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**EMBRACING THE ISLAMIC PRINCIPLES OF SOCIAL  
JUSTICE IN THE MALAYSIAN TRADE  
UNION MOVEMENT**

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**ABSTRACT**

The notion of social justice in Islam requires fairness in allocating and distributing goods to all members and groups in society. In the context of employment, an employer is required to treat all workers equally and pay their dues suitable with their skills and capabilities. A trade union is an important component under the tripartite system of industrial relations that is imperative in representing workers to demand or improve their working conditions. Although there is legal recognition accorded to trade unions in Malaysia, various state-imposed restrictions have curtailed trade union actions in representing workers

for better and equal treatment at the workplace. This paper examined whether the current trade union legal framework in Malaysia is in concord with the Islamic principles of social justice. The objectives of this research are two-fold: first, to examine the principles of social justice in Islam and second, to integrate Islamic principles of social justice into the Malaysian trade union legal framework. In order to fulfil the objectives of this study, it employed the literature research method and referred to Islamic texts (the *Quran* and hadith). The study has revealed that the restrictive legal system of trade unions in Malaysia contradicts the concept of social justice as embodied in Islamic principles. Therefore, there should be amendments to the legal framework of trade unions in Malaysia to guarantee the exercise of full rights of trade unions in the state and ensure consistency with shariah.

**Keywords:** Trade unionism, Islamic law, industrial relations, social justice, *shariah*.

## INTRODUCTION

Islam comes from the root word, meaning “peace” and “submission.” It is a religion that applies to all humankind, regardless of gender, race, or status. Moreover, it works as a guideline for humankind in facing this life and the hereafter. The *Quran*, which contains the words of God and the *Sunnah* (words and deeds of the Prophet Muhammad) form the basic guidelines for humankind in their aim towards a just and welfare society. Justice in Islam is a value and an obligation of man as the vicegerent of God to establish justice in society. In the context of labour relations, Islam emphasises a peaceful relationship between an employer and his workers, requiring the employer to be kind and tolerant when managing his workers (Khan et al., 2010). Notably, a trade union is a movement that is recognised and compatible with Islamic values due to its medium of fairness and justice in the labour framework. The International Labour Organization (ILO) defined a trade union as a workers’ organisation constituted for the purpose of furthering and defending workers’ interests and regulating the employment relationship through the direct process of collective bargaining with management (ILO, 2019). The issues that are resolved through collective bargaining include wages, hours of work, holiday

entitlement, and other issues at the worker's workplace. In short, a trade union plays a vital role as a voice mechanism of the workers to enhance their well-being at work. In furthering a trade dispute between an employer and a worker, the law allows for strikes and picket action to pressure the employer to fulfil the worker's demands. Collective bargaining is a mechanism employed when workers want to improve the terms and conditions of their employment contracts. Following these actions, the trade union acts as a representative of the workers.

In Malaysia, a trade union is a recognised legal independent association representing the voice of workers, as long as it complies with the rules and regulations on the registration and activities of a trade union. Furthermore, a trade union can represent workers in a collective bargaining action with the employer in an industrial dispute. However, trade unions in Malaysia have various restrictions imposed on them by the government, which have hindered the aims of trade unions for social justice. Consequently, trade unions face various challenges in exercising their rights. In collective bargaining, trade unions undergo lengthy and time-consuming recognition procedures, usually taking at least a year to complete a single recognition claim. For instance, the Electronic Industry Employees Union Western Region, Peninsular Malaysia (EIEUWR), struggled for four years before the trade union secured recognition (Hector, 2018). This situation constrains the workers as they must wait for a long period before negotiating with their employer. On top of that, Malaysian employers are taking advantage of the loophole in the trade union legal framework to prevent trade unions from exercising employees' rights. This fact is evident in anti-union actions by employers, such as delay in recognising trade unions, refusing recognition claims on unreasonable grounds, and discriminating against trade union members in their organisation. In one case, the employer dismissed a leader of EIEUWR on the grounds of acting contrary to company policies during the time when the trade union was waiting for recognition from the employer (Hector, 2017). These anti-union actions by employers, as well as the restrictive rules applicable to the trade unions, have obstructed access to social justice. In fact, the trade union in Malaysia is currently experiencing a decline in its density. According to the ILO statistics, the trade union density in Malaysia experienced its highest density in 2006 (10.5%) and the

lowest density rate (8.8%) in 2016.<sup>1</sup> Most importantly, economic changes, political ideology, and legislation hinder union movement in certain countries, which have directly influenced the countries' trade union density (Kuruvilla et al., 2002).

