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Implications of the Employment Amendment Act 2022 on the Labour Court in Malaysia

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Abstract: *The "Labour Court" established under the Employment Act (EA)1955 is essentially a term referring to the authority of the Director-General of Labour (DGL) to hear complaints regarding violations of the Act's provisions. The Labour Court has limited jurisdiction and is confined to the provisions of the EA. However, it is a court that is accessible and affordable for workers seeking to address breaches of fundamental rights or employment contract terms. The 2022 amendments to the EA have expanded the jurisdiction of the Labour Court. These powers include, among others, hearing claims related to issues of discrimination, the definition of a 'worker' under an employment contract and addressing the increasing number of claims resulting from the Act's extended application to all employees. The challenges faced by the Labour Court following the 2022 amendments are significant, as it will not only bear a higher workload but also handle more complex issues. Using a doctrinal methodology, this article analyses the Sections of the EA amendments that impact the role of the Labour Court. The study finds that while the 2022 amendments pose challenges to the Labour Court, they also have the potential to elevate its status to a higher level. For example, its decision in the case of Mohamad Adam Rahmad, reported in 2024, proved that the Labour Court had managed to handle complex issues on employment contract.*

Keywords: Malaysia, Employment Act 1955, Employer, Employment Act Amendment 2022, Labour Court

1. Introduction

In 2022, the Employment Act (EA) 1955 was amended, with the changes taking effect on January 1, 2023. These amendments introduced new provisions and revised existing ones, addressing various aspects of workers' rights, including the role of the Labour Court.

The Labour Court plays a crucial role as an accessible and cost-effective forum for private-sector workers in Malaysia. It is empowered to handle monetary complaints, such as disputes over wages and other entitlements under the EA. By efficiently resolving such cases, the Labour Court offers a practical alternative to civil courts, which can be both costly and time-consuming.

The key amendment is the extension of the Act to all employees working under a contract of service. Before the 2022 amendment, the EA applied only to specific categories of workers: those earning a wage amount not exceeding RM2,000 or manual labourers, irrespective of their

wages (Balasubramanian, 2023; Hassan & Rahman, 2015; Mohamed et al., 2017; Mahmod & Mir, 2013). This limited scope has since been expanded, reflecting a growing recognition of the need to protect a broader segment of the workforce.

The amendment, passed by Parliament in 2022 and effective from January 1, 2023, significantly broadened the EA's coverage to include all workers in the private sector. This policy shift not only extended protections to a wider workforce, including migrant workers (Mohamad & Hassim, 2024), but also increased the responsibilities of the Department of Labour and the Labour Court.

Among the key amendments is the expansion of the Labour Court's authority to hear claims filed by employees for violations of the Sections of the EA. The term "Labour Court" is not explicitly stated in any provision of the EA but is instead referred to as the authority of the DGL The 2022 EA amendment broadens the DGL's powers to hear complaints made by employees against their employers.

The complaint is deemed to be a dispute to be heard by the DGL or the Labour Court. Remedies provided by the Labour Court take the form of compensation. This should be distinguished from actions or enforcement measures taken by the DGL and their officers against employers for violations of the Act, which may result in fines or imprisonment. This article focuses on the Labour Court.

2. Literature Review

The employment statutory protection rights in Malaysia are primarily governed by the EA. This legislation, which applies to employees in the private sector, has long provided fundamental employment rights. These rights include monetary entitlements such as salary regulations, various types of leaves, holidays, notices of termination, dismissal procedures, and enforcement mechanisms (Balasubramaniam, 2023). The employment relationship is premised on norms of fairness, loyalty, and cooperation in the workplace (Wachter, 2004). It also focuses on formal, legal agreements that explicitly outline the rights and duties of employers and employees (Yosuf, 2022; Thompson& Newsome, 2004).

The employer-employee relationship is based on a service contract, but legislation also intervenes to ensure the rights of employees who typically lack bargaining power (Inversi et al., 2017; Kahn-Freund et al., 1983; Kelloway et al., 2004; Spooner & Haider, 2006). The EA serves as an intervention, granting authority to the Labour Court to provide justice in cases of violations of the provisions of the EA (Hassan & Rahman, 2015; Mahmod & Mir, 2013; Mohamed et al., 2017).

This article's theme concerns the additional employees' rights such as the contract of service interpretation, work-related discrimination issues and the Labour Court. There are limited number of articles which discuss this scenario.

