because we are inherently hindered to some extent, it is impossible to have such a false veil even under hypothetical circumstances (Sandel & Anne, 1998). Rawls also knows that the idea of original position is purely a rational assumption and cannot be demonstrated in the history of practice. Despite this, Rawls emphasizes that only the principles which people would agree to would be the principles of justice because people would give thorough consideration to the likely effects, the costs and benefits, for all the members in society, including those worse off (Dennett & Dennett, 1996).

There are two principles of justice that are derived from the veil of ignorance. The first principle is the equal liberty principle. Everyone in society should have equal basic liberties including freedom of thought, liberty of conscience, political liberties, freedom of association, freedom specified by the liberty and integrity of the person, and rights and liberties covered by the rule of law (Rawls, 2009i). For example, employers and employees share the same level of social status that it is injustice for the employers either to conduct any actions which are legally prohibited or any “legal” actions which are related to coercions and exploitations. These fundamental rights are so basic that they should not be traded off for any economic efficiency.

The second principle is the difference principle. As mentioned, Rawls admits that society is inherently unfair because it is the incentive that nurtures the development of the society. In other words, it allows to give some members of the society more power, income, social status etc. The theory of incentive can also apply to compensating differentials. As mentioned in section 2.4.3, for those workers who are in an undesirable and unpleasant working condition, they should be paid the additional amount of income as compensation.

However, it is just only when social and economic inequalities is regulated. Specifically, economic inequality will not be rejected only when the least disadvantage people can benefit from the inequality (Rawls, 2009b). In other words, unless people are under the same salary differential

system which can guarantee the vulnerable people being taken care of, the existence of economic inequality should be rejected. Take Mary Barra for instance. As the CEO and chairman of General Motors Company, Barra earned US\$22.6 million in 2016, which made her become the world's top-paid auto CEO (Isidore, 2017). According to Rawls' view, Barra's salary is just and reasonable only when those at the bottom can get benefits from it, such as policies for income redistribution. It is natural that someone in the society holds more power or money, but it will be unjust if the entire social structure failed to treat these facts properly. In Rawls' word, "*those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out*" Rawls (2009h).

The responsibility towards the least well-off is derived from Rawls' view that the distribution of income, wealth, and opportunity should not be based on moral arbitrariness, such as family background, or the level of education etc. This is also the reason that Rawls believes merit-based theory should go a step forward. To achieve distributive justice, it is not enough to open all positions under fair equality opportunities and reward those work harder or get higher scores. From Rawls' view, merit-based system cannot overcome the moral arbitrariness, "*even if it works to perfection in eliminating the influence of social contingencies, it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents*" (Rawls, 2009e). Moral arbitrariness means that someone who is in an advantage position is mere luck, such as family background, health, level of education, opportunity etc. The formal equality of the merit-based system means that there should be an improvement which allows some people benefits from moral arbitrariness while those the least well-off are being taken care of as well.

Except for moral arbitrariness, the success of a gifted person is nurtured by social factors as well. There is a common ground between MacIntyre's view on communitarianism and Rawls' view on social nourishment. One is productive because he/she is a member of this very prosperous, highly integrated, productive society, not simply because he/she is gifted (Hardin, 1999). As such, social structure should be designed to help the least well-off, "*the naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well*" (Rawls, 2009h). For instance, the success of the developed countries is not only because of their moral arbitrariness such as geographical advantages, resource advantages and human capital advantages, it is also nurtured by

the sacrifice of the developing countries, from colonial plunder since 15th century, to industrial transfer in the context of economic globalization. It is no doubt that these sacrifices have brought social-economic development to those under-developed countries, however, it is just a small portion compares to the economic profits gain by the developed countries.

In the case of iPhone, there are great differences in the distribution of value between the headquarter in the United States and subsidiaries in other countries. Although most of the components are manufactured in China, it only makes up 1.8% in the whole value chain, while product design, software development, product management, marketing and other high-wage functions in the United States capture the largest share of value which account for 58.5% (Kraemer, Linden, & Dedrick, 2011). In this circumstance, it is obvious that the under-developed countries are the least well-off. As such, a healthy and justified development structure should be built to take care of the developing countries. According to Rawls' theory, issues that discussed in section 2.4.1, 2.4.2 are unfair for the least well-off (developing countries). In other words, there is no justice in low labor standards and forced labor that happens in the under-developed countries.

3.3.2 Procedural justice

Procedural justice is an idea of fairness that aims to address disputes and resources distribution. Traditionally, the sense of procedural justice is connected to legal contexts. Studies find that in many cases, people care more about if they are being treated fairly in the process than the outcome of the cases (Lind & Tyler, 1988). In this circumstance, procedural justice focuses on the process. Procedural justice can also apply to resolve conflict or divide benefits or burdens in social-economic issues (Vermunt & Törnblom, 1996). In this context, procedural justice is substantive that it more focus on the result and effect of distribution. In this section, the discussion of procedural justice will focus on how benefits and burdens of various kinds are allocated in the society based on Rawls' distributive justice.

When discussing the issue of distributive justice, there are a few questions that make us confused. What rules of distribution should we comply with? Why should we comply with procedures? How can we develop justified procedures? Rawls has a complete analysis of how to allocate resources, that is, *procedural justice*.

From Rawls' view, there are three types of justice, perfect procedural justice, imperfect procedural justice and pure procedural justice. According to Rawls, perfect procedural justice is that "*there is an independent standard for deciding which outcomes is just and a procedure guaranteed to lead to it*" (Rawls, 2009c). The most common example to explain perfect procedural justice is cake distribution. Imagining there are a number of people are to divide a cake. To achieve an evenly distributed result, the person who cuts the cake will get the last piece of cake and other people are allowed to pick before him. By doing so, he will divide the cake equally. In this example, there is an independent standard for deciding what is the just result: everyone gets an equal share; there is also a procedure to ensure that this result is achieved: the person who cuts the cake takes the last piece.

On the contrary, procedural justice is imperfect when "*there is an independent criterion for the correct outcome, there is no feasible procedure which is sure to lead to it*" (Rawls, 2009d). Criminal trial is a typical example of imperfect procedural justice. The expected result of a trial is: as long as the defendant has actually committed the crime, he should be declared guilty while the defendant should be innocent if he has not. However, even though the law is complied with carefully and the process is guided fairly and appropriately, it is still possible to achieve the wrong result. An innocent person may be found guilty, and a guilty person may go unpunished. In reality, people would like to use fair procedures to produce just results, but sometimes it is not easy to find such absolute procedures.