As mentioned, this study has two objectives: first, to examine the principles of social justice in Islam and second, to integrate the principles of social justice in Islam into the Malaysian trade union legal framework. The first part of this study examined the ideas, objectives, and methods in the principles of social justice in Islam and the significance of the trade union movement as a medium to achieve social justice between the employer and worker. The next part of this study analysed the issues and challenges in the legislation that has curtailed the trade union movements in Malaysia. The final section of the study proposed reforming the trade union legal framework to improve the accessibility of the trade union movement in representing the workers by assimilating the Islamic principles of social justice in its framework.

## RESEARCH METHOD

This study employed qualitative research and adopted a purely legal research and doctrinal approach. The study also examined relevant legislation relating to trade unions in Malaysia, namely the Trade Unions Act 1959 (TUA 1959) and the Industrial Relations Act 1967 (IRA 1967) including other relevant sources, such as textbooks, journal articles, and reputable websites. The main Islamic law sources for this study were primarily from the *Quran*, *Sunnah*, and the works of *fiqh*. Besides, this study conducted a case study method to analyse court cases involving trade unions in Malaysia.

### The Principles of Social Justice and Work in Islam

Justice is a subjective matter with different meanings depending on the nation and culture. However, the concept of justice in Islam is different from the conventional view of justice. In Islam, there is an absolute source to measure whether there is real justice, i.e., in the *Quran* and the prophetic tradition. In Islam, justice must be served

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<sup>1</sup> ILO Statistics on density of trade union in Malaysia (only available up until 2016)

in every aspect of life and society, including economic, political, and social justice. Social justice in Islam aims not to reach absolute equality but to ensure fair distribution among society. According to Sayyid Qutb, attainment of social justice in Islam is by way of proving three elements: first, placing someone in a post or function befitting his capabilities. Second, making a decision befitting a situation and third, by placing wealth or property to those who rightly deserve them (Qutb, 2013). Clearly, realisation of social justice is possible if one pays due care and attention to the interests of the other party. The *Quran* has also presented sufficient verses that appreciate the concept of justice and its implementation. Evidence of this fact lies in the succinct definition of justice in the *Quran* and its wide scope and applications in a variety of situations, which is as follows:

Allah both commands you to render back your trusts to those to whom they are due; and when ye judge between people, that ye judge with justice.<sup>2</sup>

And in another verse;

O ye who believe, stand our firmly for Allah as witnesses to fair dealing and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just that is next to piety and fear Allah for Allah is well acquainted with all that you do.<sup>3</sup>

Upholding justice is the responsibility of human beings as vicegerents in this world. In order to maintain justice, everyone is responsible and answerable for his actions. In one hadith, Abdullah bin Umar reported that the prophet peace be upon him (*PBUH*) stated that:

Each of you is a shepherd and each of you is responsible for his flock. The Imam who is over the people is a shepherd and is responsible for his flock; a man is a shepherd in charge of the inhabitants of his household and he is responsible for his flock; a woman is a shepherd in charge of her husband's house and children and she is responsible for them; a man's slave is a shepherd in charge of his master's property and he is responsible

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<sup>2</sup> An-Nisa:58

<sup>3</sup> Al-Maidah:8

for it. So each of you is a shepherd and each of you is responsible for his flock.<sup>4</sup>

The *Quran* clearly validates help for the victims of oppression<sup>5</sup> and even encourages them to leave the land of oppression and migrate rather than tolerate injustice.<sup>6</sup> Moreover, Al- Subki wrote:

The construction workers should ascertain that the site which they build is clear of living creatures. Building works should not be rushed such that it entraps animals underneath or that unclean substances are mixed and used in construction materials. Textile workers and tailors should not make pure silk garments for men nor should they draw inappropriate pictures and designs on their cloths. Dyers and tannery workers must also avoid using unclean substances in their line of work. The use of blood in dyeing is one such example, which is unlawful. Transport workers and those who rent out animals for transport should refrain from being a party to a procurement of sin- such as taking people to gambling circles. Prison and governors and guards must allow Muslim prisoners to perform their Friday congregational prayers unless the judge has ordered against it. The judge is authorised to disallow it on grounds of public interest. They must also help prisoners whom they know to be innocent to seek their release. Weavers must ensure not to include pig hair in the cloth, which Muslims may use as prayer mats or wear during the performance of prayer. Water carriers must ensure that drinking water is clean of impure substances. It is a part of their Islamic duties to be watchful in this regard. Then it is added that if any of these classes of workers are misled or pressured by the corrupt and powerful elements of society to violate their professional ethics, they must resist the pressure in order to preserve their purity of character and piety.<sup>7</sup>

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<sup>4</sup> *Sahih Muslim*, 47:308

<sup>5</sup> *Asy-Syuraa*:39

<sup>6</sup> *An-Nisa*:79

<sup>7</sup> Al-Banna develops this theme by reference to the work of a eight/fifteenth century Muslim jurist, Taj al-Din ‘Abd al-Wahhab al-Subki (d.771), in particular his *Mu’id al-Ni’amwa-Mubid al-Niqam* (Harbinger of fortune and extinguisher of misfortune) where al-Subki spoke of the professions, their religious/ethical framework and what was unlawful in their activities. See Kamali M.H. (2011).

According to Kamali (2011), the concept of ‘*amal* in Islam relates to work undertaken with the intention of producing lawful benefits. In the work and economic perspective, ‘*amal* is defined as ‘physical or mental exertion by a human being made for generating economic gain, or for enhancing and developing an existing value (Kamali, 2011). Meanwhile, Qaradawi defined ‘*amal* as ‘self-exertion by a human being, either individually or in collaboration with others to produce goods or render a particular service (Kamali, 2011). Additionally, the concept of ‘*amal* is similar to an employment contract as it incorporates the elements of an agreement between one person who agrees to employ another as his worker and that other person agrees to serve his employer as a worker and in return, the worker receives monetary benefits. According to Jamal al-Banna, in comparison to the conventional concept of work, the unique characteristics of work in Islam is that it extends beyond economic conception to religious and spiritual dimensions (Kamali, 2011). The Islamic concept of ‘*amal* comes close to the pursuit of righteousness and worship. It is a duty for all individuals with the mental or physical capacity to perform work and, as vicegerent of God in this world, a trustee to build this world and harness its resources in the best possible manner. This fact is evidenced by referring to the *Quran*:

Those who have faith and do good works (*amilu al-salihah*) shall have blessings and great rewards.<sup>8</sup>

In another verse:

And say (you must) work, soon will God see your work, and so will His Messenger and the believers.<sup>9</sup>

In the performance of work, fair dealings, and justice for both the employer and the worker are essential to ensure cooperation between the two parties. The employer must recognise the worker’s rights at the workplace, and in exchange, the worker should perform his job accordingly. Moreover, Islam promotes the implementation of *ehsan* regarding employment relations by encouraging the value of goodness and generosity between the employer and the worker (Syed & Abbas, 2012). The workers should be paid a living wage to satisfy

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<sup>8</sup> Al-Fathir:7

<sup>9</sup> At-Tawbah:105

their basic daily needs to facilitate their devotion to work. Naqvi agrees that Islam places special emphasis on social justice in the issue of employment relations:

The Islamic perception of [the] socio-economic process is dynamic and its insistence of social justice is uncompromising. This is because injustice disrupts social harmony and, for that very reason, is unethical. To produce the best social structure, according to this view, man's economic endeavors should be motivated by a meaningful moral philosophy (Naqvi, 1994).