Hassan et al. (2023) in their article, "Amendments to the Employment Act 1955: An Analysis of the Key Changes with Reference to International Labour Standards – A Positive Improvement for Malaysia's Employment Regime?" lucidly examine the new provisions brought about by the Employment Act (Amendment) 2022. The articles discuses several important issues implicated by the amended Act, namely, the scope of the Act coverage, increase of maternity leave, protection against termination on female employees on pregnancy

leave, introduction of paternity leave, removal of prohibition of women to work in unsuitable place and time, awareness of sexual harassment, maximum working hours, and flexible working arrangement.

Mahyut et al. (2023) discuss the impactful changes on the new amendment of Employment Act 1955. The revised Employment Act in Malaysia now offers comprehensive protection to a far broader range of workers, irrespective of their salary or job kind. In order to guarantee compliance, employers should review and update their employment contracts and procedures in light of the modified EA. In addition, employers are requested to comply with the necessary measures to adhere to the modified Act and the Revised First Schedule. Employers should be cautious when evaluating contracts or policies that may include terms conflicting with the amended EA. Such provisions would be deemed invalid and ineffective under Section 7 of the EA.

Literature on the Labour Court *per se* is also relatively scarce. However, some explanations about the court can be found on law firm websites, such as www.mahwengkwai.com. Although not academic writings, these brief explanations are very helpful in understanding the jurisdiction and role of the Labour Court, especially when compared to the Industrial Court.
Based on the literature review above, it is evident that the discussion regarding the amendments to the EA is not very in-depth. This is because articles written by Rafizah et al., and Mahyut et al., primarily state the provisions amended by the relevant Act but lack specific analysis of individual provisions. This paper distinguishes itself by providing a focused discussion on the Labour Court, based on the EA provisions and decided cases.

3. Methodology

This study employs a qualitative method, specifically a doctrinal approach. The doctrinal approach in legal writing is a common practice. In this study, the doctrine or jurisprudence is grounded in the principle of justice in the workplace. Justice in this context refers to workers having access to an institution capable of efficiently and affordably hearing their claims. Accordingly, the Labour Court is the focus of this study. Secondary materials such as books, journal articles, court cases, and statutes are used as references. Legislative provisions/statutes form the basis for discussing the Labour Court, as its powers and jurisdiction are provided by the EA. The 2022 amendments to the Act serve as a reference point as they expanded the Labour Court's jurisdiction, which forms the basis of the analysis in this writing. Cases decided by the Labour Court are examined to understand the role the court plays in interpretation and decision-making related to workplace disputes.

Powers of the Labour Court

The Malaysian Labor Department has jurisdiction over proceedings before the Director General of Labor, also referred to as the "Labour Court." The provisions of the EA 1955 govern the Court. The EA 1955's Section 69(1) stipulates the following:

> "*The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under[...] and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.*"

Under the relevant procedure, a complaint is filed with the Department of Labour. Following this, an investigation is conducted to determine whether the complaint has merit. For complaints deemed to lack merit, no further action will be taken. Conversely, for complaints with merit, a conciliation session will be arranged to explore the possibility of an amicable settlement. If conciliation fails, the case will be served to the "Labour Court", and a trial date will be fixed. A summons letter will be sent to both the defendant and the complainant, and a Trial Order will be issued, which will later be fixed and heard. Parties dissatisfied with the "Labour Court's" decision may appeal to the High Court (Section 77 EA 1955).

Section 75 of the Employment Act 1955, regarding the enforcement of DGL's order by Sessions or Magistrate Court, provides as follows:

> "*Where any order has been made by the Director General under this Part, and the same has not been complied with by the person to whom it is addressed, the Director General may send a certified copy thereof to the Registrar of a Sessions Court, or to the Court of a First Class Magistrate [...] shall cause the said copy to be recorded and thereupon the said order shall for all purposes be enforceable as a judgment of the Sessions Court, or of the Court of the First Class Magistrate, as the case may be, notwithstanding that the same may in respect of amount or value be in excess of the ordinary jurisdiction of the said Court.*"

The expansion of Section 69 of the EA to allow employees earning a monthly salary exceeding RM2000 to lodge complaints with the DGL is the most significant benefit extended to workers in the private sector. The clause gave the DGL the authority to investigate employee complaints regarding salaries or other financial payments that the employee is entitled to. Furthermore, under section 14(1) of the EA, the DGL has the authority to investigate complaints pertaining to disagreements between principals and contractors as well as any employer-made decisions. This DGL's power is typically known as the 'Labour Court'. The 'Labour Court' established under the EA is empowered to hear cases concerning infringements of the provisions of the Act, for example on discrimination issue under Section 69F. It should be noted that the term "Labour Court" is not explicitly used in the Act. Instead, this term is commonly employed by employers, employees, practitioners and officials of the Ministry. The procedure in the DGL's inquiry ('Labour Court') is provided under Section 70 of the EA and he shall keep a record of enquiry. The DGL may refer any legal question to the High Cout (Section 76), and any person may make an appeal against the DGL's order to the High Court (Section 77).

