



Labour Bulletin

Pekerja Teras Transformasi Negara



Pertemuan MTUC bersama YB PM

Pertemuan pemimpin-pemimpin MTUC bersama YAB Dato' Sri Perdana Menteri pada 5hb April 2012 jam 4.00 petang di Parlimen. MTUC yang dipimpin oleh Presiden MTUC Sdra. Mohd Khalid Atan dan Setiausaha Agung, Sdra Abdul Halim Mansor serta pegawai-pegawai utama MTUC, di samping pemimpin-pemimpin Kesatuan NUBE, BATEU, KTMB, MASEU dan Kesatuan Elektrik Barat turut hadir bersama dalam pertemuan bersama YAB Dato' Sri Perdana Menteri dan YB Khairy Jamaluddin, Ahli Parlimen.

Dalam pertemuan tersebut Presiden telah menyatakan pendirian MTUC yang tidak setuju dengan pindaan yang dicadangkan oleh pihak Kementerian Sumber Manusia(KSM) khususnya 'contract for labour' dan secara amnya mana-mana pindaan terhadap akta kerja 1955 yang dimaklumkan pada 6hb Oktober 2011.

MTUC berpendapat bahawa pindaan ini mengurangkan perlindungan pekerja sebagai jaringan keselamatan pekerja yang telah diamalkan sejak 60 tahun malah secara tidak langsung akan hilang.

MTUC juga mencadangkan perlindungan terhadap Kesatuan Badan Berkanun seperti KWSP, PERKESO, LTAT dan LTH yang mana mereka ini tertakluk kepada Akta dan keputusan Lembaga dan tidak mendapat perlindungan yang dinikmati oleh kakitangan Kerajaan atau Swasta. MTUC memohon supaya mereka juga mendapat perlindungan yang membolehkan pertikaian yang tidak selesai dibawa untuk keputusan Mahkamah Perusahaan.

MTUC juga memaklumkan kepada YAB PM tindakan menghalang penubuhan kesatuan dan meniadakan Hak kepada Kesatuan yang sedia ada. Contohnya penubuhan kesatuan dalaman (*inhouse union*) di Maybank, penubuhan kesatuan Cabin crew dalam Penerbangan MAS yang adanya MASEU, penubuhan kesatuan Keretapi TM, dalam RUM, manakala tindakan memecahbelahkan BATEU kepada anak-anak syarikat yang tidak diberi nama atas nama syarikat induk dan seumpamanya secara terang menunjukkan tindakan-tindakan ini menunjukkan bahawa usaha melemah dan menghancurkan sesuatu kesatuan secara langsung dilakukan apatah lagi tiada usaha dari KSM bagi mencegah daripada perkara ini terjadi.

Umur persaraan 60 tahun-MTUC telah menyarankan mempercepatkan Undang-undang baru, jaringan keselamatan pekerja yang tertangguh ini. Akta Umur Persaraan minima swasta akan dibentangkan pada Jun 2012 dikuatkuasakan secepat mungkin dan memberi pengecualian kepada semua pekerja yang bersara pada tahun 2012.

YAB Dato' Sri PM, secara peribadi memohon dan menasihat Setiausaha Agung MTUC, secara lisan agar MTUC menangguhkan semua tindakan berpiket MTUC bagi memudahkan YAB PM untuk mencari jalan penyelesaian di atas semua tindakan MTUC.



17th International Commemoration day

World Day for Safety and Health at Work

Today 26th April 2012-MTUC celebrated the 17th International Commemoration day for the Dead and Injured workers at Subang Jaya Selangor. It was attended by more than 80 leaders and trade unions from various sectors.

Khalid Atan, President MTUC said that as the green economy develops, it is essential that safety and health at work are integrated into green jobs policies. This implies integrating risk assessment and management measures in the life cycle analysis of all green jobs. The protection for workers' health and safety and the protection of the environment should be intrinsically linked to ensure a comprehensive approach to sustainable development.

Meanwhile GURMIT SINGH K.S. the Chairman, for Centre for Environment, Technology and Development (CETDEM) stressed the importance of creating awareness among the Malaysian population is important. All the parties neither give priority to green economic nor on green jobs. In fact many Malaysians thought it was too technical an issue and did not affect their daily lives. This has slowly changed but it has taken a long time for government agencies to openly acknowledge that environmental problems exist. He said there was a real urgency to implement the green agenda as climate change could already be seen here in the home front. People must be willing to change by asking themselves what is their contribution to reduce greenhouse gases (GHG) and stop global warming. We cannot be always waiting for the government to do something.

The ILO has in 2003 declared 28 April the World Day for Safety and Health at Work, focusing international attention on the magnitude of the problem and how promoting and creating a safety and health culture can help to reduce the number of work-related deaths each year. The trade union movement has organized the International Commemoration Day for Dead and Injured Workers worldwide since 1996 coordinated by the International Confederation of Free Trade Unions (ICFTU).

The theme for this year 2012 of the World Day for Safety and Health at Work is "Promoting safety and health in a green economy". The "green economy" has become an emblem of a more sustainable economy and society that preserves the environment for future generations. The advance towards a "green economy" creating "green jobs" and "greening" current industries, production processes and jobs has become a key element for achieving environmentally sustainable economic and social development. However, even if certain jobs are considered to be "green", the technologies used may protect the environment but not be safe at all.