Besides, there is a hadith directing anyone who sees an evil to change it by any means, be it by oral admonishment, taking physical action, or through silent denunciation.<sup>10</sup> The goals and actions of the trade union to ensure justice and prevent exploitation from capitalists are therefore compatible with the goals in Islam. Furthermore, the formation of the trade union, which encourages the workers to express their need for justice at the workplace collectively, resides in a hadith where the prophet once said:

Support one another as if you were the component parts of a building.<sup>11</sup>

The *Quran* also permits any individual or group who feel oppressed to protest peacefully against the unjust acts of the employer. This is supported by a verse:

But indeed if any do help and defend themselves after a wrong (done) to them, against such there is no cause of blame.<sup>12</sup>

Islam supports the idea of tolerance and thus provides an avenue for the workers to enter into negotiations and bargain with the employers. This practice should be done in a civilised and peaceful manner, applying the concept of forgiveness and reconciliation. Additionally, the concepts of believing in the hereafter and the punishment for the wrongdoings and unfairness in their convictions are parallel with the basic teachings clearly highlighted in the following *Quran* verses:

<sup>10</sup> *Sahih Muslim*, Hadith 34: 200

<sup>11</sup> *Sahih Muslim*, Hadith 36: 250

<sup>12</sup> Ash-Shuraa:41



O ye who believe! Avoid suspicion as much (as possible): for suspicion in some cases is a sin: And spy not on each other behind their backs. Would any of you like to eat the flesh of his dead brother? Nay, ye would abhor it...But fear Allah. For Allah is Oft-Returning, Most Merciful. <sup>13</sup>

And do not turn your cheek [in contempt] toward people and do not walk through the earth exultantly. Indeed, Allah does not like everyone self-deluded and boastful.<sup>14</sup>

### **Trade Unionism**

Trade unions emerged during the Industrial Revolution era in Great Britain due to the unfair treatment of workers by the capitalists. The organisation concurrently alerted the capitalists to the power of the working class in protecting their labour rights. Since then, trade unions exist in most parts of the world but with different systems governing the movement. Trade union also plays a part in the tripartite industrial relations system besides the employer and the government, where it acts as a voice mechanism of the workers in promoting better working conditions. According to the Oxford Dictionaries (n.d.), a trade union is an organised association of workers in a trade, group of trades, or profession, formed to protect and further their rights and interests. Collins English Dictionary (n.d.), defined trade union as an association of workers formed to improve their incomes and working conditions by collective bargaining with the employer or employer organisations. Meanwhile, Black's Law Dictionary (n.d.), defined a trade union as a 'combination or association of men employed in the same trade (usually a manual or mechanical trade), united to regulate the customs and standards of their trade, fixing prices or hours of labour, influencing the relations of employer and employed, enlarging or maintaining their rights and privileges, and other similar objects.' On the other hand, the Cambridge Dictionary (n.d.), defined a trade union as 'an organisation that represents the people who work in a particular industry, protects their rights, and discusses their pay and working conditions with employers.'

There are various grounds why workers join the trade union. As specified by Solomon, the trade union can act collectively as a

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<sup>13</sup> Al-Hujurat: 12

<sup>14</sup> Luqman: 18

pressure group within the workplace to negotiate with the employer (Michael, 2000). Godard, in his survey of Canadian workers, cited that the workers participated in trade unions with the expectation that the trade union could be a formal mechanism to improve their economic standing by way of maximising wages and benefits and to obtain workplace democratisation by securing workers' rights and protection (Godard, 2013). Dawkins presented three factors that attracted workers to join a trade union: first, for economic equity, second, for workplace democracy, and third, for social justice (Cedric, 2009). On top of that, Maimunah viewed the workers as part of the trade union due to increased wages and benefits, job security, protection against unfair treatment, cooperation with fellow workers, and peer pressure (Aminuddin, 2013). Generally, the trade union is given a set of rights and responsibilities once it is legally registered. Trade unions have the right to take industrial action to protect its members. For example, the right to call for a strike and picket to show their dissatisfaction to the employers, the right to inspect the working conditions of the workers and the terms and conditions of the employment contracts of the workers, and the right to negotiate with the employer to represent their workers in the form of collective bargaining and action.

