

Foreign Workers and Trade Unions in Malaysia

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Abstract

This paper examines the involvement of foreign workers in trade unions in Malaysia, a critical issue given the substantial presence of foreign labor in the country's workforce. Despite legal provisions granting them the right to join unions, foreign workers' participation remains relatively low due to various obstacles. The paper explores the benefits of their involvement, the challenges and barriers they face, the legal framework governing their rights, and the roles of key stakeholders in facilitating their participation. It highlights the need for collaborative efforts to increase awareness, address cultural and linguistic barriers, foster inclusive representation, and create an enabling environment that encourages and protects foreign workers' engagement in union activities. Enhancing their involvement is crucial for

protecting their rights, promoting their welfare, and strengthening the labor relations in Malaysia.

Keywords: Foreign Workers, Trade Union, Collective Bargaining, Union Membership, Malaysia.

Introduction

Malaysia's rapid economic growth and development have led to a significant influx of foreign workers, who play a crucial role in various sectors of the economy, particularly labor-intensive industries such as manufacturing, construction, and plantation agriculture. According to Third Quarter Labour Force Report (DOSM, 2023), around 2.29 million foreign nationals working in the labour market. This substantial presence of foreign labor has become an integral part of the country's economic landscape, contributing significantly to its productivity and growth.

Trade unions serve as essential platforms for workers to voice their concerns, negotiate better working conditions, and ensure fair treatment by employers. They play a vital role in promoting workers' rights, collective bargaining, and social dialogue (Yusof & Ariffin, 2020). The Department of Trade Union Affairs (JHEKS) in Malaysia is responsible for the registration and regulation of trade unions. Its main role is to ensure that trade unions comply with the Trade Union Act 1959 and the Trade Union Regulations 1959. In 2023, Malaysia had 756 officially recognised trade unions, comprising a combined membership of 1,008,371 individuals (JHEKS, 2023). Nevertheless, the level of foreign worker involvement in these unions is significantly lower in comparison to their overall presence in the labour force. In the year 2023, there existed a total of 17 trade unions that included foreign workers as members. The number of foreign workers in membership experienced a substantial growth, rising from 27,998 in 2022 to 34,872 in 2023. Trade unions representing foreign workers are present in only four specific industries: 10 trade unions in agriculture, forestry, and fishing; 5 in manufacturing; 1 in transportation and storage; and 1 in education. The majority of foreign workers in the agriculture, forestry, and fishery sector, totalling 33,611 individuals, are affiliated with trade unions. This number is higher compared to other industries. Additionally, a significant portion of these workers, specifically 19,907 individuals, are located in Selangor. Although there is a significant number of foreign workers in Malaysia, their involvement in trade unions is disproportionately low compared to their overall representation in the workforce (Dasuki, 2023). This low level of involvement raises concerns about the protection of their rights and the promotion of their welfare in the workplace.

The involvement of foreign workers in trade unions has been a topic of ongoing debate and discussion in Malaysia. Some argue against their inclusion in trade unions, citing their non-citizen status and the belief that they may not have the same rights and responsibilities as local workers. However, others recognize the numerous benefits that can arise from their participation, such as increased collective bargaining power, improved working conditions, and a stronger, more representative labor movement (Tan, 2014; ILO, 2023).

This review paper examines the involvement of foreign workers in trade unions in Malaysia, exploring the legal framework governing their rights to join unions, the benefits and challenges of their participation, and the factors influencing their decision to engage in union activities. It also discusses the role of key stakeholders, such as the Malaysian Trade Union Congress (MTUC), the Malaysian Employers Federation (MEF), and relevant government

agencies, in promoting and supporting foreign workers' involvement in trade unions. By delving into these critical aspects, the paper seeks to contribute to the understanding of the obstacles faced by foreign workers in exercising their right to collective representation and identify potential strategies for increasing their participation in Malaysian trade unions. The findings of this paper have important implications for policymakers, trade unions, employers, and foreign workers themselves in fostering a more inclusive, equitable, and productive labor environment in Malaysia.

Objectives

1. To summarise the benefits of foreign workers' participation in trade unions, as well as the challenges and barriers to such involvement,
2. To provide an overview of foreign workers' legal framework and rights, as well as the role of stakeholders in promoting foreign worker involvement in trade unions.

