CHAPTER 6
UNDER WHAT CONDITIONS WOULD A STRIKE BE ILLEGAL

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1.0 INTRODUCTION

Strike can be characterised by the Industrial Relations Act (Section 2) is "The
discontinuance of work by a group of labourers acting in mix, or a purposeful
refusal or a refusal under a typical comprehension of various workers to
proceed with work or to acknowledge business, and incorporates any
demonstration or oversight by an assortment of workers acting in mix or under
a typical comprehension, which is expected to or results in an impediment,
confinement, decrease or suspension of a laziness in the execution or
execution of the entire or any piece of the obligations associated with their
business", (Aminuddin, 2016).

In the trade union act 1959 part (IV) the rights and liabilities of trade unions in
section 25A is about strike and lock-outs. The purpose of this trade union act
is to promote or arrange or pay for a strike or lock-outs in any trade or
industry or the provision of salaries or other benefits to its members during a
strike of lock-outs (Law, 2011). Therefore, every industry must be registered
under this trade union because in the event of such strike or lock-outs they
may use these acts as evidence, finance or sue any party involved.
In section 25A it says’ “no trade union can strike a strike, and no member of it may strike and no employer’s union can declare a lock-outs”. It implies that on account of a worker's organisation of labourers, without first getting the assent by mystery poll of no less than 66% of its all-out number of individuals who are qualified for vote and in regard of whom the strike is to be called; and on account of a worker's guild of managers, without first acquiring by mystery ticket the assent of something like 66% of its complete number of individuals who are qualified for vote.

The procedures to be followed to ensure the legality of the strike is still unclear in industry relations but various guidelines and restrictions are found in both of the Trade Unions Act and the Industrial Relations Act. The strike is only valid and true if they follow with the rules in the Industrial Relations Act and the Trade Unions Act.

Therefore, the right to strike will only be given to registered trade union members and must continue with trade disputes (Industry Relations Act, Section 45). A group of workers with only trade disputes with their employers can only take a strike but the sympathy and politics, or general attacks, are illegal in Malaysia.

Strike can be taken in the form of total or partial and refusal or reduction of work. Where a strike can be a complete labour productions, or can be done slowly where workers are working, but intentionally work slowly (below their normal production levels) to pressure employers to comply with demand (Negotiations, 2014). The strike can also be continuous, or can take action, where workers strike for several days, then return to work, and then start a strike later. Therefore, the party cannot attack the dispute of the right and the dispute must be linked to a dispute of interest, in which one party cannot enforce its will with another through the operation of the law. In the next section will be discuss more in depth about a strike where a strike can be conducted or illegal while conducting and following its procedure.
2.0 DISCUSSION

2.1 Strike Procedures based on Trade Unions Act 1959

2.1.1 No trade union of working people shall call for a strike, and no member thereof shall go on strike, and no trade union of employers shall declare a lock-out.

2.1.2 Any trade union of every executive member who, commencing, promoting, organizing or financing any strike or lockout which is contrary to subsection (1) shall be guilty of an offense and shall, on conviction, be liable to a fine not exceeding two thousand ringgit, or imprisonment for a term not exceeding one year, or both, and a further fine of one hundred ringgit for each day for which the offense continues.

2.1.3 Any member of the trade union, the working people who initiates or participates in and there is any objection contrary to subsection (1) shall immediately cease to be a member of the trade union and thereafter shall not be a member of the trade union except with the approval of the Director General.

2.1.4 The Director General may, where he is satisfied that subsection (1) has been contravened by any person and the trade union concerned has failed to carry out the provisions of subsection (3), or where there is undue delay in so doing, after such investigation as he deems necessary, order the trade union to remove forthwith the names of the members concerned from its membership register.

2.1.5 The satisfaction of the Director General under subsection (4) that subsection (1) has been contravened by any person may be arrived at regardless as to whether or not there is any prosecution of any person for contravention of the said subsection (1).

2.1.6 Any registered trade union and every member of its executive, who fails to comply with subsection (3) or by the order of the Director General under subsection (4) commits an offense and shall, on conviction, be liable to a fine not exceeding one thousand ringgit,
furthermore one hundred ringgit for every day for which the offense continues.

2.1.7 In every proceedings for an offence under this section the onus of proving that the requirements specified in subsection (1) have been complied with shall be on the trade union, the member of its executive or the member of the trade union, as the case may be.

All these procedures must be followed by members of the trade union because in the subsection (1), the secret vote is only valid for 90 days and if the strike has not taken place within this period, a new vote will be required if the union intends to continue with the strike action (Labour & Act, n.d.) (Trade Unions Act, 1959). Section 44(b) of the Industrial Relations Act says “No workmen shall go on strike and no employer of any such workmen shall declare a lockout after a trade dispute or matter involving such workman and such employer has been referred to the Court and the parties concerned have been notified of such reference.” (Aminuddin, 2016). It means that matters involving the strike and lock-outs will continue to be referred to the Court and in accordance with the Trade Unions Act and the Industrial Relations Act.

