

## INDUSTRIAL RELATIONS IN A HIGH-INCOME NATION: IS MALAYSIA READY?

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Received: 1 January 2019    Accepted: 8 April 2019    Published Online: 24 December 2018

### ABSTRACT

*Industrial relations is one of the most delicate and complex issues in a modern industrial society. Industrial progress is well-nigh impossible without the cooperation of the labour force and the harmonious relationship between employers and employees. Therefore, it is in the interest of all to create and maintain the good relationship between employers and employees. Malaysia, as one of the South East Asian countries, hopes to be a high-income nation by 2024. In order to achieve the status of high income nation, the government of Malaysia has introduced the Economic Transformation Programme (ETP). ETP will help Malaysia to triple its Gross National Income (GNI) from RM 660 billion in 2009 to RM 1.7 trillion in 2020. The status of high income nation is said to be achieved, among others, via innovation, creativity, higher productivity, new technology and the development of a multi-skilled and highly skilled workforce as well as healthy industrial relations. As such, in underlining industrial relations in a high-income nation, this article is an attempt to examine the role of the Malaysian industrial relations of today. It will also portray whether changes are required in Malaysian industrial relations in order to be relevant in a high-income nation.*

**Keywords:** *Employer, High-income nation, Industrial relations, Trade union.*

## INTRODUCTION

A sound industrial relations system is considered as key to the progress and success of economic development in any country. This is because it ensures the continuity of productivity that ultimately ensures continuous employment for all from management level to the workers. A good industrial relations system can help in promoting co-operation and increasing productivity. In addition, a healthy industrial relations system improves the morale of employees. Employees work with great zeal and share a common interest with employers, i.e. to increase productivity.

Thus, it is evident that a sound industrial relations system is the basis to achieve higher productivity with minimum cost and yet, maximum profits. It can also increase the efficiency of employees. An economy organised for planned production and distribution, with the aim of the realisation of social justice and welfare of the society, can function effectively only in an atmosphere of healthy industrial relations. If the twin objectives of rapid national development and increased social justice are to be achieved, there must be a harmonious relationship between the employers and the employees.

Therefore, it is necessary to maintain a harmonious industrial relations system to enhance productivity so as to achieve high income nation status. Much of the success or failure of economic development depends on the maintenance of harmonious employee-employer relationships.<sup>1</sup>

Generally, industrial relations deal with the interaction between employers and employees as well as their trade unions.<sup>2</sup> In the event of conflict between the two parties, a third party, i.e. the government shall play its role in helping to resolve the dilemma.<sup>3</sup> This is known as a tripartite arrangement. The parties will then focus on their objectives respectively, *inter alia*, the employers will look at the maximum returns on its investments perhaps even at the cost of

<sup>1</sup> Deep Archesh, Importance of Industrial Relations, <https://www.scribd.com/document/64248237/Importance-of-Industrial-Relations> (Last visited on June 09, 2018).

<sup>2</sup> The preamble of the Industrial Relations Act (IRA) 1967 categorically stated that the aim of this Act is... “...to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom”.

<sup>3</sup> Chaudhri, S. (1995). Economic Times. Bombay, 13th September.

the quality of the product; the trade unions will focus on securing maximum financial gains perhaps even to the extent of opting for industrial action whereas the government will act as mediator in trying to appease both parties.<sup>4</sup> The difference in the focus of both parties have blinded them to the common goal that is the product, the one that the employers are investing in and the one that the members of trade unions are responsible in producing. The task to mediate is not easy when the parties are focused on different goals as compared to a common one.

Malaysia aims to be a high-income nation by 2020. As such, the government has introduced the Economic Transformation Programme (ETP). ETP will help Malaysia to triple its Gross National Income (GNI) from RM 660 billion in 2009 to RM 1.7 trillion in 2020. This will translate to an increase of GNI per capita income from RM 20,770 (US\$6,700) to at least RM46,500 (US\$15,000) meeting the World Bank's high-income benchmark.<sup>5</sup> Becoming a high-income nation will make the people in general enjoy a high level of income and a high quality of life resulting from growth that is both inclusive and sustainable. High-income status is said to be achieved, among others, via innovation, creativity, higher productivity, new technology and development of a multi-skilled and highly skilled workforce. As such, this article is an attempt to examine the role of industrial relations when Malaysia becomes a high-income nation. With this primary objective in mind, this article is divided into six parts including the introduction and conclusion. Part two will cover a discussion on the concept of a high-income nation and industrial relations whereas part three will highlight the industrial relations in Malaysia. Part four will portray industrial relations in a high-income nation along with required changes in Malaysia. A conclusion will be drawn in part five whereby suggestions will be brought forth regarding necessary changes in the existing industrial relations in Malaysia.

## **THE CONCEPT OF HIGH-INCOME NATION AND INDUSTRIAL RELATIONS**

A high-income nation is defined by the World Bank as a country with a per capita income of more than US\$12,476 for the fiscal year

<sup>4</sup> Rath, D., & Misra, S. (1996). Future of Industrial Relations and Industrial Relations in Future: The Indian Scenario. *Vikalpa*, 21(4), 47-54.