Literature Review

Benefits of Foreign Workers' Participation in Trade Unions

The globalization of the economy has led to an increase in the mobility of labor across borders (Yusof & Ariffin, 2020). Many countries, including Malaysia, have witnessed a significant influx of foreign workers seeking employment opportunities (Estrada et al., 2013). This influx of foreign workers has both positive and negative implications for the host country. One potential avenue for addressing the challenges and ensuring the well-being of foreign workers is their participation in trade unions (Yusof & Ariffin, 2020).

The participation of foreign workers in trade unions in Malaysia has been a topic of debate and discussion for several years (Tan, 2014). While some argue that foreign workers should not be allowed to join trade unions as they are not citizens and may not have the same rights and responsibilities, others recognize the numerous benefits that can arise from their inclusion (ETI, 2019). The participation of foreign workers in trade unions can bring various benefits to the workers themselves, employers, their home countries, and Malaysia as a whole (Yusof & Ariffin, 2020).

An important advantage of foreign workers' involvement in trade unions is the enhanced capacity for collective bargaining. As a member state of the ILO since 1961, Malaysia has ratified Convention No. 98: Right to Organise and Collective Bargaining Convention, 1949, enabling trade unions in the country to engage in collective bargaining with employers. This right is codified in Section 13 of the Industrial Relations Act 1967 (IRA 1967), which stipulates that a recognized trade union may initiate collective bargaining proceedings with an employer. Through trade unions, foreign workers are empowered to file formal complaints regarding workplace rights violations (Ibrahim & Razali, 2022), helps protect foreign workers from exploitative practices, including forced labor (Tang, 2019), and foreign workers are less likely to participate in illegal strikes that can lead to industrial unrest (Mohamed et al., 2012). Furthermore, this collective bargaining power is especially crucial for foreign workers, as it allows them to negotiate for improved wages, working hours, and working conditions (Yusof & Ariffin, 2020). Furthermore, foreign workers' participation in trade unions can contribute to improved employer-employee relations and increased workplace productivity (Sangalang, 2013; Aminuddin, 2020). Through union membership, foreign workers gain access to legal assistance, grievance handling mechanisms, and training opportunities that enhance their

skills and employability. This can lead to a more skilled and capable workforce, benefiting both employees and employers.

Finally, the knowledge and experiences gained by foreign workers through their involvement in trade union activities can have positive spillover effects in their home countries (Ismail, 2022). When foreign workers return to their countries of origin, they bring with them the skills, insights, and perspectives gained through their participation in trade unions. This exposure can contribute to the development of stronger labor movements and the promotion of improved labor standards in their home countries. Additionally, the international solidarity and cooperation fostered through their involvement in Malaysian trade unions can facilitate knowledge sharing and collaboration with labor organizations in other countries, promoting a more interconnected and supportive global labor movement.

Challenges and Barriers to Foreign Worker Involvement

Foreign workers face numerous obstacles that impede their participation in trade unions. The legal framework and regulations in host countries often create barriers to union membership and activity (Connolly et al., 2019). Language barriers and communication difficulties in their new work environments further complicate their engagement with unions (Debono, 2023). Cultural norms and the lack of established social networks can also discourage foreign workers from union involvement (Pajares, 2008). Many foreign workers are unaware of the benefits of union membership, the procedures for joining, or the nature of union activities, which limits their participation (Perret et al., 2012; Yusof & Ariffin, 2020).

Furthermore, the precarious nature of employment for many foreign workers, including temporary or irregular migration status, can create a power imbalance that discourages them from asserting their rights or organizing collectively (Farbenblum & Berg, 2017). Foreign workers, particularly those in low-skilled or labor-intensive sectors, may fear retaliation from employers, such as termination or non-renewal of contracts, if they engage in trade union activities (Clarke & Pringle, 2009; Dasuki, 2023). This power imbalance can make foreign workers hesitant to engage in union activities, fearing that their employer may terminate their contract, withhold wages, or even initiate deportation proceedings as a form of retaliation.