The Labour Court functions similarly to an administrative tribunal and is not necessarily presided over by a legally qualified person. In contrast, the Industrial Court (IC), established under the IRA, is presided over by legally qualified individuals. Those appointed to preside over IC cases must have at least seven years of experience as advocates or solicitors if appointed from the legal profession, a condition not required for the 'Labour Court'. The individuals presiding over complaints in the 'Labour Court' are labour officers. We do not intend to undermine the capability of the presiding officer; however, handling a case involving legal issues, such as those related to discrimination arising from clauses in the Federal Constitution, would indeed be challenging.

With the amendment of the EA 2022, millions of workers earning over RM2000 monthly will now have the right to be governed by the Act and will have access to the 'Labour Court'. Consequently, the Department of Labour will face additional tasks and heavier workloads in enforcing the Act, such as inspecting workplaces (Mahyut et al., 2023). Furthermore, the

'Labour Court' will hear more cases since current management employees, who were previously unable to file complaints before 2023, will now be able to do so.

Power of the Labour Court on Employees' Presumption Issues

The Employment (Amendment) Act 2022 has introduced similar considerations or tests that the DGL or Labour Court must evaluate whether a contract of service exist. This includes tests for qualifying for protection under the EA, applicable to both management and non-management employees. This amendment is very helpful for the Labour Court because the application criteria of the EA require that those 'employed' must be an 'employee' under a service contract. This question is often raised by employers when they attempt to deny that the claimant is a 'employee' of the employer.

Without a formal service contract pertaining to any category of employee under the First Schedule of the Act, it will be assumed that a person is an employee in any proceeding for an offence under the Act after amendment, in accordance with Section 101C, where: (i) Someone else controls or directs his work style; (ii) Someone else controls or directs his working hours; (iii) Someone else gives him tools, materials, or equipment to carry out his work; (iv) His work is an essential component of someone else's business; (v) His work is done exclusively for someone else's benefit; or (vi) He receives payment in exchange for work done.

In this context, the DGL/Labour Court has a duty to deliberate and determine whether an applicant is an employee if this question arises or is raised by any party. Section 101C (1) is a presumptive provision that is subject to counterarguments. The DGL/Labour Court will have to deal with this issue with is usually handled by the Industrial or Civil Courts which are used to arguments of this question. It will be interesting to observe how the presiding officers of the Labour Court deliberate on this matter.

It would be interesting to observe whether the Labour Court would adopt the same approach taken by the Industrial Court or Civil Court in addressing the question of whether the applicant is an employee employed under the service contract. Or would the lawyer representing the employer or employee adopt arguments along the line of the principles as propounded by the Industrial Court or Civil Court. If this happened it would, arguably, contradict the characteristic of the Labour Court which is administrative in nature. But this scenario is expected to occur if such presumptive provisions are made available in the amended Act, and hence legal activism will eventually creep into the Labour Court. Since the decisions of the Labour Court may be reviewed by the High Court, the Labour Court officer will certainly conduct the case according to the principles as enunciated by the civil courts.

We discuss here cases from the Civil Court and Industrial Court related to the issue, as they can serve as guidance for the Labour Court. The Labour Court has referred to cases from the Civil Court and Industrial Court. The cases referred to are *Colgate Palmolive Sdn* (2002), *Ekajaya (M) Sdn Bhd* (2014), and *Mashyur Mutiara Sdn Bhd* (2020). Other civil and Industrial Court cases determining whether the claimant qualifies as a workman are discussed below.

In *Hoh Kiang Ngan*' case (1996), Gopal Sri Ram JCA pointed out that one important consideration is the Control Test, which measures how much control an employer has over a claimant. The more power the company has over the individual, the more probable it is that the worker is a corporate employee. His Lordship also remarked that "however, this may not be the sole measure. The conditions of the contract between the parties must first be discovered in order to identify the nature of the latter's duties and functions".