<sup>5</sup> The Editor, (2010). Economic Transformation Programme: Roadmap to high-income nation. The Edge, 22nd September.

2017.<sup>6</sup> A high-income nation is knowledge-based and innovation-driven as opposed to investment-driven. All sectors of the economy are involved in high value economic activities where knowledge, innovation and productivity become the core to value creation. The key strategies<sup>7</sup> for the workforce are as follows:

- (a) Create high paying jobs;
- (b) High skilled workers, educated and skilled workers and quality workforce;
- (c) High productivity;
- (d) High efficiency; and
- (e) Value added services.

The key strategies for the workforce in a high-income nation differ from those in the middle-income nation. A middle-income nation emphasises on labour-intensive industries that provide low wages, less innovation and lack of creativity. These elements will eventually cause a middle-income nation to be trapped since the industries that drive growth in the early stages will eventually become globally uncompetitive due to rising wages.<sup>8</sup> The middle-income nation can only move away from the dilemma if it is replaced by a new set of industries that is human capital oriented and knowledge-intensive.<sup>9</sup> Failure to upgrade human capital has trapped Malaysia in the middle-income nation.<sup>10</sup> The fact that Malaysia lacks skilled workers is not something new. In this regard, efforts have been made to overcome this issue through Technical and Vocational Education and Training (TVET).<sup>11</sup> A taskforce has been set up to elevate TVET and recognise it as an alternative to university education.<sup>12</sup> It is hoped that these

<sup>6</sup> Surendra, E. (2017). Malaysia: Is becoming a high-income nation a dream or a reality? <https://www.imoney.my/articles/malaysia-high-income-nation> (Last visited on March 13, 2018).

<sup>7</sup> Sani, R. (2018). Skills-based pathway to a high-income nation. *The New Straits Times*, January 24, 2018.

<sup>8</sup> Felipe, J., Abdon, A., & Kumar, U. (2012). Tracking the middle-income trap: What is it, who is in it, and why? Working Paper Series No. 715, p.20.

<sup>9</sup> Ibid.

<sup>10</sup> Ohno, K. (2009). Avoiding the middle-income trap: Renovating industrial policy formulation in Vietnam. *ASEAN Economic Bulletin*, 26(1), 25-43.

<sup>11</sup> Vital to boost human capital development, *The Staronline*, Sunday, 26 July 2015, at <https://www.thestar.com.my/opinion/columnists/the-star-says/2015/07/26/vital-to-boost-human-capital-development/>, (Last visited on August 02, 2018).

<sup>12</sup> Time to recognise and elevate TVET, *The Staronline*, Sunday, 24 June 2018, at <https://www.thestar.com.my/news/nation/2018/06/24/time-to-recognise-and->

steps will produce more skilled workers to support Malaysia as a high-income nation.

While we are still grappling with the concept of high-income nation, we are introduced to the concept of Industrial Revolution 4.0.<sup>13</sup> Industrial Revolution 4.0 or the digital revolution combines technological and human capacities in an unprecedented way through self-learning, algorithms, self-driving cars, human machine interconnection and big data analytics.<sup>14</sup> The data uncovered by the World Economic Forum found that there are huge changes underway that will create a massive displacement of traditional workers or the emergence of new opportunities.<sup>15</sup> Although the said revolution is still far away for Malaysia, nevertheless embracing and adjusting legal policies with respect to Malaysia as a high-income nation will pave the way to support the said revolution.

Having considered the definition of a high-income nation and Industrial Revolution 4.0, it is now pertinent to look at industrial relations where it is defined as “a set of phenomena, operating both within and outside the workplace, concerned with determining and regulating the employment relationship”.<sup>16</sup> However, the term “industrial relations” is sometimes used more loosely to include the relationship between employers and employees, regardless of the recognition status of unions, synonymous with employee relations.<sup>17</sup>

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elevate-tvet-nurul-izzah-expand-vocational-education-to-ensure-no-one-is-left/, (Last visited on August 02, 2018).

<sup>13</sup> Unit, E. P. (2015). Eleventh Malaysia Plan, 2016-2020: Anchoring growth on people. Putrajaya, Percetakan Nasional Malaysia Berhad, at <http://epu.gov.my/en/rmk/eleventh-malaysia-plan-2016-2020>, (Last visited on August 02, 2018).

<sup>14</sup> Schäfer, M. (2018). The fourth industrial revolution: How the EU can lead it. *European View*, 17(1), 5-12.

<sup>15</sup> World Economic Forum. (2016, January). The future of jobs: Employment, skills and workforce strategy for the fourth industrial revolution. In *World Economic Forum*.

<sup>16</sup> Salamon, M. (2000). *Industrial relations: Theory and practice*. Pearson Education, p.3.