Cultural differences and social isolation can also act as barriers to foreign workers' participation in trade unions. Coming from diverse backgrounds, foreign workers may face difficulties in integrating into the local workforce and building social support networks (ILO, 2023). Malaysia's foreign workforce comprises individuals from diverse cultural and linguistic backgrounds, which can pose challenges in effective communication and integration within trade unions (Aminuddin, 2020). Language barriers may hinder foreign workers' ability to understand and participate fully in union activities, while cultural differences can lead to misunderstandings or a perceived lack of representation. This sense of isolation can make it challenging for foreign workers to connect with trade unions and actively participate in union activities. Moreover, cultural norms and expectations regarding collective action and worker solidarity may differ from those in the host country, further complicating foreign workers' engagement with trade unions.

The legal restrictions on foreign workers holding leadership positions within trade unions pose another obstacle to their full participation. While foreign workers are allowed to join

trade unions in Malaysia, they are prohibited from holding leadership positions within these organizations, as stipulated in Section 28(a) of the Trade Unions Act 1959 (Ismail, 2022). This restriction limits their ability to directly influence decision-making processes and the strategic direction of trade unions. Moreover, foreign workers may face structural barriers within workplaces, such as segregation or isolation from local workers, which can hinder their integration into trade union activities (Aminuddin, 2020). Additionally, the prevalence of subcontracting or outsourcing arrangements can create fragmented workforces, making it more challenging for foreign workers to organize collectively.

Legal Framework and Rights of Foreign Workers

Malaysia's legal framework governing foreign workers' rights to join trade unions is primarily based on the Trade Union Act 1959 and the Industrial Relations Act 1967. These laws provide the foundation for the protection of workers' rights to collective representation and freedom of association, including those of foreign workers (Ismail, 2022). Under Section 8 of the Employment Act 1955 and Section 4 of the Industrial Relations Act 1967, foreign workers in Malaysia are granted the right to participate in trade unions. The Trade Union Act 1959 does not differentiate between local and foreign workers, implying that the right to join a trade union extends to all employees, regardless of their nationality (Department of Trade Union Affairs, 2023). However, while foreign workers can join trade unions, they are prohibited from holding leadership positions within these organizations, as stipulated in Section 28(a) of the Trade Unions Act 1959 (Ismail, 2022). This restriction limits their ability to directly influence decision-making processes and the strategic direction of trade unions.

Despite the legal provisions, foreign workers' participation in trade unions remains low, attributed to factors such as fear of work permit cancellation, repatriation, and a lack of support from the employer (Dasuki, 2023). The Department of Trade Union Affairs (JHEKS) plays a vital role in ensuring that trade unions operate in accordance with the law and that the rights of all workers, including foreign workers, are protected. The department also actively promotes trade unions and encourages the participation of both local and foreign employees in union activities.

In addition to JHEKS, other key stakeholders such as the Malaysian Trade Union Congress (MTUC) and the Malaysian Employers Federation (MEF) have a significant influence on the involvement of foreign workers in trade unions. MTUC, as the largest labor congress in Malaysia, advocates for the rights and welfare of all workers, including foreign workers. It has established Migrant Worker Resource Centres to provide support and assistance to foreign workers in navigating the challenges they face in the workplace. MEF, on the other hand, represents the interests of employers and plays a role in shaping policies and practices related to foreign workers' participation in trade unions. In conclusion, while the legal framework in Malaysia grants foreign workers the right to join trade unions, their actual participation remains limited due to various obstacles.

Role of Key Stakeholders

The promotion and support of foreign workers' involvement in trade unions in Malaysia require the collaborative efforts of key stakeholders, including the Malaysian Trade Union Congress (MTUC), the Malaysian Employers Federation (MEF), and relevant government

agencies. Each of these stakeholders plays a crucial role in creating an enabling environment that encourages and facilitates the participation of foreign workers in union activities.

The Malaysian Trade Union Congress (MTUC), as the largest labor association in the country, has been at the forefront of advocating for the rights and welfare of all workers, including foreign workers. MTUC has established Migrant Worker Resource Centres (MRCs) to provide support and assistance to foreign workers in navigating the challenges they face in the workplace (Aminuddin, 2020). These centers offer a range of services, including legal advice, grievance handling, and language support, which are essential in helping foreign workers understand their rights and engage with trade unions. MTUC's MRCs serve as a bridge between foreign workers and trade unions, facilitating their participation and representation. By providing a safe space for foreign workers to voice their concerns and access support services, MTUC helps build trust and confidence among foreign workers, encouraging them to actively engage in union activities. Moreover, MTUC plays a vital role in raising awareness about the importance of trade unions and the benefits of collective bargaining among foreign workers through various outreach programs and campaigns.