Nevertheless, *Fiqh* literature does not address the trade union in detail, as trade unions did not exist in earlier times (Kamali, 2011). Based on the works of early Islamic authorities, scholars, and contemporary scholars, there were already independent guilds established during the first six centuries of Islam's Golden Age, common in major cities such as Baghdad, Cairo, and Damascus. During that era, the merchants organised themselves into guilds, and their functions included supervising foreign merchants closely, settling disputes between merchants and customers and among the merchants, and fixing a 'just price' that was fair for both producer and customer. These guilds actively aided guildsmen who fell into poverty, providing financial assistance for the burial expenses of its members and looked after their dependents. Later, the majority of guilds became obsolete during the colonisation of the British, French, and other colonial empires' lands, replaced by the concept of the Western system of trade unions (Ali, 2005).

Even though trade unions are not explicit in Islamic sources, the activities of trade unions and the principles of freedom of association are consistent with the principles of Maqasid-al-Syari'ah. The five

elements of Maqasid as propounded by Al-Ghazali are the life of a human (*Nafs*), the intellect (*Aql*), lineage (*Nasl/al Ird*), faith (*Din*), and wealth (*Mal*). Organised in the form of a trade union with the objectives to represent workers' rights at the workplace and negotiate with the employer to improve the employment contract of workers fulfils the criteria of Maqasid, particularly with the concept of *Mal*. Additionally, security in employment is regarded as a property and must be dealt with fairly by the employer. Through trade unions, the security in the employment of the workers is to uphold and thus directly protect the wealth of the workers (Kamal & Mostafa, 2013).

In Islam, an organisation rests on *shariah* principles (Islamic Law), where the *Quran* (The words of Allah) and hadith (The words of *Prophet Muhammad; Peace be upon Him*) are the basis of the principles (Nik et al., 2013). The concept of a trade union comprises a group of employees to promote and protect the interest of its members with the objective of helping each other meet the characteristics of *shariah*. The goal of an organisation in Islam is to maintain and provide the real interests and needs of society by performing justice based on *shariah* principles. Besides, Islam promotes organising to express opinions and maintain rights. In this regard, the *Quran* provides:

You are the best of Peoples, evolved for mankind.  
Enjoining what is right, forbidding what is wrong, and  
believing in Allah. If only the people of the Book had  
faith, it was best for them: among them are some who  
have faith, but most of them are perverted transgressors.<sup>15</sup>

The *Quran* also provides:

Help one another in righteousness and piety, but help not  
one another in sin and rancor: Fear Allah: for Allah is  
strict in punishment.<sup>16</sup>

Islamic jurists have different views regarding the position of trade union in Islam. According to Gamal al-Banna, justice is the primary goal of trade unions, established to prevent exploitation of workers and enable workers to live a decent life (Al-Faruqi & Al-Banna, 1985). Al-Banna stated that mistreatment of workers by the

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<sup>15</sup> Ali-Imran, 3:110

<sup>16</sup> Al-Maidah, 5:2

employer often happens and that workers must accept the unfair terms of employment contract, which favours the employer. In Islam, if a party to a contract is in a greater position due to intellectual or physical advantage or economic position, a guardian entrusted with negotiating the conditions of the contract on behalf of the other party is appointed. In the context of employer-employee relations, the trade union plays its role in negotiating with the employer to produce a collective agreement. In addition, Ismail Faruqi mentioned that there should be justice in the reward of work. Therefore, part of the worship ritual in Islam is organising in the form of a trade union (Al-Faruqi & Al-Banna, 1985).

Social justice is the primary aim of Islam and the trade union movement (Al-Faruqi & Al-Banna, 1985). The introduction of this concept by the trade union movement to maintain workers' good standards in the employment contract and workplace is highly commendable in Islam. Al-Banna stated that:

All the world knows that workers are still exploited, that the conditions of work are inhumane, that trade unions were established to prevent these gross outrages and enable workers to live a decent life.

He mentioned that the word 'justice' is the primary aim of trade unions, and he believed that justice represents a proactive approach to save workers from the exploitation of capitalists (Al-Faruqi & Al-Banna, 1985). Therefore, if the Islamic principles of justice at the workplace are applied, the government is responsible for safeguarding and implementing justice in its area of authority. It is the duty of the government as the ombudsman to ensure that workers receive pay accordingly, not given excessive work and to encourage employers to negotiate with workers for better working conditions. Seeing that trade union acts as a voice mechanism for workers in a trade dispute with employers, the trade union movement is thus consistent with the Islamic principles of social justice with its goal to assist workers in demanding better employment conditions at the workplace.