The common ground between perfect procedural justice and imperfect procedural is that there is an independent standard for what is a fair distribution. In other words, people can distinguish the dispute or injustice of the results without considering the procedure. On the contrary, pure procedural justice does not have any independent standards for legitimate results. It "*obtains when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed*" (Rawls, 2009d). Take gambling for instance. Gambling needs to be conducted voluntarily and without deception. The gambling process is fair, thus, any result derived from fair gambling program activities is considered fair no matter no matter what the result is.

When discussing these three types of justice, Rawls does not indicate his preference for procedural justice. Instead, Rawls indicates that we cannot say that a specific result is just because it is achieved by following a fair procedure (Rawls, 2009d). In reality, it is rare to find a system that runs like a perfect procedural justice. Laws and institution often belong to imperfect procedural justice, that is, although there are good wills, all sorts of problems are always existed in the implementation process, making the final result into an imperfect result. The injustice does not come intentionally, rather, the accidental combination of certain situations.

4. The Malaysian case

4.1 The Malaysian E&E industry

4.1.1 The development of the E&E industry

Since 1972, the E&E industry has become the engine of the development of Malaysian economy. Its emergence can be traced back to decades ago. After achieving its independence from Britain in 1957, in order to reform its economic structure which was heavily depend on the export of primary goods such as natural palm oil, rubber and tin, the Malaysian government implemented several policies towards industrialization. In order to attract foreign investment, the earliest attempt was the introduction of Pioneer Industry Ordinance in 1958. Under the ordinance, firms will be granted tax reliefs if they are in the pioneer status. It was during this that the first Malaysian E&E firms were established. Among them, the Matsushita Electric was representative. However, due to the high unemployment rate of 7.3% (Yeow & Ooi, 2009), the domestic market was getting smaller which stagnated the E&E industry.

The development of the E&E industry is closely related to the first and second Malaysia Plan. Like many other developing countries, Malaysia also has launched a set of five-year development plans “*for all Malaysians, irrespective of race, creed or political affiliation*” (Mathews, 2014). Since 1965, the Malaysian government has launched the Malaysia Plan based on the Malaysian social and economic structure. Until 2020, Malaysia has come to the end of its 11th plan.

During the first Malaysia Plan, the Investment Incentives Act, which lays a solid foundation for the future development of the export-oriented E&E industry, was enacted in 1968. Similar to Pioneer Industry Ordinance, the act grants companies the pioneer status. In addition, for the non-

pioneer companies, they have investment credit. At last, the act gives a set of export incentives such as export allowance, accelerated depreciation allowance and deduction for promotion expenses overseas for those whom export their products (Onn & Cheong, 1984).

In 1971, the Malaysian government launched the Second Malaysia Plan with the basis of the New Economic Policy, which aimed to maintain national unity by eradicating poverty and eliminating the gap between different ethnic groups through a “*rapidly expanding economy*” (Athukorala & Menon, 1997; Means, 1991). To achieve the objective, the Malaysian government took many measures. One of them is proposed by Dr Lim Chong Eu. He suggests that Malaysia should establish free trade zones to attract export oriented foreign investment and absorb the large amount of unemployed labor. With the support of the government, the Free Trade Zone (FTZ) Act was enacted. The act has a set of incentives including duty-free imports of raw material and capital equipment, streamlined customs formalities, subsidized infrastructure facilities and company income tax incentives (Warr, 1985). In addition, the act indicates that the FTZ have minimal customs control. Except for the compliance with Prohibition of Imports and Exports under Section 31 of the Customs Act 1967, the FTZ is not subjected the application of the Customs Act 1967, Excise Act 1976, Sales tax Act 1972 and Services Tax Act 1975 (Yeow & Ooi, 2009). The loose government intervention also gives Malaysia a comparative advantage over other competitors. Take the Philippines for instance. As a country share similar geographical advantage as Malaysia and have a large amount of English-speaking labor with low labor cost, the Philippines attract less FDI in the 1970s. The reason is that compared to the Philippines, Malaysia offers simplified approval services and offer security and stability at the FTZs (Rasiah, 2017). As a long-term investment, it makes sense that foreign investors tend to choose destination with stable social and political environment (Tang, Yip, & Ozturk, 2014).

In addition, in order to have a more balance distribution of the export-oriented companies in all the states, the Malaysian government set up the LMW. The function and the services of LMW is similar to FTZ which intend to cater for export-oriented industries. Only that the LMW areas are neither feasible nor practical for the establishment of FTZ. Later on, in 1986, the Promotion of Investments Act substituted the words FIZ for FTZ. Nowadays, there are hundreds of LMWs and 18 FIZs in Malaysia, with two in Penang, five in Malacca, four in Selangor, two in Perak, four in Johor and one in Sarawak (Yeow & Ooi, 2009).

With the opening of the FIZs and LMWs, the E&E industry grows rapidly in Malaysia. The first semiconductor plant was set up by Clarion and National Semiconductor in Bayan Lepas FTZ, Penang in 1972, followed by massive assembly operations of Intel, Advanced Micro Devices, Texas Instruments, Hitachi, Motorola, HP, and Siemens (Litronix) in the mid-1970s (Rasiah, 2017).

Later on, in the 1990s, the E&E industry focused on office and computer equipment. Nowadays, the E&E industry is the largest export earner with four sub-sectors: electronic components, consumer electronics, industrial electronics, and electrical products. The main production capacity is in the manufacture of electronic components and boards, computers and peripheral equipment, communications equipment, consumer electronics, optical instruments and photographic equipment, magnetic and optical media (Malaysia Department of Statistics, 2014)

In 2017, the E&E industry earned US\$80 billion in total and took a large 36.7% of Malaysia's total value of export (Malaysian Investment Development Authority, 2018). The most potential export markets are Hongkong, Germany, China and Indonesia by showing 16.85%, 15.54%, 15.21% and 13.01% net shift respectively (Rahman & Taufiq, 2015). With the supported incentives by the government, well-established infrastructure and services, stable social environment, the E&E industry has placed Malaysia in the global supply chain of electronic manufacturing services, outsourced semiconductor services. In 2016, the E&E sector has attracted US\$1.9 billion FDI, which was 85.8% of all investment in the E&E industry (Ministry of International Trade And Industry (Malaysia), 2017).