<sup>17</sup> Khuan, L. W. (2005). *Industrial relations in Malaysia: Issues and challenges confronting private sector employers and their unionised employees* (Doctoral dissertation), pp. 3-5. According to one author, ‘employee relations’ is a more acceptable term than ‘industrial relations’. See also, Rose, E. (2001). *Employment Relations Continuity and Change: Policies and Practices*. London: Pearson Education Limited.

A modern industrial relations system focuses on the management and facilitation of an equitable employment relationship between the tripartite parties comprising the employers, the employees and the government within a complex framework of law, culture, conventions and rules.<sup>18</sup> Industrial relations encompass the relationship between an employer and his employees on employment or non-employment terms and conditions of work and grounds of termination of employment.<sup>19</sup> One scholar reiterated that industrial relations deal with the manner in which the relationship between employers and employees is conducted and the methods employed by both parties in their working relationship.<sup>20</sup>

The term “industrial relations” and “employee relations” share similarities and yet subtle differences in the area of focus. Whilst they refer to the relationship between employers and employees which are governed by rules and regulations, industrial relations include another stakeholder group, i.e. trade unions, in a tripartite relationship.<sup>21</sup>

## INDUSTRIAL RELATIONS IN MALAYSIA

Industrial relations in Malaysia has been governed by extensive state control guaranteeing a high level of managerial prerogative within the workplace, minimal overt conflict and very little bargaining power for labour.<sup>22</sup> These arrangements are an integral component of the package to attract investors as Malaysia’s industrialisation strategy is focused on low-cost, export-oriented industries. Since Malaysia’s industrialisation focus has been shifted to higher value-

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<sup>18</sup> Yong, A.B.K. (1996). *Malaysian Human Resource Management*. Kuala Lumpur: Malaysian Institute of Management.

<sup>19</sup> D’Cruz, M.N. (2001). *A Comprehensive Guide to Industrial Relations in Malaysia*. Kuala Lumpur: Malayan Law Journal.

<sup>20</sup> Wu, M. A. (1995). *The Industrial Relations Law of Malaysia*. Kuala Lumpur: Longman Malaysia.

<sup>21</sup> Khuan, L.W. (2005). *Industrial Relations in Malaysia: Issues and Challenges Confronting Private Sector Employers and Their Unionised Employees* (Doctoral dissertation), 3-5.

<sup>22</sup> Jomo, K. S. and Todd, P. (1994). *Trade Unions and the State in Peninsular Malaysia*. Kuala Lumpur: Oxford University Press. See also, Adrusothy, P. & Littler, C. (1993). *State Regulation and Union Fragmentation in Malaysia*, in S Frenkel (ed.) *Organised Labor in Asia-Pacific Region: A Comparative Study of Trade Unionism in Nine Countries*, Ithaca: ILR Press.

added strategies, the government has implemented a range of policy measures to promote skills development and human resources oriented practices.<sup>23</sup> However, it is unfortunate to say that not much change has been made to the reliance on cheap and unskilled foreign labour<sup>24</sup> and the adversarial approach in settling industrial relations issues such as recognition of a trade union, collective bargaining, or termination. The two main statutes governing industrial relations in Malaysia are the Trade Unions Act 1959 (TUA)<sup>25</sup> and the Industrial Relations Act 1967 (IRA)<sup>26</sup>. The main characteristics of these two legislations are as follows:

### **The Right to Form and to Join a Trade Union**

Although Article 10(1)(c) of the Federal Constitution recognises the right for citizens to form and to join an association, this freedom however is restricted by the TUA whereby a worker can only join a trade union which represents his/her particular occupation, trade or industry in which the worker is employed within the same state, whether they are in Peninsular Malaysia, Sabah or Sarawak.<sup>27</sup> Omnibus unions seeking representation for a variety of workers from different industries or sectors or within the whole of Malaysia or combining the public sector and the private sector is not permitted in Malaysia.<sup>28</sup> Thus, it is not surprising to note that only 9% of the 11 million workers in Malaysia are registered as members of trade unions.<sup>29</sup>

Once a new trade union is established, it has to apply for registration in accordance with the TUA whereby it provides for various

<sup>23</sup> Kuruvilla, S. (1996). *Linkages Between Industrialisation Strategies and Industrial Relations/Human Resource Policies*: Singapore, Malaysia, the Philippines, and India. *ILR Review*, 49(4), 635-57.

<sup>24</sup> There are 1.797 million legal foreign workers in 2017, at <http://www.mef.org.my/kc/statistics.aspx>, ((Last visited on August 02, 2018).

<sup>25</sup> Act 262.

<sup>26</sup> Act 177.

<sup>27</sup> Section 2 (1) of the Trade Unions Act 1959.

<sup>28</sup> *Ibid.* Section 2 (1) provides that: “trade union” or “union” means any association or combination of workmen or employers, being workmen whose place of work is in Peninsular Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in Peninsular Malaysia, Sabah or Sarawak.....”, thus it is impossible for an omnibus union or a union representing both public and private sectors to be formed in Malaysia. There is no case on this issue.