### **Malaysian Trade Union Legal Framework**

Historically, the rise of trade unionism in Malaysia was during the period of colonisation of the British administration. Trade unionism

ideas in Malaya were brought by Chinese and Indian immigrant workers to protest against the unfair indenture system of their agents. The Malayan Communist Party (MCP) was the first trade union registered under the Societies Ordinance 1928. During that period, since no clear rules were regulating trade union activities in Malaya, the trade unions exercised their rights without any restrictions. Hence, as a result of the employer's unfair treatment of the workers, the MCP influenced them to organise strikes to show their dissatisfaction with the employers. Thus, the British colonial government took steps to control the trade union movement since the strikes conducted by the MCP were politically motivated. Besides the closure of coal mines and factories had paralysed the economic sector. Following the incident, the Trade Unions Enactment 1940 was introduced to regulate the formation and activities of trade unions in Malaya, presently known as the Trade Unions Act 1959 (TUA 1959). In 1967, the government introduced the Industrial Relations Act 1967 (IRA 1967) to regulate the industrial relations area in Malaysia.

In principle, workers in Malaysia can form and join a trade union by virtue of Article 10 of the Federal Constitution of Malaysia, which guarantees the right of every Malaysian citizen to form associations. Two main statutes govern the registration and operation of trade unions in Malaysia, known as the TUA 1959 and the IRA 1967. In addition, a trade union is legally registered in Malaysia if it falls under the definition of Section 2 (a) of the TUA 1959: a union can be a combination of workers or employers, whose place of work is in Peninsular Malaysia, Sabah or Sarawak, as the case may be, within any particular establishment, trade, occupation or industry or within any similar trades, occupations or industries, whether temporary or permanent and having among its objects one or more of the objects stated under the section. Although the trade union is allowed to perform its activities, it is limited to the rights provided under the legislation.

The freedom of association for a trade union in Malaysia is not absolute as Article 10(2)(c) of the Federal Constitution gives power to the Parliament to impose legal restrictions on the right to form associations if it deems such restrictions as 'necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality'. As a result of this limitation, various restrictions were imposed on Malaysian trade unions on the grounds of security

and economic policies of the state (Suraya & Ahmad, 2018). Hence, a registered trade union can exercise its rights as provided under the statutes such as picketing, strike, and conduct collective bargaining action with an employer. Nonetheless, the complex procedures in the system hinder a trade union from exercising these rights. Basically, the control exercised by the government is very detailed and comprehensive to the extent that it limits the freedom to form and participate in a trade union (Zaharah et al., 2020).

Picket and strike are the forms of worker's industrial actions recognised by the Malaysian legal system, in furtherance of a trade dispute with the employer. The IRA 1967 defined strike as the cessation of work by a group of workers refusing to continue to work.<sup>17</sup> A strike is a concerted discontinuance of work to compel the employer to fulfil the worker's demands. On another note, a strike could cause economic loss to the employer as the employer's business or production flow is affected. A strike will become lawful once it is made in compliance with the provisions of the law. Also, a registered trade union member must gain a two-thirds majority from votes in a secret ballot to conduct a strike. Another important condition is the workers can conduct a strike only if the Director General of Trade Union views that the grounds or issues leading to the strike action are valid. These complex requirements take time and eventually cause deprivation of justice to the workers as the employers use this opportunity to conduct anti-union actions to prevent any strike.