4.1.2 Foreign workers in the E&E industry

Malaysia is the largest importer of labor in Southeast Asia (Harkins, 2016). Nowadays, foreign workers make up a large proportion of labor force in the Malaysian E&E industry. Official statistic shows that the Malaysian E&E industry employs about 700,000 people of whom 20 to 60% are foreign workers (Bormann, Krishnan, & Neuner, 2010; Wong, 2013). Most of the foreign workers in Malaysia come from neighboring countries in Southeast Asia such as Indonesia, Nepal, India, Vietnam, Bangladesh, Philippines and Thailand (Kaur, 2014). The proportion of the migrant workers is fluctuated because of the unclear number of undocumented workers.

The nature of the E&E industry can explain why there are so many foreign workers in the E&E industry. In 1990s, a production organization called CEMs emerged in the Malaysian E&E industry. CEMs first appeared in the United States as a production model closely related to “*internalization of capabilities that can be standardized to fit with global production services strategies*”, which becomes an important factor of global production networks (OECD, ADBI, & ILO, 2019). The nature of CEMs is “*less interested in developing local capabilities and more interested in exploiting the pre-established functions performed by local firms and their workers*” (R. Phillips & Henderson, 2009). In order to compete the electronics contracts, CEMs take all the actions they can to undercut the contract cost. Among them, one effective way is to use the abundant cheap labor in the neighboring countries. The cost can be cut as much as 15% (OECD et al., 2019). As such, it makes Malaysia become a large importer of labor.

In addition, due to the lack of human capital such as quality professional in the fields of science and technology, the Malaysian E&E industry fails in technology upgrading, which makes Malaysia fall behind its neighboring countries and regions such as China, Singapore, Indonesia and Taiwan. Although it is getting more engaged in the high value-added activities like research and design in recent years, the Malaysian E&E industry is still in the lower tier of the supply chain which is still engaged in the stage of low value activities, particularly in particularly mass assembly, packaging and testing (Wilkinson, Gamble, Humphrey, Morris, & Anthony, 2001). The E&E industry has to import foreign workers to keep wages down to keep its comparative advantage.

4.1.3 Labor standards in the E&E industry

As discussed in section 2.4.1, FDI is closely related to “race to the bottom” in terms of labor standards. As we know, the Malaysian government has made efforts to attract foreign investment in the E&E industry. But what is the impact of these efforts to the local labor standards? Are the workers in the E&E industry vulnerable to forced labor?

In order to attract foreign investment to the E&E industry, except for the efforts such as the establishment of FIZs and LMWs, economic incentives and minimal government intervention, the relaxed labor standards supported by government policies also makes Malaysia ideal for the investors. In other words, the Malaysian labor standards are governmentally created and enforced. In general, labor standards includes minimum wages, overtime and working time, paid time-off,

unemployment and employment insurance, workers' compensation, collective bargaining, equal employment opportunity, unjust discharge, occupational health and safety, advance notice, workers' rights to information and consultation, parental and family leave, and transfer of undertaking and ownership (Block, 2007). In regard to the issues in the E&E industry, the main problem occurs in the minimum wage standard, the access to labor union and excessive work hours.

4.1.3.1 Minimum wage standard

Take the minimum wage standard for instance. In 2019, the monthly minimum wage in Malaysia is US\$255 which is 21% lower compared to its competitor Philippines (Medenilla, 2019; Ramasamy, 2018). According to a study from the Bank Negara Malaysia, the minimum wage is not even half of the minimum living cost of US\$624 (Chong & Khong, 2017). The UN Special Rapporteur also concerns about the gap between the minimum wage and the living cost: "*despite the welcome establishment of a minimum wage, Malaysia does not guarantee a living wage that will lift people out of poverty*" (De Schutter, 2014). In order to survive, individuals would need to take an extra job or working overtime to have supplemental income.

4.1.3.2 Access to labor union

Another example is the access to labor union. Since the colonial period, labor union activities have been restricted to ensure that it does not hinder the capitals interests (Todd & Jomo, 1994). Although the Malaysian constitution guarantees the rights of forming and joining labor union, the Trade Unions Act of 1959 and the Industrial Relations Act of 1967 have restrictions on the union's activities. One thing should be noticed is that Malaysia have not ratified the ILO convention of Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87). In private sector, only 3% of the employers are the union members. At the company level, Malaysian Employers Federation (2014) carries out a survey of recruitment and employment of migrant workers among 101 firms and found that about 74% of the employers forbid migrant workers they hired to join trade unions. The denial access to labor union means that workers are not covered by any collective bargaining agreements in terms of welfare, wages, working conditions, or social and political status.

4.1.3.3 Excessive work hours

In general, for the person whose wages do not exceed US\$459, the regular work hours in Malaysia are not more than nine hours in one day or 48 hours in one week (Employment Act 1955, (No.265)). As for the hours of overtime work, the Malaysian law has relatively loose restrictions. The maximum hours of overtime work should be a total of 104 hours in any one month with the rate not less than one and half times the employee's hourly rate of pay (Employment (Limitation of Overtime Work) Regulations 1980). For those companies need to work overtime in excess of the limit of hours, they just need to hand in applications.

For the E&E industry, the Electronics Industry Citizenship Coalition has set a bit higher limitation with no more than 60 hours a week including over time. Emergency or unusual situations as such unpredictable events, accidents that resulting in prolonged shutdown of a production line, unforeseen raw material or component shortages, peak season and contract change can be considered as exception which do not need to comply the regulations (The Electronic Industry Citizenship Coalition® (EICC®) Code of Conduct, 5.0).

Despite the law regulations, the situations are different in reality. In the study covered 55 workers from three different E&E companies, SOMO (2013) finds most of them are demanded to work 12 hours a day with one day off a week which is difficult to refuse. In another study, Verité (2014) finds that among the 495 respondents in the E&E industry, 65% of them have to work 12 hours a day on average, and 5% of them have to work seven days a week to meet the demands of the orders.

Although low labor standards are not equivalent to forced labor, but it is important to find out whether it is pure economic needs or threat and coercion that keeps the workers from leaving in the jobs with such a low labor standard. ILO (2019a) also states that if the government and firms cannot make any effort to improve the low labor standards, there is a risk of aggravating to forced labor.

4.2 Forced labor issues in the E&E industry: law vs. practices

Although Malaysia signed and ratified the ILO Forced Labor Convention in 1957, forced labor issues still exist by far. In this section, the issues of forced labor in the Malaysian E&E industry are presented through the comparison between relevant Malaysian laws and practice in reality.