<sup>29</sup> The Star, Feb 12, 2012.

restrictions. For instance, registration will only be allowed if there is no other registered trade union in the same or similar trade, occupation, or industry.<sup>30</sup> The question of similarity will be decided by the Director-General of Trade Unions (DGTU).<sup>31</sup>

### **Recognition of a Trade Union**

The issue of recognition of a trade union by the employer is dealt with in the IRA. The IRA provides that the trade union may apply for recognition and recognition will only be accorded by the employer if the trade union is considered to be competent and it represents the majority of its workers.<sup>32</sup> The competency issue is decided by considering the similarity in trade, occupation or industry between the trade union's membership clause and the employer's business. For the majority, the decision is made through a secret ballot.<sup>33</sup> It is pertinent to note that problems may arise as to the scope of representation by the trade union in relation to workers whose jobs have been classified under: confidential, security, executive and management.<sup>34</sup> The recognition process is slow and the trade unions believe that the decisions are made arbitrarily instead of in the interest of workers; therefore it is proposed that automatic recognition should be granted.<sup>35</sup>

### **Collective bargaining and collective agreement**

Collective bargaining is a process which the trade unions and the employer must go through before signing a collective agreement.<sup>36</sup>

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<sup>30</sup> Section 12 of the Trade Unions Act 1959.

<sup>31</sup> Section 2(2) of the Trade Unions Act 1959.

<sup>32</sup> Section 9 of the Industrial Relations Act 1967.

<sup>33</sup> Section 9(4A) (b) of the Industrial Relations Act 1967.

<sup>34</sup> Section 9(1) of the Industrial Relations Act 1967.

<sup>35</sup> Aminuddin, M. (2009). Employment Relations in Malaysia: Past, Present and Future. *New Zealand Journal of Asian Studies*, 11(1), 308, cases of : *Dynamic Plantations Bhd v YB Menteri Sumber Manusia & anor* [2010] 4 MLJ 299, *Kinabalu International Hotel Sdn Bhd (Hyatt Regency Kinabalu ) v The Honourable Minister of Human Resources M'sia & Anor* [2012] 8 MLJ 470, *RHB Bank Bhd v YB Menteri Sumber Manusia M'sia & Anor* [2017] 6 MLJ 239.

<sup>36</sup> Section 13 of the Industrial Relations Act 1967 discussed the procedures for a collective bargaining.



The trade union is prohibited from discussing any issues that fall within the management's prerogative such as termination, dismissal or promotion.<sup>37</sup> However, the trade union is allowed to raise general question on these issues.<sup>38</sup> Collective bargaining will normally take months to complete, and failure to commence collective bargaining, after efforts to commence it are exhausted, can lead to a trade dispute.<sup>39</sup>

## **The Right to Industrial Action**

The ability of the trade unions to fight for the welfare of their members with regards to work-related issues would be the main attraction for workers to join the trade unions. In Malaysia, we have a few trade unions that are vocal in pushing for their cause, such as the National Union of Bank Employees, Peninsular Malaysia (NUBE) and the Association of Bank Officers, Peninsular Malaysia (ABOM), the National Union of Plantation Workers (NUPW), the National Union of Hotel, Bar and Restaurant Employees (NUHBRE). NUBE is highly successful in representing its members' interest.<sup>40</sup> However, this ability is limited by various conditions laid down in both the IRA and TUA pertaining to industrial actions, mainly strikes and pickets.<sup>41</sup> These two industrial actions are the tools for the trade unions to use when bargaining, negotiations and discussions reach a

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<sup>37</sup> *Sime Darby Malaysia Bhd v National union of Commercial Workers I.C.* Award No 13/71, 1. See also s13(3) of the Industrial Relations Act 1967.

<sup>38</sup> Proviso to section 13(3) of the Industrial Relations Act 1967.

<sup>39</sup> Section 13(7) of the Industrial Relations Act 1967.

<sup>40</sup> Peetz, D., & Todd, P. (2001). "Otherwise you're on your own": Unions and bargaining in Malaysian banking. *International Journal of Manpower*, 22(4), 333-348.

<sup>41</sup> Amongst the requirements are only union members have the right to go on strike, after a resolution through a secret ballot, the result of the secret ballot must be deposited with the Director-General of the Trade unions, the resolution must be supported by 2/3 majority of the workers involved in the trade dispute and they must wait for 7 days before going on strike. In the meantime, reconciliation process will be initiated by the Industrial Relations Department, and if this failed then the Minister of Human Resources is empowered to refer the dispute to the Industrial Court for its decision. While the provisions on picket does not require a formal agreement to go on picket, the same power to refer the dispute to the Industrial Court for a decision will render the picket illegal if the trade union proceeds to do so. Section 25A and section 40 of the Trade unions Act 1959, sections 40 (2A) and section 44 of the Industrial Relations Act 1967.

deadlock. Strikes or pickets cannot be held once a dispute between the two parties is referred to the Industrial Court for arbitration, making it impossible for the trade union to go on strike or picket.<sup>42</sup> If a trade union is seen as toothless, the workers will indirectly be discouraged to join.