The Malaysian Employers Federation (MEF), as the representative body of employers in the country, also has a significant role to play in promoting foreign workers' involvement in trade unions. While some employers may view trade unions as a challenge to their managerial prerogatives, MEF recognizes the potential benefits of constructive engagement between employers and trade unions. By fostering a culture of social dialogue and cooperation, MEF can encourage its members to support the participation of foreign workers in union activities, leading to improved industrial relations and productivity. MEF can also work with trade unions and government agencies to develop best practices and guidelines for the fair treatment of foreign workers, including their right to join and participate in union activities. By promoting responsible employment practices and compliance with labor standards, MEF can contribute to creating a more inclusive and equitable workplace environment that encourages foreign workers' involvement in trade unions (Aminuddin, 2020; ILO, 2023; Yusof & Ariffin, 2020; Harun & Mohamad, 2020).

Government agencies, such as the Department of Trade Union Affairs (JHEKS), the Department of Labour Peninsular Malaysia (JTKSM), and the Department of Industrial Relations (JPP), play a critical role in regulating and supporting the activities of trade unions in Malaysia. These agencies are responsible for enforcing labor laws, registering trade unions, and promoting harmonious industrial relations. JHEKS, in particular, is mandated to ensure that trade unions operate in accordance with the Trade Union Act 1959 and the Trade Union Regulations 1959. The department actively promotes the formation and growth of trade unions, including those representing foreign workers. By providing guidance and support to trade unions, JHEKS helps create an enabling legal and administrative environment for foreign workers' participation in union activities. JTKSM and JPP also play important roles in protecting the rights of foreign workers and promoting their involvement in trade unions. JTKSM handles complaints and grievances related to working conditions and labor standards, ensuring that foreign workers' rights are upheld. JPP, on the other hand, facilitates the resolution of industrial disputes and promotes collective bargaining between employers and trade unions, including those representing foreign worker. By providing effective dispute

resolution mechanisms and supporting the bargaining process, these agencies help create a more stable and conducive environment for foreign workers' participation in trade unions.

Conclusion

The substantial presence of foreign workers in Malaysia's workforce highlights the importance of examining their involvement in trade unions. While legal provisions grant them the right to join unions, their participation remains disproportionately low compared to their representation in the labor force. This review paper has explored the benefits, challenges, legal framework, and roles of key stakeholders in facilitating foreign workers' engagement in union activities.

The potential benefits of foreign workers' participation in trade unions are multifaceted. It can enhance their collective bargaining power, leading to improved wages, working conditions, and rights. Additionally, it fosters solidarity, mutual understanding, and a sense of community among a diverse workforce. Foreign workers' involvement can contribute to improved communication, collaboration, and productivity within organizations. Furthermore, it strengthens the labor movement's representativeness, legitimacy, and effectiveness in advocating for workers' interests. Consequently, the participation of foreign workers raises awareness and education about labor rights and regulations, empowering the entire workforce.

However, significant obstacles impede foreign workers' ability to exercise their right to collective representation. These include a lack of awareness about trade unions and their rights, language and cultural barriers, fear of retaliation or deportation, social isolation, and legal restrictions on holding leadership positions within unions. The precarious nature of employment and power imbalances further discourage foreign workers from asserting their rights or organizing collectively.

Implications

This review has several important implications. Firstly, we have highlighted the critical importance of collective bargaining for foreign workers in Malaysia, as this could help improve their welfare. Secondly, the identification of specific challenges faced by foreign workers implies that targeted interventions, such as language support. Thirdly, a concerted approach is needed to increase awareness and education about the legal framework supporting foreign workers' rights in trade unions. This requires a collaborative effort from key stakeholders, such as the Malaysian Trade Union Congress (MTUC), the Malaysian Employers Federation (MEF), and relevant government agencies. Fourth, organizational policy has implications for foreign worker participation in trade unions. Policy changes and cultural shifts within companies may overcome the fear among foreign workers. Lastly, this paper provides an indication that foreign worker involvement could increase union membership and consequently trade union density, which would have broader implications for labour relations in Malaysia.

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