To discuss the existence and the extent of forced labor in the E&E industry, I should bring back the ILO definition of forced labor. ILO defines forced labor as “*all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily*” (ILO, 1930). Human trafficking, slavery and other slavery-like practices are regarded as forced labor as well (ILO, 2012a). In addition, there are 11 indicators help to identify the existence of forced labor: abuse of vulnerability; deception; restriction of movement; isolation; physical and sexual violence; intimidation and threats; retention of identity documents; withholding of wages; debt bondage; abusive working and living conditions; excessive overtime (ILO, 2012b). ILO points out that these 11 indicators have covered the main elements of a forced labor situation. In some circumstance, a single indicator is enough to point out the existence of forced labor while in other cases, several indicators may be needed.

In general, foreign workers in the E&E industry are more vulnerable to forced labor compared to local workers. Because of language barrier, the relative unfamiliarity of the knowledge of local laws and the lack of social network, migrant workers have higher possibility of being the victim of forced labor. Verité (2014) conducts a case study in the Malaysian E&E industry and finds that among 139 victims trapped in forced labor, only one of them is Malaysian worker. Thus, this section focuses on the foreign workers in the E&E industry.

According to the dual market theory (Massey et al., 1993), labor market is separated into two categories: the primary sector in which the jobs have dignity, well-paid wages, clean and safe working condition and job security, the second sector in which the jobs have low social status, low wages, poor working conditions and poor jobs security. In Malaysia, foreign workers are divided into two groups based on their salary as well: those who earn more than US\$690 monthly are classified as expatriates (high-skilled workers), otherwise they are considered as contract workers (low-skilled workers) (Kaur, 2008). The term “foreign workers” discussed below refers to contract workers, most of which are employed in the “3D” (dirty, dangerous, and difficult) jobs in the E&E industry.

4.2.1 Immigration policies

4.2.1.1 Immigration Act 1959/63

To manage immigrant inflows, the Malaysia government stipulates that only citizen and those (a) holding a valid Entry Permit or valid pass, (b) being endorsed as the company of holder of the Permit, (c) holding a valid pass or (d) being exempted by the Director General are allowed to enter Malaysia (Immigration Act 1959/63, (Act 155)). Other than these circumstances, any attempts to enter Malaysia are regarded as illegal immigration. In August 2002, the law was amended which criminalizes non-compliance with the regulations. Offenders are subject to arrest if caught by authorities or the People's Volunteer Corps (Harkins, 2016). In addition, both employers who hire undocumented migrants and the migrants themselves are fined up to US\$2300, prison sentences extending to five years, whipping of no more than six strokes or deportations (Kanapathy, 2006).

4.2.1.2 Amnesty policy

Being confronted with the immigration inflows, the Malaysia government has launched several initiatives in order to balance labor shortages and the "illegal immigration" issue since 1992. Although these initiatives have provided documents to hundreds of thousands of workers, the number of foreign workers without legal status remains high because of the lack of full participation (Harkins, 2016). In 2001, the MOHA launched an amnesty program called the 6P program to address the issue more comprehensively. The program includes 6 stages: registration (pendaftaran), legalization (pemutihan), amnesty (pengampunan), supervision (pemantauan), enforcement (penguatkuasaan) and deportation (pengusiran) (Augustin & Lee, 2012). With these 6 stages, the government hopes to enlarge the legal labor pool as large as possible.

4.2.1.3 The levy system

In order to work in Malaysia, foreign workers must be issued work permit before their arrival. The work permit can only be applied by the employers on behalf of the migrant workers.

To apply the work permit, the process is complicated. Before the hiring process, the employers must apply the quota-based permission through the One-Stop Center, which is composed of the MOHA, the Ministry of Human Resources, and the Ministry of Trade and Industry. In order to

protect local employment, the Malaysian government uses this quota-based approach to control the number of unskilled or semi-skilled foreign workers.

After having the approval letter from One-Stop Center, the levy payments must be paid upon the application of work permit. Based on the latest revision, the levy for the E&E industry is US\$425 annually (MOHA, 2015). The levy system was introduced in 1992 as a tax for the development of public utilities and public services. From 1992 to 2008, the levy was paid by the migrant workers. Since it was paid upon the application, it had to be paid by the employers in advanced and deducted from the workers' monthly salary (Kanapathy, 2001). In 2009, in order to control the increased number of foreign workers and encourage employers to hire more local workers, the levy payment was shifted to employers. On April 9, 2013, the Department of Labor in Peninsular Malaysia issued a General Authorization of Employee Payroll Deduction which shifted the levy payment back to the foreign workers again and reinstated the monthly deductions made by the employers. Although the government stated that the levy would not be a financial burden to the workers compared to the increased salary under the Minimum Wage Order (The Star, 2013), the payment was still a significant sum for workers which account for nearly 14% of the minimum wage. In 2016, the government failed to raise the levy payment rates due to the strong protest. In 2018, the levy charges were transferred to the employers again under the Employer Undertaking Policy in order to limit the employment of foreign workers to 15% of the total employment rate (Lokman, 2017).

4.2.2 Forced labor practices

As the supreme law of Malaysia, Federal Constitution (1957) has set out the fundamental liberties of a person in Malaysia. In the constitution, article 6 forbids all kinds of forced labor and slavery except for compulsory service for national purposes. This article can be implied to everyone in Malaysia, including citizens and non-citizens (ILO, 2019b). In reality, however, the practices of forced labor in the Malaysian E&E industry are still widely existed.

The outsourcing system plays an important role in the forced labor issues of the Malaysian E&E industry. As mentioned in section 4.1.2, multinationals in the E&E industry are in need of a large number of foreign workers. Nowadays, many multinationals prefer to hire foreign workers through outsourcing agencies. By using the outsourcing agencies, multinationals are able to do the recruitment work efficiently with the minimum cost. Posthuma (2010) indicates that by

outsourcing, multinationals save the cost of retaining stable work force as well as have no responsibility for those workers with whom they have no direct employment relationship in host countries and escape the pressures of social compliance and the reach of regulation and monitoring.

The outsourcing agencies have an efficient network around Malaysia, with both public and private sectors. In addition, according to the regulations of Malaysia's MOHA, they are also allowed to cooperate with independent agents and intermediaries from the neighboring countries which are recognized by the MOHA as approved sources.