## **Dismissal**

The protection against unlawful or wrongful dismissal is spelt out in the IRA.<sup>43</sup> The IRA provides for the dismissed worker to file a claim for reinstatement within a stipulated time frame. The worker must attend the conciliation process as failure to do so without reasonable justification would render the complaint filed as deemed to be withdrawn. If the conciliation process fails, the case would then be referred to the Industrial Court by the Minister of Human Resources for a decision. If the Industrial Court is in favour of the worker, the Industrial Court may order a reinstatement or compensation. The decision of the Industrial Court is final<sup>44</sup> and can only be subject to judicial review by the High Court.<sup>45</sup> The amount of compensation is capped due to the amount of time taken to dispose the case.<sup>46</sup>

This system is time-consuming and adversarial in nature. The situation is most awkward if the Industrial Court ruled in favour of the worker and reinstatement is being ordered. The industrial harmony between the parties would have been shattered and it is impossible for both parties to work as a team again, making reinstatement redundant and the Industrial Court is only left with compensation. The system requires a lot from the Industrial Relations Department's officers and the Industrial courts.

## **Access to the Industrial Court**

The Industrial Court is established under the IRA with the aim of settling disputes between the employers, employees and the trade union expediently.<sup>47</sup> However, most of the Industrial Court's powers

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<sup>42</sup> Section 40 (2A) and section 44 of the Industrial Relations Act 1967.

<sup>43</sup> Section 20 of the Industrial Relations Act 1967.

<sup>44</sup> Section 33B(1) of the Industrial Relations Act 1967.

<sup>45</sup> Section 33A(1) of the Industrial Relations Act 1967.

<sup>46</sup> Section 30(6A) and the Second Schedule of the Industrial Relations Act 1967.

<sup>47</sup> Section 21 of the Industrial Relations Act 1967.

are invoked only by way of reference to the Minister.<sup>48</sup> As such, if the Minister refuses to refer the matter to the Industrial Court, the parties to the dispute will have to resort to judicial review in the High Court. Also, if the case is referred to the Industrial Court, and the party in the dispute is dissatisfied with the decision, the application for judicial review must include a reference from the Minister, too.<sup>49</sup> The hefty cost is a paramount factor to consider.

The above discussion illustrates the industrial relations system in Malaysia which has been in place since 1967 until today. After being a middle-income nation, Malaysia has adopted the goal to evolve into a developed country or a high-income nation and has embarked on a higher value-added and more capital-intensive industrialisation strategy.<sup>50</sup> The issue that comes to mind now is whether these current industrial relations practices are still relevant when Malaysia becomes a high-income nation. Is there a need for industrial relations practices to be transformed and not merely changed in order to cater to the needs and challenges of a high-income nation?

## INDUSTRIAL RELATIONS IN A HIGH-INCOME NATION

The current approach of Malaysian industrial relations may have been relevant and suitable when Malaysia was embarking on an industrialisation drive. Malaysia has been relying on foreign investments to propel its economic growth. A calm and peaceful labour environment and the availability of cheap labour will definitely attract investors to Malaysia. This approach may no longer be relevant in a high-income nation which emphasises on educated, highly skilled workers, and a quality workforce. The high-income nation also focuses on high productivity, high efficiency and value-added services.

In order to accommodate these changes, the industrial relations practices must change from tripartite arrangement as we understand now to a more dynamic tripartite with each party being treated on an equal footing. That said, the proposed changes are as follows:

<sup>48</sup> Sections 20(3) and 26 of the Industrial Relations Act 1967.

<sup>49</sup> The case *Kathivelu Ganesan & anor v Kojasa Holdings Bhd* [1997] 2 MLJ 685.

<sup>50</sup> Todd, P., & Peetz, D. (2001). Malaysian industrial relations at century's turn: Vision 2020 or a spectre of the past?. *International Journal of Human Resource Management*, 12(8), 1365-1382.

## **Transforming the legal framework of industrial relations**

If the projection that Malaysia will achieve a high-income nation in 2024 is materialised, it means that Malaysia has another six more years to prepare for the transition. Efforts to increase the number of skilled workers and reduce reliance on foreign workers have been conducted, however sad to say, nothing has been done to change the legal framework of industrial relations in Malaysia. Generally, the TUA and the IRA remain the same with a few amendments here and there. However, what is very clear is that the roles of the government through the Minister, the DGTU and Director General for Industrial Relations (DGIR) have not changed. There will be some form of control exercised by these officers every step of the way.<sup>51</sup>

This method of controlling will no longer be suitable for a high-income nation. The government needs to allow the parties involved to be more proactive in settling their disputes. The parties must be willing to self-regulate themselves in handling issues. The role of the government should be more of monitoring then controlling. This approach is not alien to Malaysia since it has adopted the Occupational Safety and Health Act 1994<sup>52</sup> which emphasise on self-regulation with the government playing a minimal role in determining issues on safety and health at the workplace.