The Ministry of Human Resource (the Ministry) has wide powers to control the strike conducted where the Ministry can interfere with the process and instruct the dispute to refer to the Industrial Court for arbitration<sup>18</sup>. Moreover, the Ministry can restrict the trade union from performing a strike by giving the power to the Ministry to stop a strike if the strike or lockout lasts beyond a certain time or extend beyond a certain scope, thus endangering the lives, personal safety, or health of the whole population.<sup>19</sup> In addition, there is prohibition on workers in the essential services from conducting a strike.<sup>20</sup> This fact is evident

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<sup>17</sup> See section 2, IRA 1967 and TUA 1959

<sup>18</sup> Section 44(b) of Industrial Relations Act 1967

<sup>19</sup> Section 44b of the Industrial Relations Act 1967

<sup>20</sup> The essential services as gazetted by the government, include the banking services, electricity services, fire services, port, harbour and airport services, postal and telecommunication services, prison service, public health service, water service, transport service, broadcasting (TV and Radio), petroleum and gas industries and certain government departments including customs and excise, immigration, marine, meteorology and printing.

in *Kumpulan SF Powertech Sdn Bhd v. Ishak Haji Kamari & Anor*<sup>21</sup> where the employer dismissed the workers after they decided to stop working and went on a strike after the company failed to pay their full wages. The Industrial Court held that the claimants were engaged in the category of ‘essential services’, and thus rendered the strike illegal. In the case of *Lam Soon (M) Berhad v. Kesatuan Pekerja-Pekerja Perkilangan Perusahaan Makanan*,<sup>22</sup> the strike conducted by the trade union was illegal as the trade union failed to obtain by secret ballot the consent of at least two-thirds of the members of the union. Thus, the non-conducive environment had led to the deprivation of social justice at the workplace. In Malaysia, only small numbers of strikes have occurred, with no case of strike reported in 2019 (Employment and Labour Statistics Series, 2019).

Another form of industrial action that can be taken by the workers is known as picketing. Picket refers to the action of attending near any place for the purpose of peacefully obtaining, communicating information, persuading, or inducing any workman to work or abstain from working. This action is conducted to pressure the employer to fulfil the worker’s demand. In Malaysia, it was reported that only 22 picket cases were registered in 2019 (Employment and Labour Statistics Series, 2019). Despite the protection of picket action under the IRA 1967, there is no standard definition of the word picketing under the act. Nonetheless, the regulation of picket action is provided in Section 40 of the IRA 1967. However, the IRA 1967 is currently silent on the time to conduct the picket. Therefore, workers can organise a picket outside working hours to avoid dismissal by the employer. Most notably, the Industrial Court or the Board of Inquiry has extensive powers to declare that a picket is illegal.<sup>23</sup> Picketing can only be lawful if it complies with the conditions such as not intimidating others and not obstructing entrance or egress of any premise or causing a breach of peace. Despite these conditions, employers always find the opportunity to declare that the trade union’s actions are illegal. This occurrence became apparent in the picket organised by the EIEUWR, where the employer lodged a report to the police claiming that the picket held by the union was illegal and intimidated the workers who joined the picket (Malaysia Kini, 2020).

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<sup>21</sup> [2006] 1 ILR 521.

<sup>22</sup> [1995] 2 ILR 815.

<sup>23</sup> Section 40(2A) IRA 1967.

Another issue concerning the trade union framework is on collective bargaining rights. Collective bargaining is an important medium of negotiation between workers and employers to reach a collective agreement. Through collective agreement, the workers' terms and conditions can be changed for better working conditions. Nevertheless, the legislation restrictions imposed on trade unions have obstructed the path to social justice. Restrictions in collective bargaining are evident in the early stages of collective bargaining action, known as the recognition process. In this recognition process, the competency of the trade union is determined through a secret ballot to prove the majority support of the trade union members. Recognition of a trade union is a pre-requisite to the collective bargaining action, where a trade union that wishes to represent the workers must obtain the employer's recognition. Obtaining this recognition is challenging as the employer would use every opportunity to ensure that the trade union is disqualified. Another important fact is that there is an unnecessary delay in obtaining recognition due to the employer's reluctance to respond to the application and the objections filed by the employers in terms of recognition claims. Essentially, there is prohibition on workers under the category of managerial, executives, confidential, and security from voting in the secret ballot, which directly affects the number of support for the trade union in a secret ballot. In the case of *South Pacific Textile Industries Ltd v. Kesatuan Pekerja-Pekerja South Pacific Textile Industries Ltd.*,<sup>24</sup> the court held that the worker be disqualified from voting in a secret ballot as the worker's position was under the managerial category in the employer's organisation. Last year, out of the 164 recognition applications, only 96 recognition claims were successful (Employment and Labour Statistics Series, 2019).