The E&E industry has hired foreign workers through outsourcing agencies for more than 20 years. Before 1995, it was illegal to use the outsourcing services except for recruiting domestic workers. Later on, the prohibition was lifted because the authority found that it has become an unstoppable trend (Kanapathy, 2006). In 2005, MOHA approved the implementation of the "Foreign Worker Supply and Management System according to the Outsourcing Method" which stated that companies which hired fewer than 50 foreign workers to use outsourcing agencies. In 2012, the amended Employment Act 1955 legalized the term "contractor for labor" and defined it as "*a person who contracts with a principal, contractor or sub-contractor to supply the labor required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor*" (Employment Act 1955, (No.265)).

The legalization of outsourcing agencies means that firms can either sign the employment contract directly with the workers or sign the service contract with a supplier of labor. Nowadays, more and more companies prefer the latter one in which the outsourcing agencies are the employers of the workers. Malaysian Employers Federation (2014) found that among the 101 firms in the survey, 85% of them tend to recruit foreign workers through outsourcing agencies. The legality of outsourcing agencies as employers is also highlighted in the act: "*employers means any person who has entered into a contract of service to employ any other person as an employee and includes the agent, manager or factor of such first mentioned person*" (Employment Act 1955, (No.265)). As mentioned in section 4.2.1, foreign workers are tied to their employers due to the structure of immigration policy. As such, in many cases, foreign workers in the E&E industry are tied to the outsourcing agencies. Except for the contractual responsibility for the hiring and recruitment process, the outsourcing agencies are also in charge of the external management including

orientation courses, accommodation, transportation between living areas and worksite, mandatory medical support, work supervision and payroll management. In the E&E industry, the outsourcing system has led to a series of forced labor practices. Among them, deception, debt bondage and passport retention are typical and common.

4.2.2.1 Deception

Among the foreign workers in the E&E industry, some of them were aware of the wages, working hours and working conditions before they arrive in Malaysia. However, many workers who come to work in Malaysia were deceived by the recruiters. As one of the indicators of forced labor, deception means that the promised conditions of work are failed to deliver to the workers upon their arrival in Malaysia.

As mentioned, the outsourcing agencies have connections with independent agents and intermediaries from the sending countries. In many cases, deception first happened at the village level of the sending country. Usually, those agents promise the workers with generous working conditions. In a recruitment video published on YouTube, the agent was recruiting electronic mobile parts packing workers in India. The job needs to work 8.5 hours with a monthly salary from US\$330 to US\$395 (Royal Information Service, 2018). But what the reality is doubtful. Verité (2014) found that during the recruitment process, 22% of the respondents were not told about the real conditions of their jobs in the E&E industry. The deceptive information includes job duties, salaries, working hours, working conditions, location of the worksites, quality of the housing, transportation etc.

Another deceptive situation happens due to language barrier. When signing the contracts, the workers are asked to sign a contract written in Malay and English, languages that none of them understood. Once the workers begin to work, they would find that they are trapped in the exploited conditions and have no ability to leave as their livelihoods in Malaysia depend on their employers. If the job is not as promised, the workers can either carry on or go back to their countries, which makes them trap in poverty again.

4.2.2.2 Debt bondage

Although debt bondage is not included in the ILO definition of forced labor, it is still a form of forced labor as it is one of the forced labor indicator. United Nations (1956) defines debt bondage as “*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*”. In the Asia and Pacific region, debt bondage is the main form of forced labor. In the Malaysian E&E industry, debt bondage mainly comes from the high recruitment fee.

As mentioned in section 4.2.2.1, most of the multinationals in the E&E industry hire foreign workers through outsourcing agencies. Usually these agencies tend to charge high recruitment fee on the grounds of applying travel documents, handling fee or expediting job applications. The amount of the recruitment fee is varied according to the sending countries which is often exceed legal limits set by sending countries (Amnesty International, 2010).

Based on the background of the foreign workers, many of them are too poor to pay such high fees that they have to take a loan or advance salary. Although Malaysia has ratified the Protection of Wages convention in which article 9 stated that “*any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labor contractor or recruiter), shall be prohibited*” (Protection of Wages Convention, No.95), such practices are still common in the E&E industry. Verité (2014) finds that among 434 respondents in the E&E industry, 92% of them have paid the recruitment fee and 77% of them pay for the fee by taking a loan. In another study, SOMO (2013) finds that all of the respondents in the E&E industry used their wages to directly pay back a loan and/or send back to home countries to repay family debts. Due to the high interest rates and low-to-minimum wages, it will take a long time to pay off the debts. Amnesty International (2010) explains that for a worker who takes a loan of US\$1380 with 15% rate of interest, he needs four years to pay back the loan. In other cases, the workers may have to work without salary for the first few months to cover the recruitment fee.

4.2.2.3 Passport retention

Passport retention is strictly prohibited in Malaysia, “*any person who ...without lawful authority, has in his possession any passport or internal travel document issued for the use of some person other than himself... shall be guilty of an offence*” (Passport Act 1966, No. 150). Passport retention also is an indicator of forced labor because it restricts freedom of movement. However, such practice is entrenched within the E&E industry.

Due to the frequently changing and complicated immigration policies, it is costly and complicated for the employers to hire foreign workers. In addition, the nature of the E&E industry makes foreign workers become critical means of production. Thus, in order to defend their own interests, many employers withhold the workers’ passport as a secure measure to prevent the workers from running away. Passports are often retained upon the workers’ arrival in Malaysia. In a survey, over two-thirds of the employers admitted that they have retained the identity documents of the foreign workers (Malaysian Employers Federation, 2014). In some cases, some of the employers stated that they retain the workers’ passport so as to avoid the risk of getting lost, stolen or damaged (Earth Worm, 2019). Nevertheless, these excuses cannot change of the essence of restricting the workers’ freedom of movement.

4.3 Ethical considerations

4.3.1 Business ethics in the E&E industry

It is reasonable to state that the first goal of business is to make every effort to maximize economic efficiency. As mentioned in section 3.1, this goal is separated from moral principles. De George (2011) calls this separation “*the myth of amoral business*”. Traditionally, moral principles are in an unfavorable position in business because it is much easier and more comfortable to deal with money. It does not mean business is immoral, it is just amoral, which is, not taking moral principles into account. From the view of act-utilitarianism, if the Malaysian E&E industry fail to make profits or make less profits, it will have negative effects not only on government revenue which is used to develop the country, but also on the livelihoods of those who are working in the industry. The E&E industry has provided over 320,000 employment opportunities (Ministry of International

Trade And Industry (Malaysia), 2017). As such, the livelihoods of more than 320,000 people and their family will be affected if the E&E industry is under poor management.

