

RATIFICATION OF FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (CO NO. 87): SHOULD STATE RATIFY?

INTRODUCTION

International Labour Organisation (ILO) inaugurated to embolden the compliance and ratification of international labour standards by its country's membership in order to uphold the rights and fair remedy to the employee in nowhere¹. Among the fundamental labour standards that was outlined by ILO, is Freedom of Association and Protection of the Right to Organise Convention, 1948 (Co. No. 87 - C087)². The convention been learned as one of the eight fundamental conventions that also encouraged decent in work place³. The fundamental core value of this rights aims that any employee in any manner not being restricted by the employer from establishing a trade union (refer as union) and actively participate in the movement. Therefore, this article concentrating on the Co. No. 87, labour legal framework in reforming the trade union in Malaysia and the way forward whether state should ratify the convention.

THE ILO CONVENTION NO. 87

The Convention entered into force on 04th July 1950, and over the date, there were only 157 ratifications by the states out of 187 ILO's member states had ratified the convention⁴. Hereafter, Part 1 Freedom of Association (FOA), underlying of Article 2 of ILO's C087, workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join

¹ One of the United Nation's (UN) wing / agency that established in 1919 as part of Treaty of Versailles. History of the ILO. <https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm>

² C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232

³ The Philadelphia Declaration 1944 underlying this interest in the ILO's core principles and objectives.

⁴ Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312232

organisations of their own choosing without previous authorisation⁵. Meanwhile Article 3 (para 2), public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof⁶.

FOA provides generic protection to the right to establish and join trade union. This rights, is thoroughly interrelated to the universal right that stipulated in the national (federal) constitutions of most respective countries include Malaysia⁷, and as well as in international human rights conventions⁸. The Federal Constitution of Malaysia, is an uppermost law locus in Malaysia, accords the freedom of speech, assembly and association as the fundamental liberties. According to Awang Idris Awang Daud, Dzulzalani Eden et. al, 2017, the objective of ILO Convention 87 is to encourage the promotion of the principle of freedom of association in which employees or employers are free to choose and form trade unions or organisation of their choice⁹.

MALAYSIAN LABOUR LEGAL FRAMEWORK

In due course, Malaysian labour law has been enacted to encounter essentials of international standards of freedom of association. The Employment Act 1955 (EA 1955 - Act 265), Industrial Relations Act 1967 (IRA 1967 - Act 177) and Trade Union Act 1959 (TUA 1959 - Act 262) specified every employee even though employers have rights to form and assist the trade unions' formation, join a registered trade union, participating in its legitimate activities, shall not interfere with each other in the formation, functioning or administration of that trade union and shall not placing the trade union with the object of under control or influence. These principles that lies in the labours laws of Malaysia,

⁵ C087 - *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*. Et

⁶ Ibid.

⁷ Federal Constitution Part II Fundamental Liberties Article 10 Freedom of speech, assembly and association - (1) Subject to Clauses (2), (3) and (4) — (c) all citizens have the right to form associations. https://www.jac.gov.my/spk/images/stories/10_akta/perlembagaan_persekutuan/federal_constitution.pdf

⁸ *Article 19 & 20. Universal Declaration of Human Rights (UDHR)*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁹ *Benchmarking: The Way Forward. A Study of Trade Unions Effectiveness in Malaysia*. 2017. Institute of Labour Market Information and Analysis (ILMIA).

herein equated and honours the exclusive protection to the employees for instituting a trade union in the industry.

The trade union movement in Malaysia entails of 2 categories, which in-house union (for employee / employer within occupation or establishment or enterprise) and national (for employee / employer within trade or industry). The definition of the union itself, section 2 (1) (a) TUA 1959, trade union or union means any association or combination of workmen or employers, as the case may be within any particular establishment, trade, occupation or industry or within any similar trades, occupations or industries (ETOI). However, recently, the Parliament of Malaysia (Dewan Rakyat) has vouch to pass passed the Trade Union Bill (Amendment 2022)¹⁰. The amendment of the Act takes out the restrictions of the establishment of trade unions based on ETOI and eventually it will allow diversity of trade unions movement. Meanwhile, Section 2, IRA 1967 trade union means any trade union registered under any law relating to the registration of trade unions. Nevertheless, not all capacity / categories of workers eligible to join any trade union regardless it is in-house or national union. Employees with the capacity / category in managerial, executive, confidential and security need to form their own exclusive unions and excluded from others worker.