The claimant in *J Mathew Miranda*' case (2018) claimed that the company had constructively fired him without providing a good reason or explanation. Nonetheless, the company argued that the claimant did not fit the 1967 Act's definition of a "workman" under Section 20(1) since he was not an employee. Therefore, before the court could consider the question of constructive dismissal, the claimant had to demonstrate that he was an employee of the corporation. The fact of the case showed that the claimant was free to come and go from the workplace whenever he wanted, and the firm had little to no control over him. Additionally, the claimant failed to present enough evidence to prove his status as a workman under the Act. This was largely because the claimant did not testify about adhering to the company's standard working hours, which is required for regular workers. Furthermore, the claimant failed to produce any records attesting to the incorporation of his work into the company's business. Consequently, the claimant's constructive dismissal complaint was rejected.

The civil courts' decisions on service contract issues such as in *Leighton Contractors (M) Sdn Bhd* (2018); *Agenda Wira Sdn Bhd* (2018); dan *Fice Fransina Nenobais* (2020) were referred to by the Labour Court in *Mohamad Adam Rahmad*' case (2024). In this later case, the employer-employee relationship can exist through an implied contract of service, even without a clear written agreement. One important determinant of the presence of such a relationship is the degree of control the employer has over the worker.

As the most important factor in evaluating whether a contract exists, the degree of control the employer has over the employee must be evaluated. The complainant qualifies as the defendant's employee by fulfilling the terms outlined in the supplementary offer letter. Each piece of "work done" demonstrates that the defendant and its business network had full control over the complainant.

In this case, it was decided that the failure of an employer to pay wages to their employees on time constitutes a serious violation of labour laws and amounts to forced labour. A contract of service can exist directly, meaning the liability for employees hired by a building manager must be borne by the building owner. Thus, the building owner, as the principal, should be considered the employer of the employees.

There is evidence of forced labour in the defendant's administration. This is evident in the failure to provide wages or, in other words, the fact that employees did not receive payment or benefits in accordance with labour laws.

It is to be noted that the finding of the Court on the offence of forced labour aligns with the new provision of the amended EA (section 90B).

Power of the Labour Court on Discrimination Complaints

The EA's Section 69F gives the Director-General (DG) the power to act and resolve disputes regarding employment discrimination and to issue orders based on such decisions. An employer who does not comply with a DG's order commits a penal offense under the Act.

However, the Employment Act does not define what constitutes employment discrimination. Discrimination in employment can occur in various situations, including those related to gender, race, religion, nationality, physical appearance, and trade union membership (Wahab & Mahmod, 2020; Wahab, 2018). Discrimination can occur both during employment and prior to employment, such as during the hiring process (Wahab et al., 2023). However, pre-

employment discrimination cases cannot be brought to court under the Act because the complainant is not an employee of the accused 'employer'.

Discrimination cases related to trade unions can be brought to the Labour Court, especially cases concerning the prohibition of workers from participating in trade union activities. Discrimination related to trade union membership is provided for under the EA. Section 8 of the EA prohibits employers from including terms and conditions in service contracts that restrict employees' rights to join trade unions and engage in union activities.

Similarly, Section 5 of the IRA prohibits employers from discriminating against employees in relation to trade union membership, whether in terms of service contracts, reduction of terms or benefits in employment, or disciplinary actions or termination of employment due to involvement in trade union activities. However, offenses under section 5 of the IRA cannot be brought to the Labor Court, but rather to the Industrial Court.

For instance, the Federal Court ruled in *Ismail Nasaruddin bin Abdul Wahab* (2022), a case under the IRA, that an employee cannot be fired for engaging in a trade union activity while serving as an officer or member of a trade union, unless the activity is unrelated to the union's operations, is carried out in bad faith, or is done in a way that wilfully ignores the truth. Before releasing a press release regarding the nature of a trade dispute, a trade union representative acting on behalf of a trade union is not required by law to exhaust the trade dispute procedure under sections 18, 19, and 26 of the APP. In addition, the legal scheme implemented does not prohibit officials or trade union members from issuing press statements.

Another example of a case related to union discrimination is *Sethupaty a/l Thiaganarajan* (2023) in which the Court of Appeal held that the claimant was never acting independently against the bank. Posting photographs on his Facebook page and tagging NUBE does not change the fact that he was performing actions closely related to and within his role as a union representative at the Bank.