However, the success of the E&E industry should not be based on the use of forced labor. It is impossible to aggregate all values and preferences with money. For those victims of forced labor in the E&E industry, the loss of freedom, or the pain that coercion and debt bondage brought to themselves and their families are countless with money. In the United State Trafficking in Persons report in 2014, Malaysia was ranked as tier 3 due to its severe circumstance of forced labor (U.S. Department of State, 2014). In 2015, more than 130 graves suspected of being victims of human trafficking were found on the border between Malaysia and Thailand (Azmi, 2019). These are the losses that cannot be measured by money. Your interests are important, but so are the others. In addition, from a rule-utilitarian perspective, there are differences between happiness and contentment. The so called “happiness” of the employers which is based on the pain of the victims of forced labor cannot even count as the real happiness. The practice of “the greatest good for the greatest number” should be based on moral rules that may bring the most benefits to the most people.

There is a clear distinction between ethics and law. It is common that in wage negotiation, the employers have initiative in determining the amount of wages as they have much more power than the employees. Although many foreign workers in the E&E industry earn more than the minimum US\$255, it is not even half of the minimum living cost of US\$624 (Chong & Khong, 2017; Ramasamy, 2018). It is not illegal to pay those foreign workers less than the minimal living wages because the amount is over the minimum wage. But it is unethical because in the E&E industry, foreign workers are obviously in the less advantage position in regard to wage negotiation due to their lack of access of local knowledge and language barriers etc.

As discussed in section 2.4.3, the existence of wage differentials is reasonable due to the nature of the employments themselves and government policies. However, there should be compensation for those jobs which have undesirable characteristics. In the E&E industry, most of the foreign workers are employed in the “3D” (dirty, dangerous, and difficult) jobs. It is unethical if they are not paid offering additional amount of income to compensate the disadvantage of the nature of

their jobs. To create a sense of shared values among employees, managers in the E&E industry should increase the attention on the ethical values in business judgement.

4.3.2 Respect for humanity of the workers

As discussed in section 3.2.1, Our existence is not a pure object that is used by others, we are the ends in ourselves so that we can fulfill our goals and ambitions. We should also treat other people as ends in themselves regardless any circumstances. One should never be treated as the mere means because he is human and has dignity. In regard to the Malaysian E&E industry, at government level, the loosen of labor standards including the minimum wage standard, the access to labor union and excessive work hours is used as a means to attract FDI. At company level, forced labor practices which are derived from outsourcing recruitment such as deception, debt bondage and passport are used as a means for their employers to generate profits same as other machines.

In practices, although the workers are entered into the employment relationship with the outsourcing agencies, they still have to comply the rules in the worksites and are under directly supervision of the factory management. However, as they are outsourced workers, they do not have the rights to join the labor union or seek for collective bargaining.

These multiple dependencies upon the outsourcing agencies is a paternalistic relationship (Barrientos, 2013). On the bright side, the foreign workers' lives in Malaysia are well organized that they do not need to worry about how to survive in the Malaysia. However, once the working conditions become progressively worse, they have no way to escape. These multiple dependencies are likely to creates the vulnerability to exploitation. The multiple dependencies "*flourished on rent-seeking behavior...spawning a range of abusive practices*" (Devadason & Meng, 2014). N. Phillips (2011) also stats that the most severe forms of exploitation are likely to occur in the outsourcing practices. In order to maximize the economic efficiency, firms are likely to exploit the foreign workers. It is reasonable to achieve a goal by using other people as a mean, but it is immoral to treat people as the mere means. The prerequisites of using other is that they agree to being used.

As discussed in chapter one, coercion is an element of forced labor. Coercion means that the victims are manipulated which lead to the failure of conducting their free will. In the E&E industry, coercion is related to debt bondage, passport detention.

In terms of debt bondage, there are two factors that compound the issue. At the government level, the levy charges contribute to the reduced wages. Although foreign workers do not have to pay the levy anymore, employers continued to pass on the cost to the workers in various ways such as the reduction of wages. As such, it takes much more time for the workers to pay off the debts. At the company level, many workers reported that when the employers withhold their wages, instead of paying back the wages, the employers often offer a loan to the workers. As the loans accumulated, it is difficult for the workers to recount the precise amount of the debts.

In regard to passport detention, Verité (2014) finds that most of the sampling workers in the E&E industry have difficulties to get back their passports. If they want to get back or “borrow” their own passports, they will have to pay a fee as deposit or guarantee, which obviously is another financial burden to them. In addition, nearly two-thirds of them stated that their movement is restricted because their passports are held by their employers. The term “freedom of movement” refers to both the freedom of walking around and the freedom of leaving the employers. Despite of the restriction of freedom of movement, passport retention also becomes a tool for the employers to threaten the workers to work overtime.

In addition, deception in the recruitment process should also be taken into account in ethical consideration. From Kant’s view, one cannot make his/her decision if he/she is deceived. In this circumstance, this person has lost his/her positive freedom as acting autonomous. Once the workers are deceived, they lose their rights of freedom to choose and informed consent. As ILO said, “*many victims enter forced labor situations initially out of their own choice, albeit through fraud and deception, only to discover later that they are not free to withdraw their labor*” (ILO, 2009). If the workers had known the reality, they would never accept the offer.

Meanwhile, it is also immoral for the recruitment agencies to deceive the workers. Only reason that is done for the sake of the motive of duty has moral value. By deliberately offering false information on working condition, wages, the type of work, housing and living conditions or job location, recruitment agencies are not acting for the sake of social responsibility. Rather, they are doing so for their self-interests. Likewise, even though those foreign workers in the E&E industry can earn some money to support the likelihoods of themselves and their family after what they

have suffered, forced labor practices are still immoral because such practices are grounded in a self-seeking purpose from the employers.

4.3.3 The golden mean between profits and ethics

Admittedly, the nature of business is pursuing profits. Doing business is obviously not equivalent to doing charity. As discussed in section 3.2.3, making profits is the distinctive activity of business. Only those who can make profits in business have virtue. However, it should be noticed that virtue is the golden mean between two extreme states, one of excess and the other of deficiency (Hauser, 1999). In regard to the E&E industry, making profits is the golden mean between poor management and greedy. Judging its performance that mentioned in section 4.1.1, it is obviously going way far from poor management. Rather, the forced labor practices indicate that the E&E industry is in an excessive situation, which is suppressing labor costs and labor standards for generating more profits.