## **RECOMMENDATIONS**

Based on the discussions, trade unions in Malaysia are currently experiencing various challenges before they can exercise their rights. Obstacles by way of anti-union practices and bureaucratic procedures hinder workers from upholding their rights at the workplace. The restrictive legislation imposed by the Malaysian government is primarily due to national security reasons. Principally, a trade union

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<sup>24</sup> (Award No. 6/67, 16 October 1967) [1965-67] Mal. L.L.R. 163



is important in a country as the trade union acts as a representative of workers to ensure that capitalists treat workers fairly. One of the core principles of Islam is upholding social justice when dealing with other individuals, including employment relationships. Therefore, there needs to be swift reformation of the trade union legal framework to restore the workers' access to justice. In particular, the restrictive regulations in the IRA 1967 should be amended to achieve the objective of the IRA 1967, i.e., to promote and maintain industrial harmony between employers, workers and the trade unions. The first step in the reformation involves Ministerial powers in deciding trade union activities; the Ministry should do away with wide discretionary powers in determining and interfering in strikes conducted. Instead, the Director General should possess the discretion to decide on the matter albeit with limited scope. With regard to picketing, the IRA 1967 must provide a standard definition of picketing and the lawfulness of the conduct by inserting a clear guideline on the legality of picketing action. There must be action to facilitate the recognition process of the trade union in collective bargaining. Hence, the employer's recognition should be abolished, and heavier punishment should be imposed in cases of employer's anti-union conduct. On top of that, the case should be reported in the news so that the public is aware of the employer's conduct.

In sum, employers should refrain from unfair labour practices towards workers and co-operate with the trade union when dealing with trade disputes. The Code of Conduct for Industrial Harmony (Code) could be a guideline for the employer in promoting fairness and justice in the trade union legal framework. The Code is an agreement between the Ministry and the Malaysian Council of Employers' Organisations (the predecessor of the Malaysian Employers Federation and the Malaysian Trades Union Congress) which aims to establish principles and guidelines for employers and workers on the practice of industrial relations to achieve greater industrial harmony. Although the Code is not binding, the courts still consider the employer's compliance with the Code when deciding a dispute. In following the Code, social justice between the employers and workers is viable. According to Saeed, the principles of Islamic ethics are highly dependent on one's state of faith towards Allah. If each party at the workplace appreciates the value of social justice as a principle, then a peaceful and harmonious industrial relations environment is established.

Sayyid Qutb proposed that the realisation of social justice can only be done by the heart and conscience from within and proper legislation in social settings (Qutb, 2013). Accordingly, the Malaysian government should apply the three elements of social justice in Islam when reforming the IRA 1967. First, by placing someone in a post or function appropriate to his capabilities. This approach can be made by placing independent agency bodies to determine the competency of a trade union. Second, by improving the secret ballot system in order that decisions made are appropriate to the situation(s). This is so that workers can vote properly to reach a decision. Third, by placing wealth or property to those who rightly deserve them. Employers must know the worth of their workers and willing to negotiate with trade unions to improve the workers' wages. Ultimately, the employer and the worker should regard one another as brothers in faith and humanity and not as master and slave. When the employer regards his employee as his brother, he would be very generous in his wages and, at the same time accord his employee his rights. As a result, the employee would take a special interest in his work and work hard to the best of his ability and strength. On that account, a business would prosper to the advantage of both the employer and employee (Shaharuddin et al., 2013).

## CONCLUSION

Trade union plays an important role as a medium in obtaining justice for workers. The function of a trade union fits the principles of *shariah* in protecting the wealth of an individual in the form of security at the workplace. In the race to reach the Industrial Revolution 4.0, it is alarming to see that the trade union movement in Malaysia is deprived of justice. In conclusion, the Islamic principles of social justice should prevail in the system by way of removing restrictions and clarifying issues in the TUA 1959 and IRA 1967. Employers should be fair when dealing with the trade union, and the government should take action to improve the Malaysian trade union legal framework. This need is in line with Islamic principles that emphasises the importance of social justice in the relationship between the employer, and worker and that the trade unions should be treated with dignity and honour.

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