Aside from changing the role of the government in industrial relations, the legal framework should emphasis more on cooperation and consultation between the parties. Both parties i.e. the employers and the trade unions are dependent on each other. They need to understand their common goal, and that they are actually on the same side. Thus, it is therefore more beneficial for them to work together.

## **Strengthening the relationship between management and trade union**

It is crucial that the bipartite relationship between the employers and the trade unions must first be strengthened. Both parties must understand that they are seeking the same goal— increase in

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<sup>51</sup> See for example, sections 9(4) (4A) (4B), 9(5) of the Industrial Relations Act 1967 for recognition; sections 2(2), 32, 33 of the Trade Unions Act 1959 on similarity of the trade unions.

<sup>52</sup> Act 514.

productivity and profit. If the company is profitable, employees would also be able to receive bonuses. As such, it is important for the parties to enhance their cooperation and consultation in designing strategies to increase productivity. The issues which are directly connected to both the management and the trade union should be dealt internally, through discussions and dialogues. The issues should not be used as an opportunity to undermine each other. The adversarial approach needs to be changed because time and energy are needed to increase productivity. Among these issues are:

**(a) Recognition of a Trade Union**

Recognition of a trade union by the management or the employer is crucial to the trade union. The procedure for recognition is long-winded, involving the trade union, the management or the employer, the DGIR and the DGTU. Decisions may be reviewed every step of the way, or challenged.<sup>53</sup> Perhaps the time has come for automatic recognition to be given, once it is established that the trade union has fulfilled the requirements of competency and the majority.<sup>54</sup> The verification to ensure that these two requirements are fulfilled can be done administratively by the DGTU, before submitting his findings to the DGIR. If the findings favour the recognition to be accorded then the DGIR should inform the employer, who must accord recognition, failing which the DGIR can mandate the recognition.

**(b) Collective bargaining and collective agreement**

Both parties must approach collective bargaining as an opportunity to discuss issues and work towards a solution. It is not about the position as the management or the trade union, but it is about finding a win-win solution to resolve issues.<sup>55</sup> In order for both parties to

<sup>53</sup> Sections 9-12 of the Industrial Relations Act 1967 and the case of *AG v Chemical Workers* [1971] 1 MLJ. 38, *Tanjong Jaga Sdn Bhd v Minister of Labour* [1987] 1 MLJ 124, *Minister of Labour v Patterson Candy (Malaysia) Sdn Bhd* [1980] 2 MLJ 122.

<sup>54</sup> Sections 9(4), (4A), (4B) of the Industrial Relations Act 1967 and the cases of *Foh Hup Omnibus v Minister of Labour* [1973] 2 MLJ 38, *Pahang South Omnibus v Minister of Labour* [1981] 1 MLJ 199.

<sup>55</sup> Matkin, J. (1986). *The Future of Industrial Relations in Canada*. Canadian Public Policy, Vol. 12, Supplement: The Macdonald Report: Twelve Reviews, 127-132, <http://www.jstor.org/stable/3551299>, (Last visited on October 09, 2013).

have a fruitful discussion, a pre-negotiation procedure should be introduced where both parties can identify major issues that need to be addressed. The DGIR can be the chairperson during this pre-negotiation procedure. The parties should be allowed to discuss issues relating to employment and productivity including promotion and termination. Once the major issues are identified, both parties should be given time to develop an approach(s) to solve the issues. The next discussion will be focused on the problem-solving approach forwarded by both parties so that a mutually acceptable solution can be achieved and sealed in a collective agreement.

### **(c) Termination and Dismissal**

Security of tenure is very important to an employee and of course to the trade union which is representing the employees. Employees in the private sector do not enter into a contract of employment with the intention to stay on for the rest of their working lives<sup>56</sup>, except for pensionable officers who are working in the public sector. These officers must continue to work for the entitlement of their pension scheme.<sup>57</sup> As such, procedure for terminations and dismissals are important to the employees and the trade union. Having a clear policy and procedures on terminations and dismissals will help to strengthen the relationship of trust and mutual confidence between both parties. The terminations and dismissals must always be done in good faith. It should be dealt within the organisation first, instead of bringing in a third party. Only if a case fails to be resolved then, the case can be sent for mediation by a third party. This approach is in line with the spirit of consultation and mediation, a key feature in industrial relations in a high-income nation.

### **(d) Changing from Adversarial to Other Alternative Dispute Resolutions**

The adversarial approach in settling disputes may further erode the relationship between the two parties. Both parties' objective is

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<sup>56</sup> The situation is different from Japan, where the employees join a company with the intention to stay there for the rest of their working life, their prosperity depends upon the prosperity of the company. Singh, A. (2000). Industrial Relations in Japan: Trends, Challenges and Future Prospects. *Indian Journal of Industrial Relations*, 35(3), 362-380.