2.2 What Conditions Would A Strike Be Illegal

A strike is illegal over the following issues or in the following situations:

2.2.1 Over a collective agreement which has been deposited with and accepted by the Industrial Court.
2.2.2 Over management prerogatives, such as those matters prohibited from being included in collective bargaining proposals.
2.2.3 During and immediately after the proceedings of a Board of Inquiry appointed by the Minister.
2.2.4 After a trade dispute has been referred to the Industrial Court for arbitration.
2.2.5 Over recognition dispute which is being resolved by the Minister.
2.2.6 When the Yang di-Pertuan Agong has refused permission for a trade dispute in the public sector to referred to the Industrial Court for arbitration.

A careful study of the above points shows why it is difficult for the unions to strike internally, especially in the public sector must be through the Director General of Industrial Relations will maintain the power that can prevent attacks. As can be seen, in the event of a dispute between the union and the employer, the Director General has the power to call a compliable council meeting and if this fails to bring a settlement, the Minister of Human Resources will refer the Court's dispute, thereby making an illegal strike (Aminuddin, 2016).

2.3 Example of strike cases

On 29 July 2018, about 200 staff, officers and judges at the Kuala Lumpur Court Complex here took part in the gotong royong to clean up the complex this morning (Sidek, 2018). This is due to the fact that about 120 cleaning workers in the complex launched a strike over the past two weeks because cleaning contractors appointed since Aidilfitri did not pay their wages. This is because of misunderstandings about what was promised compared to what was being done and the problem has been discussing with the contractor. While the problem arises from a contractor company who does not pay a cleaning workers salary.

Besides that, on 28 August 2018, a total of 118 prisoners of the Security Offenses Act (Special Measures) 2012 (SOSMA) went on strike to not eat since 8am yesterday (Fuad, 2018). This is because, SOSMA's prisoner called on the government to eliminate the act and Deputy Minister in the Prime Minister's Department (Law) Hanipa Maidin said he and his lawyer T Harpal Singh made a survey of the detainees who broke down and managed to stop the hunger strike. The government is currently looking into the proposal for the abolition of SOSMA through a committee formed and the jailer gave a green light to the family members to visit the prisoner today.
2.4 The effects of strike

There are various effects when a strike occurs, one of which is to contaminate or aggravate the organisation's image because in an organisation. Strikes occur causing employers to be deemed discriminatory against their employees and the organisation has no organized management system. In this case, the society will look obscure to such an organisation as it considers employers to direct workers in the form of oppression where workers' rights are underestimated by employers as a result the organisation does not have systematic management of the system in an organisation (Conferences & Limited, 2013). Therefore, the employee releases dissatisfaction with the strike for the employer to take responsibility for the needs and wants of the worker and not to discriminate against his employees.

Furthermore, a strike also causes a person to stop working. This is because employees will not remain in the organisation if employers are less responsive to their employees such as caring for employees' welfare, promotion, recognition and others to cause the worker to stop working. If many employees who stop work it can also lead to an organisation losing its workforce in contributing to organisational productivity allowing organisational consistency to decline (Carli et al., 2018). Additionally, employers will also lose potential workers in helping organisations improve the performance of their organisation. Therefore, employers need to take steps to prevent workers from taking action to strike and stop work.
3.0 CONCLUSION AND RECOMMENDATIONS

In conclusion, strike action can affect many parties by involving employers and workers or trade unions. This is because, the strike is about to follow procedures for the strike to be legal. Moreover, if compared to Malaysia with other countries such as Indonesia, Germany, the strike that was launched but in Malaysia was more limited than the foreign country. Malaysia does not have a clear statement the workers 'rights to strike but as an outside country for example Germany recognises the freedom of workers' rights to strike and strike in their country's constitution.

The strike in Malaysia is less likely to be launched as the strike issue may lead to cases of termination of service to workers who strike out because the strike should be followed by legal procedures under the law in Malaysia. For me, regardless of which country even this strike may damage the image of the organisation or country because it can restrict the entry of investors into the country where investors do not want to invest in the country because of seeing a strike that happens because of the system within the organisation or country systematic. Therefore, industrial harmony should be guarded by employers and workers where prerogative rights are set aside allowing shared justice to be maintained which gives satisfaction and better effect.

The proof is that the Department of Industrial Relations Malaysia has taken steps to ensure harmonization at workplace is always maintained as it is implementing continuous programs through harmonious tour activities, lectures and so on. In addition, workers and employers as well as trade unions are also provided explanations on job-related matters such as labour laws, good corporate relations practices and encouragement of establishing a consultative mechanism between employers and employees. This is to ensure industry harmonization is always maintained by all parties such as employers, workers and trade unions to work together and to maintain mutual prosperity.
REFERENCES


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