In business activities, the most important virtue is justice. As mentioned in section 3.2.3, Peterson and Seligman (2004) consider there are three strengths in justice: citizenship, fairness and leadership. On one hand, foreign workers in the E&E industry is as equal as the managers that should be no forced labor practices in regard to exploitation and coercion. On the other hand, managers in the E&E industry should play their roles perfectly in bringing more profits by industrial upgrading and modernization programs. Currently, the Malaysian E&E industry is still in the lower tier of the global supply chain which is still engaged in the stage of low value activities, particularly in particularly mass assembly, packaging and testing (Wilkinson et al., 2001). Instead of suppressing foreign workers, the E&E industry should focus more on the development of research and design process.

At last, forced labor in the E&E industry is also the violation of corporate social responsibility. The E&E industry is a part of the society and have connections with other social individuals. Instead of pursuing profits without moral limitation, companies should take their corporate social responsibility which fulfill their civic duties.

4.3.4 The levy system

All in all, the levy system, combined with the Immigration Act 1959/63 and the amnesty policy have put foreign workers in the risk of becoming victims of forced labor, either by depriving freedom of choosing employers, or menace and fraud. Although the intention of these policies means to regulate the employment and conditions of the foreign workers rather than putting them in an exploited position, as long as the misleading and discriminatory policies cannot be improved, foreign workers in Malaysia are vulnerable to forced labor.

4.4 Economic efficiency and justice

4.4.1 Distributive justice in the E&E industry

As discussed in section 3.3, there are two principles of justice based on Rawls' justice theory justice as fairness. The first principle is the equal liberty principle. Everyone in this society should have equal basic liberties including freedom of thought, liberty of conscience, political liberties, freedom of association, freedom specified by the liberty and integrity of the person, and rights and liberties covered by the rule of law (Rawls, 2009i).

In regard to the Malaysian E&E industry, there are a few areas that violate this principle. For example, at company level, there is limited access to labor unions for the foreign workers. As most of them are recruited by outsourcing agencies, they are actually not members of their workplaces. About 74% of the foreign workers are prohibited in joining labor unions (Malaysian Employers Federation, 2014). At government level, the Trade Unions Act of 1959 and the Industrial Relations Act of 1967 have restrictions on the union's activities. These combined oppressions of freedom of association have deprived the collective bargaining rights of the foreign workers which put them in a passive position in regard to the protection of labor rights.

The second principle of Rawls' justice theory is the difference principle. It allows the existence of inequality that some members in the society have more income or power, as long as the least advantage can also benefit from the inequality. In the context of economic globalization, it allows developed countries hold more power and wealth because this incentive drives global competition which makes our world better. However, a justified structure should be those under-developed

countries can also benefit from the competition rather than being oppressed, like FDI and “race to the bottoms” in terms of labor standard.

The development of the wealthy countries is not only based on moral arbitrariness such as geographical advantages, resource advantages and human capital advantages. It is also nourished by the sacrifices of the developing countries. In the context of economic globalization, we should not only encourage a fair competition, but also take care of the least advantage countries. Although the E&E industry have a great share in global market, its development model is based on CEM. As discussed in section 4.1.2, CEM is “*less interested in developing local capabilities and more interested in exploiting the pre-established functions performed by local firms and their workers*” (R. Phillips & Henderson, 2009). While FDI and multinationals are focusing on how to complete more orders faster with lower costs, maybe they should also think about the investment on the development of human capital in host countries.

At microeconomics level, ideally, the Malaysian government should focus on policies for income redistribution. However, in reality the government has little concerns on the foreign workers. In order to protect local employment, the government has strict limitation on the number of foreign workers. According to the 11th Malaysia Plan, the employment of foreign labor will no more than 15% of total workforce in the country by 2020 (Tay, 2019). As such, the government has implied policies to restrict the number of foreign workers. The levy system that mentioned in section 4.3.2 is one of the examples.

Regardless of who is responsible for the levy charges, foreign workers are de facto bearer. If the levy charges are on the workers’ side, employers will be entitled to make deductions from wages, which makes the low salary even much lower. Besides, the levy is not the only one government fee applied to employment of migrant workers. According to Malaysian Employers Federation (2014), visit pass, visa fee, processing fee, security bond, foreign worker compensation scheme, health insurance premium and medical examination have to be paid during the employment process as well. Even after the new implementation in 2018, employers continued to pass on the cost to the workers in various ways such as the reduction of wages, worse living condition etc. Besides, except for the application of work permit, foreign workers also have to pay the levy tax when they renew their work permit. Every year, this financial burden forces many foreign workers

give up their legal status to evade the levy charges (Kassim & Zin, 2011). As such, rather than fulfilling the original intention of less dependency on foreign workers, the levy system would only foster more serious exploitation on the foreign workers.

In addition, the levy also limits the workers' freedom of resignation. So far, there will be no refund of the levy if the workers pre-terminate the contracts. As the levy is paid by the employers upfront, workers are tied to employers before they can pay off the balance of the levy charges. In a study of the forced labor issues in the Malaysian E&E industry, Verité (2014) finds that among the commonly cited barrier to pre-termination of contract, levy cost is regarded as mostly considered factor, followed by passport retention, forfeiting of wages, and the requirement to pay an illegally high fine. About 31% respondents in the study state that they cannot pre-terminate the contracts if they fail to pay off the balance of the levy. The impossibility of leaving an employer is a characteristic of forced labor because it puts the foreign workers in a position of working voluntarily. Admittedly, it is obliged to comply with law and regulations and the existence of the levy is not an indicator of forced labor, however, the levy charges which is based on protectionism deprives the freedom of choice which the foreign workers should have enjoyed.

At last, these frequently changing and complicated policies have resulted in the increased cost of hiring foreign workers. It is inevitable that firms would suppress labor costs to gain price advantage, which makes the foreign workers become potential victims of forced labor. Instead of putting foreign workers in the risk of forced labor, the Malaysian government should take care of them as they have also contributed to the development of the E&E industry.