<sup>57</sup> Pensions Act 1980.

to win because winning means that the party's conduct is correct, they are not at fault. The decision of the court would reaffirm this. However, in obtaining that validity, sometimes the damage done is irreparable, and alas, both parties still have to work together in the same environment.

The time has come to give alternative dispute resolutions a more prominent role in industrial relations. It has been argued that social justice for both parties who are in dispute may be achieved through alternative dispute resolutions.<sup>58</sup> The movement of civil society which is currently gaining momentum emphasises dialogue and discussion in all matters of public interest. Therefore management and the trade unions should also move in this direction.

There are a few types of alternative dispute resolutions available to be explored, such as conciliation, mediation and arbitration. The difference between the three methods is subtle. Conciliation is defined as a process whereby a third party will guide the parties in dispute to try and reach a compromise that suits both parties.<sup>59</sup> This method of alternative dispute resolution is widely practised in Malaysia through the role played by the DGIR in dealing with the recognition of trade unions, collective bargaining, trade disputes and also dismissals. Arbitration is a process in which an impartial third party (after hearing from both sides) makes a final binding agreement.<sup>60</sup> This alternative dispute resolution is well-accepted within the commercial industries and in Malaysia we have the Arbitration Act 2005<sup>61</sup>, which governs the arbitration process. Another method of alternative dispute resolution is mediation, which is defined as a process by which an impartial third party helps two (or more) disputants work out on how to resolve a conflict, by deciding on the terms of the agreement. The onus is on them to produce and agree on the acceptable outcome.<sup>62</sup> In Malaysia, there are various mediation bodies catering to the needs of various areas such as Banking Mediation Bureau, Insurance Mediation Bureau,

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<sup>58</sup> Ridley-Duff, R., & Bennett, A. (2010). Mediation: developing a theoretical framework for understanding alternative dispute resolution. *British Academy of Management*, p. 2.

<sup>59</sup> Ibid, p.7.

<sup>60</sup> Ibid.

<sup>61</sup> Act 646.

<sup>62</sup> Ibid.

Malaysian Mediation Centre and Marriage tribunal/ Conciliatory body (Law Reform (Marriage & Divorce) Act 1976. Indeed, the time has come for a special bureau to be introduced to mediate disputes between employers, employees and the trade unions. This special bureau will free the industrial relations department officers from having to deal with this so as to allow them to focus more on the administration of the Act. The members of the bureau will be equipped with the necessary skills, in order to make it meaningful, and not something which must be done, because it is required by the IRA.

### **Other Challenges**

When Malaysia was first formed in 1957, the few main issues concerned the establishment of a trade union, its role and membership. As such, the legal framework has reflected these issues through the provisions of the TUA. The control exercised by the government is very detailed and comprehensive to the extent that the freedom to form and participate in a trade union is limited. Once a trade union is registered, then the issues on recognition, collective bargaining and collective agreement, trade disputes, industrial actions and terminations as well as dismissals need to be addressed. However, all these issues are issues that are relevant to a middle-income nation. For a high-income nation, Malaysia needs to focus on different issues altogether, for all parties.

Employers need to emphasise on the quality of products rather than the quantity, and the price of products must be competitive in order to attract consumers. In order to achieve this, employers will have to be innovative and creative. There is a need to invest more in technology as compared to relying on manpower. In order to achieve this, focus will be placed on skilled and knowledgeable workers, the latest technology, creative and innovative products and marketing. Employers will be looking at a different set of criteria of workers. Employers must be willing to offer good salary and invest in R&D. Working conditions should be in place, so that it will no longer be an issue.

The trade union, on the other hand, needs to be able to ensure that the workers are skilled and knowledgeable, well-versed with the latest technology, creative and innovative. The trade union will



have to emphasise more on the need for appropriate training and empowering measures for the welfare of the workers. Even though there are already provisions in the IRA on training to be included,<sup>63</sup> nevertheless the dispute on collective agreement still involves traditional matters especially on wages. The trade unions are keen to discuss opportunities for workers to upgrade their skills and to learn new ones. They perhaps want to advocate a flexible contract of employment such as part-time work. The trade unions would as far as it is reasonably practicable expect employers to opt for the latest technology and equipment in production.

It is crucial to realise that the issues campaigned by the trade union will have to go beyond what is being done now. The issues on increment of wages, bonuses, terminations and dismissals should not be part of it anymore because everything is already settled due to the existence of a mechanism to address them amicably and bilaterally, such as mediation and consultation. Only then, will both parties be able to work together for the betterment of the organisation where both parties have a stake.

## CONCLUSION

The industrial relations system in Malaysia has been shaped by historical developments and political interventions in legislative reforms aimed at bringing about desirable changes to the social and economic well-being of the nation.<sup>64</sup> Previously Malaysia was slated to be a high income nation by 2020. Nevertheless after the mid-term review of the 11th Malaysian Plan, Malaysia may only become a high-income nation in 2024.<sup>65</sup> As such it is pivotal for concerned authorities to revisit and relook into the existing legal framework on industrial relations promptly. In this regard, both the relevant statutes, namely IRA and TUA, need to be transformed to cater for the needs of a high-income nation. The relevant legal framework must be put in place to support industrial relations in line with Vision 2024.