Another type of occupational discrimination is gender. Discrimination in employment pertaining to gender could occur as shown in the *Betrice Fernandez* (2004) case. The airline's collective agreement, which applied to all stewardesses, stipulated that a MAS employee was fired for becoming pregnant. The Federal Court decided that constitutional law, as a subset of public law, solely deals with instances in which a public power violates an individual's rights. Constitutional law will not recognize when a private individual's rights are violated by another private individual. Furthermore, it appears that the collective agreement discriminated against certain groups of female employees by setting different retirement ages for them. In this case, the employee claim based on the ground of gender discrimination did not succeed.

The gender discrimination case of *Air Asia Bhd* (2014) is somewhat comparable. The Court of Appeal ruled in the case that, provided the respondent satisfies the agreement's training requirements, a training agreement provision does not prohibit marriage or pregnancy. Consequently, it does not violate the rights of female employees.

However, the High Court decided in *Noorfadilla binti Ahmad Saikin (*2012) that not hiring a woman solely because she is pregnant constitutes gender discrimination and violates Article 8 of the Malaysian Federal Constitution, rendering it unlawful in public service. The decision is based on the phrase “in the appointment to any office or employment under a public authority”

in Article 8 of the Constitution, which explicitly prohibits gender discrimination in public service.

All the cases discussed above were deliberated by the Industrial Court or Civil Courts, not originated from the Labour Court. These cases can serve as a guide for the Labour Court in handling discrimination claim cases. Arguably, it would be a challenging task for the Labour Court to handle these types of cases, where issues of fundamental freedoms or rights are based on federal constitutional provisions. However, the authors believe that the experienced presiding officers of the Labour Court are capable to hear and decide on any type of discrimination cases.

Impact of the Employment Act (Amendment) 2022

The powers and jurisdiction of the Labour Court have certainly expanded due to the amendments to the Employment Act 2022. The Labour Court, in addition to hearing various types of claims under the EA, will also be burdened with a large number of cases. The number of cases will increase because the amendment extends the application of the Act to all workers in Malaysia. The expanded coverage of the EA has significantly increased the tasks and workload of the Labour Department, as well as the authority of the DG.

The Labour Department saw a notable increase in enforcement actions: the number of investigation papers opened in 2023 (the year when the amendments to the EA 2022 came into force) was 2,240, up from 1,323 in 2022. Additionally, there were 295 consents to prosecute in 2023 compared to 192 in 2022. The issuance of compounds also rose, with 997 issued in 2023 compared to 636 in 2022 (KSM).

In terms of operational activities, the Labour Department conducted 749 labour operations in 2023, compared to 582 in 2022. Overall, since the amended EA took effect on January 1, 2023, the workload of the Labour Department has significantly increased.

According to the MHR statistics, the number of employee termination cases in 2023 was 41,658 compared to 22,406 cases in 2022 This represents an increase of approximately 90% in terminated employees. However, the number of complaint cases was 9,691 employees in 2023 compared to 8,189 employees in 2022. The number of labour cases in 2023 was 14,488 compared to 10,910 in 2022 (KSM). These data indicate a significant increase, especially in termination cases in 2023, although not all employees file their cases with the Labour Court, Department of Labour. Many employees file their cases in the IC, established under the IRA 1967, which provides for higher compensation amounts.

Due to the increased workload at the Labour Department, it is recommended that the manpower be expanded to ensure effective enforcement of the EA. This expansion should not only include the number of presiding officers at the Court but also a focus on enhancing the legal knowledge of personnel. The amended EA is likely to bring forth new cases involving legal issues that have not been encountered before, necessitating a well-prepared and knowledgeable staff.

4. Conclusion

The Malaysian Labour Court has under undergone interesting changes as a result of the Employment Amendment Act 2022. It has expanded the court's powers and jurisdiction, allowing it to handle more employment issues, such as workplace discrimination and contract disputes. The court can now decide cases about contracts of service, which helps clarify

workers' employment status and strengthens their legal rights. This is important because it ensures all employees are treated fairly and recognized as workers, regardless of their income or job type.

However, these changes are likely to increase the number of cases the Labour Court has to handle. Since the EA now covers all employees with a service contract, complaints about wages, dismissal and workplace discrimination are expected to rise. This could make it a challenge for the court to handle cases quickly and efficiently.

The study reveals that although the EA 2022 amendments present challenges for the Labour Court, they also offer an opportunity to enhance its status. For instance, the Labour Court's decision in *Mohamad Adam Rahmad* (2024) demonstrated its capability to address complex employment contract issues effectively. In summary, while the amendments improve employee rights and protections, they also highlight the need to ensure the Labour Court can manage the higher workload effectively. Balancing these improvements with the court's capacity to deliver timely justice will be key to achieving the benefits of these changes.

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