WAY FORWARD OF RATIFYING ILO CONVENTION NO. 87

Malaysia has become an ILO Member State since 1957 and ratified 18 ILO Conventions since joining which 14 are in force¹¹. Yet due to the time, nonetheless, an establishment of union movement unrestrained under the labour law and freedom of association generally being adopted, Malaysia is a one of non-ratified state and not a party to Co. No. 87¹². In considering whether to ratify the convention, state would ought to act rationally for its own public interest. The matter is, whether state (Malaysia) will ratify FOA

¹⁰ Nora Mahpar. *Dewan Rakyat lulus RUU Kesatuan Sekerja*. 05 October, 2022. https://www.freemalaysiatoday.com/category/bahasa/tempatan/2022/10/05/dewan-rakyat-lulus-ruu-kesatuansekerja/?fbclid=IwAR1Guhcn_EVXpsAAxt8s0_o0Rena3c1coAKomT0WeXIMoXmqmKG7Wvcdzl

¹¹ *The ILO in Malaysia*. Op-cit. https://www.ilo.org/asia/WCMS_398777/lang--en/index.htm

¹² *Up-to-date Conventions and Protocols not ratified by Malaysia*. https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102960

convention to comply international obligations. The centric focus for a state to ratify the convention, whether it is noteworthy and significant to protect domestic public interest. Thus, when a state considers to ratify the convention, conceivably it will reflect the labour atmosphere and national obligations.

Obviously, Malaysian government not in urgency towards ratification. Meanwhile for Malaysian Trades Union Congress (MTUC), have consistently urge the government to ratify the convention. According to Gopal Kishnam, the implementation of FOA Co. No. 87, will open-wide the multiplicity of union and the Malaysian workers will prefer to join industrial union rather than enterprise union, as industry-wide bargaining has greater leverage safeguarding workers' interest and general well-being¹³. State ratification of any international instrument is a type of sovereign call. According to Rahmat Mohamad, it would generally require a policy decision by the government on whether to proceed or bypass the international legal obligation¹⁴.

Theoretically, theoretical approaches may propose explanations why do states ratify ILO conventions. Rational institutionalist theory expects states to use institutions such as the ILO to improve or consolidate their preferred standards while reducing the risk of suffering competitive disadvantages in world markets. In this view, ILO conventions are devices for the prevention and mitigation of regulatory “races to the bottom” among trade rivals¹⁵. The obligations of international standards are essential in free trade and globalization. Predominantly, to confer in an international free trade agreements (FTAs), a respective developing states principally must adhere with the international standards such as human rights, labour matter and environment before state being recognized as members of the economic and trade bloc or partnership with developed states.

¹³ *Call for ratification of ILO C87 in Malaysia.* <https://www.industrial-union.org/call-for-ratification-of-ilo-c87-in-malaysia>. *Workers Demand Swift Implementation of Labour Law Reforms.* <https://www.malaysiakini.com/letters/572904>.

¹⁴ *Ratifying International Conventions.* <https://www.thestar.com.my/opinion/letters/2018/07/30/ratifying-international-conventions>. 21st February 2020.

¹⁵ Leonardo Baccini & Mathias Koenig-Archibugi. *Why Do States Commit to International Labour Standards? The Importance of “Rivalry” And “Friendship”.* <https://www.lse.ac.uk/government/Assets/Documents/pdf/research-groups/pspe/working-papers/PSPE-WP1-11.pdf>

FTA, i.e. the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), provides to each member country adopts and improves their respective laws, regulations and practices in relation to the rights of ILO Declaration. In the long run, it will benefit state to bargain and negotiate the trade agreement which has currently included an article regarding international labor standard obligations as one of the terms of the agreement.

CONCLUSION

Apparently, the labour chapter of FTA itself is a challenge to a state including Malaysia to comply with the demand of international labour standards. Feasibly, therefore this theoretical approach and study might drive and provides direction, assistance and support to the government, particularly, Ministry of Human Resources (MOHR) for considering and giving a commitment to ratify the ILO conventions No.87.

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