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<sup>63</sup> Section 13 (2A) of the Industrial Relations Act 1967.

<sup>64</sup> Khuan, L.W. (2005). *Industrial Relations In Malaysia: Issues And Challenges Confronting Private Sector Employers And Their Unionised Employees* (Doctoral dissertation), 2.

<sup>65</sup> Adam Aziz, theedgemarktes.com, 18 October 2018.

## REFERENCES

- Adrusothy, P., & Littler, C. (1993). State regulation and union fragmentation in Malaysia. In S. Frenkel (Ed.), *Organised Labor in Asia-Pacific Region: A comparative study of trade unionism in nine countries*. Ithaca: ILR Press.
- Aminuddin, M. (2009). Employment relations in Malaysia: Past, present and future. *New Zealand Journal of Asian Studies*, 11(1), 308.
- Chaudhri, S. (1995, September 13). *Economic Times*. Bombay.
- Deep Archesh. *Importance of industrial relations*. Retrieved from <https://www.scribd.com/document/64248237/Importance-of-Industrial-Relations>
- D'Cruz, M. N. (2001). A comprehensive guide to industrial relations in Malaysia. *Malayan Law Journal*. Kuala Lumpur.
- Felipe, J., Abdon, A., & Kumar, U. (2012). *Tracking the middle-income trap: What is it, who is in it, and why?* Working Paper Series No. 715, p.20.
- James Matkin. (2013). The Future of Industrial Relations in Canada. *Canadian Public Policy*, Vol. 12, Supplement: The Macdonald Report: Twelve Reviews (Feb.1986), pp.127-132. Retrieved from <http://www.jstor.org/stable/3551299>
- Jomo, K. S., & Todd, P. (1994). *Trade unions and the state in Peninsular Malaysia*. Kuala Lumpur: Oxford University Press.
- Khuan, L. W. (2005). *Industrial relations in Malaysia: Issues and challenges confronting private sector employers and their unionised employees* (Doctoral dissertation).
- Kuruvilla, S. (1996). Linkages between industrialisation strategies and industrial relations/human resource policies: Singapore, Malaysia, the Philippines, and India. *ILR Review*, 49(4), 635-57.
- Matkin, J. (1986). The future of industrial relations in Canada. *Canadian Public Policy*, Vol. 12.
- Ohno, K. (2009). Avoiding the Middle-income Trap: Renovating Industrial Policy Formulation in Vietnam. *ASEAN Economic Bulletin*, 26(1), 25-43.
- Peetz, D., & Todd, P. (2001). "Otherwise you're on your own": Unions and bargaining in Malaysian banking. *International Journal of Manpower*, 22(4), 333-348.

- Rath, D., & Misra, S. (1996). Future of industrial relations and industrial relations in future: The Indian scenario. *Vikalpa*, 21(4), 47-54.
- Ridley-Duff, R., & Bennett, A. (2010). *Mediation: Developing a theoretical framework for understanding alternative dispute resolution*. British Academy of Management, p. 2.
- Rose, E. (2001). *Employment Relations Continuity and Change: Policies and Practices*. London: Pearson Education Limited.
- Salamon, M. (2000). *Industrial relations: Theory and practice*. Pearson Education.
- Sani, R. (2018, January 24). Skills-based pathway to a high-income nation. *The New Straits Times*.
- Schäfer, M. (2018). The fourth industrial revolution: How the EU can lead it. *European View*, 17(1), 5-12.
- Singh, A. (2000). Industrial Relations in Japan: Trends, Challenges and Future Prospects. *Indian Journal of Industrial Relations*, 35(3), 362-380.
- Surendra, E. (2017). Malaysia: Is Becoming a High-Income Nation A Dream or A Reality? Retrieved from <https://www.imoney.my/articles/malaysia-high-income-nation>
- The Editor. (2010, September 22). Economic transformation programme: Roadmap to high-income nation. *The Edge*.
- Todd, P., & Peetz, D. (2001). Malaysian industrial relations at century's turn: Vision 2020 or a spectre of the past? *International Journal of Human Resource Management*, 12(8), 1365-1382.
- Unit, E. P. (2015). Eleventh Malaysia Plan, 2016-2020: Anchoring growth on people. Putrajaya, Percetakan Nasional Malaysia Berhad. Retrieved from <http://epu.gov.my/en/rmk/eleventh-malaysia-plan-2016-2020>
- Yong, A. B. K. (1996). *Malaysian human resource management*. Kuala Lumpur: Malaysian Institute of Management.
- Wu, M. A. (1995). *The industrial relations law of Malaysia*. Kuala Lumpur: Longman Malaysia.