4.4.2 Procedural justice in the E&E industry

As discussed in section 3.3.2, it is rare to have perfect procedural justice in reality. Rather, although there are good wills, we often face all sorts of problems that at last, it turns to be an imperfect or an unjustified result. This injustice does not come from the fault of the law makers, rather, it is the occasional combination of certain circumstances that thwarted the purpose of legal norms. In other words, I suggest that in reality, often there are an independent standard for justice, and a procedure that looks like can guarantee to justice, but also there are arbitrary factors that lead to failure of procedural justice. The immigrations policies in Malaysia fit into this circumstance.

In regard to the Immigration Act 1956/63, its original purpose is to regular immigrations in Malaysia. However, the term “illegal immigration” is too vague that it does not take the specific details into account. Based on the immigration policy, a variety of groups are considered as illegal immigration: those enter without valid documents; asylum seekers, refugees and victims of human trafficking; those admitted with valid documents but breach the terms of admission or authorization; those whose working permit is unjustifiably cancelled by employers; those whose working permit has expired; those with counterfeit or forged documents; those whose documents were obtained fraudulently (Kassim & Zin, 2011; Santhiago, 2005). Apparently, it does not make sense to define those who are facing unfair and unsafe situation as illegal immigration.

In terms of the workers in the E&E industry, the vague definition put the foreign workers into the risk of arrest, prosecution, indefinite detention and repatriation. Meanwhile, they are also in a vulnerable position as their visa application and renewal are tied to their employers. According to the policy, the work permit is under the sponsorship of a specific employer which does not allow foreign workers to change jobs without amending the sponsor (Robertson Jr, 2009). The employers also have the right to decide whether renew the work permit or not. If the workers choose to return home before the contract expires, they cannot leave the Malaysia legally before they have the check-out memo which is issued by their employers (Zainal & Chu, 2019). For those who want to change job, they also need the memo to return home and enter Malaysia again under with a new work permit.

In regard to the Amnesty program, the leakage of privacy and dishonestly of law enforcement officers have obstructed the success of procedural justice. The Amnesty program is controversial from the very beginning. During the registration stage, biometric data like the personal photo, voice record or fingerprint need to be collected which raises the workers’ concerns of privacy leakage and fear of repatriation and refusal once detected and biometrically identified (SOMO, 2013).

In addition, some agents exploit these workers by charging excessively high handling fee and failing to complete the program (as high as US\$690- US\$1150 in some cases) (Harkins, 2016). At the same time, some civilians take advantage of these workers’ fears and vulnerability to commit fraud by imitating immigration officers or police (Verité, 2014).

The dishonestly of law enforcement officers also reflects on corruption. In a migrant workers' study conducted by Al Jazeera English (2017), it turns out that the way of trafficking migrant workers is under the cooperation between human smugglers and officers in the ministry of human resources and social security and customs in the airports. For a long time, bribe-taking and fraudulent issuance of visas are common problems among immigration officers especially at the Kuala Lumpur International Airport (Reuters, 2008). In 2016, Deputy Prime Minister Datuk Seri Ahmad Zahid Samidi estimated that more than 1500 immigration officers were involved in corrupt practices in the airport (Coverage, 2016). It will be impossible to enforce legislation if the law enforcers are a part of the illegal dealing.

All in all, the failure of procedural justice has put foreign workers in the risk of becoming victims of forced labor, either by depriving freedom of choosing employers, or menace and fraud. In these cases, we should ask of a procedure if it treats the people involved justly, for example by giving them adequate opportunities to propose their claim according to actual condition instead of pursuing a one-size-fits-all policy (D. Miller, 1999). Although the intention of these policies means to regulate the employment and conditions of the foreign workers rather than putting them in an exploited position, as long as the misleading and discriminatory policies cannot be improved, foreign workers in Malaysia are vulnerable to forced labor.

5. Conclusion

In this thesis, I have presented the theoretical framework on both forced labor and ethics and justice in regard to economic efficiency. By using this framework, I have analyzed two questions in regard to the forced labor issue in Malaysian E&E industry: (a) How are different perspectives on ethics (Kantianism, utilitarianism and virtues of ethics) reflected in laws and practices relevant to forced labor in the Malaysian E&E industry? Do certain practices conform to law but not to ethical standards and vice versa? What are the key similarities and differences between ethical perspectives in this context? (b) How do processes and outcomes relevant to forced labor in the Malaysian E&E industry violate basic tenets in the different perspective on justice? In what ways do ethics and law feed into these outcomes?

Forced labor is a term that goes throughout mankind history in various form and often simultaneously existed in all continents. It has existed since Ancient History in the form of bonded labor. In the early 20th century, most of the researches of forced labor focused on the labor camps under certain totalitarian regimes. Currently, the ILO definition on forced labor is commonly used, it consists of three elements: (a) forced labor can happen in all sectors; (b) forced labor is a menace of penalty; (c) forced labor is coercive. In addition, ILO has also developed a set of indicators to clarify the definition. The ILO also has a broader definition on forced labor which includes human trafficking and slavery. Empirical studies on forced labor shows that FDI and outsourcing are related to forced labor in the context of economic globalization. There studies that also focus on wage differentials and compensating differentials, and corruption and law enforcement. By using this framework, the nature of the Malaysian E&E industry and forced labor practices such as deception, passport retention and debt bondage are presented. The E&E industry has developed since 1950s and now it is playing a leading role in global market. Its production model determines that it has low minimum wage standard, limited access to union and excessive work hours. The forced labor issues are mainly derived from its outsourcing recruitment process.

In terms of ethics and economic efficiency, there are three different perspectives on ethics (Kantianism, utilitarianism and virtues of ethics). In utilitarianism, “the greatest good for the greatest number” is not purely the consideration of accumulating happiness. Rather, it suggests that there are different qualities in happiness that we should always act morally. Thus, it would be a failure if a forced labor supporter argues that forced labor has benefits on most of us. As for Kantianism, it requires us to respect humanity and dignity. It is immoral to use a person as a mere means to achieve a goal. In regard to forced labor in the E&E industry, it is immoral that multinationals are using foreign workers as a mere means to generate profits. As for the virtue of ethics from Aristotle and his followers, virtue is a golden mean between two extreme states. In the E&E industry, the golden mean should be the balance point between poor management and greedy. On one hand, it is immoral to use forced labor, on the other hand, the E&E industry should focus more on industrial upgrading program in global supply chain.

At last, the justice and economy efficiency focus on Rawls’ theory of justice which is *justice as fairness*. From Rawls’ view, he allows unfairness in the society as long as the least advantage can also benefit from the unfairness. However, immigration policies and governmental practices in regard to forced labor in the E&E industry has failed to meet this inquiry.

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