PENGUMUMAN GAJI MINIMUM RM900/RM800



Perdana Menteri, YAB Dato' Seri Mohd Najib Abdul Razak mengumumkan gaji minimum sebanyak RM900 untuk pekerja di Semenanjung Malaysia dan RM800 untuk pekerja di Sabah, Sarawak dan Labuan, di Putrajaya pada 30hb Mei 2012.

Pelarasan gaji minimum di Malaysia diberikan selepas isu ini didebat sejak tahun 1980-an.

Melalui pelarasan gaji minimum ini, pekerja di Semenanjung akan diberi RM4.33 sejam manakala pekerja di Sabah, Sarawak dan Labuan akan menerima gaji RM3.85 sejam. Pelarasan ini meliputi semua jenis pekerjaan kecuali pembantu rumah, tukang kebung dan sebagainya.

Perdana Menteri mengumumkan pelarasan ini di Dewan Perdana Pu-

trrajaya di dalam majlis yang dihadiri oleh wakil pekerja, kerajaan dan majikan, menegaskan bahawa ini adalah hadiah istimewa dari kerajaan bagi pekerja-pekerja yang akan menyambut Hari Pekerja pada Mei 1.

Perdana Menteri juga menjelaskan bahawa tuntutan RM1200 dan RM1500 gaji minimum akan menjejaskan ekonomi negara dengan memberi kesan buruk kepada pasaran buruh dan pelaburan negara dan serta boleh menyebabkan ramai pekerja akan kehilangan kerja.

Beliau menjelaskan bahawa mekanisma pelaksanaan gaji minimum ini adalah fleksibel supaya tidak membebankan majikan. Pihak majikan diberi tempoh bagi melakukan penstrukturan dan boleh memohon untuk perlanjutan tempoh bagi pelarasan ini.

Gaji minimum hanya akan berkuatkuasa enam bulan dari tarikh penguatkuasaan diumumkan dan 12 bulan bagi industri kecil. Gaji minima ini akan dikaji dari semasa ke semasa sejajar dengan keperluan negara. Penetapan gaji minimum ini mengambil kira keperluan asas keluarga, produktiviti, kos hidup, keperluan pasaran buruh dan keupayaan majikan.

Melalui pengumuman ini beliau berharap ia akan dapat mengekalkan perhubungan keharmonian di antara majikan dan pekerja yang merupakan satu aset nasional.

Sekiranya wujud sebarang pertikaian maka beliau menyeru agar ia dibawa ke pintu perundingan dan berjanji kerajaan akan memberi keadilan yang adil, jujur dan berobjektif demi kepetingan negara.

Beliau juga menyatakan bahawa kerajaan mendengar denyutan nadi kaum pekerja yang telah memberikan kemakmuran kepada negara.



Mohd Khalid Atan, bersama Perdana Menteri dalam majlis pengumuman Gaji minimum



*Wakil MTUC yang mewakili Perundingan Gaji Minimum—
Sdra. Mohd Khalid Atan, Sdra. Abdul Halim Mansor,
Sdra. G. Rajasekaran, Sdra. Andrew Lo dan Sdri Catherine*

MTUC/ILO National Satellite Meeting on the Need for Unemployment Insurance in Malaysia



ance system. This system will aim at providing adequate income-security and facilitating re-employment of those unemployed.

On 23 December 2011, an agreement between the Government of Malaysia and the ILO was signed launching the implementation of the Project "Supporting and Facilitating the Design of an Unemployment Insurance System in Malaysia". An

Awareness-raising and consolidation of union views on the design of an Unemployment Insurance system in Malaysia

Purpose of the Satellite meetings:

- Inform union representatives on the project
- Build their capacities on UI based on ILO standards and existing experiences around the world
- Collect and consolidate their views on the introduction of UI in Malaysia and the parameters of the scheme
- Discuss and endorse the MTUC position paper which will be shared during the Tripartite Workshops at national and regional levels (organized the 2nd week of May 2012 in Sabah, Sarawak, Pinang and Kuala Lumpur).



Context

The past crisis revealed the serious limitations of the existing social protection system and the retrenchment benefits to guarantee basic income protection to those workers who lose their jobs in Malaysia.

As part of the policy measures for intensifying human capital development, the 2010 New Economic Model (NEM) includes various policy measures that will contribute to increased flexibility in hiring and firing workers. To mitigate the social and financial impact on retrenched workers the NEM recommends "enhancing the workers safety net through the introduction of unemployment insurance", which will integrate upgraded employment services as well as up-skilling and retraining programmes.

The Government of Malaysia has requested technical assistance from the International Labour Organization (ILO) to support and facilitate the design of an unemployment insur-

ILO consultation mission including the Senior Specialist on Workers' Activities was undertaken from 9-11 January 2012 to agree with the tripartite constituents including MTUC on the implementation process of the project. The MTUC/ILO project is a part of the ILO/Government of Malaysia, which aims to build the capacity of MTUC and its affiliates on the unemployment insurance system and to help MTUC develop its position paper to be arisen from consolidated views from different unions by industry and region.

Overall methodology of the Malaysia UI Project

The first phase of the project aims at reaching a national consensus on the introduction of UI in Malaysia. To this end:

- The project will provide an analysis of the advantages and disadvantages of different UI schemes implemented worldwide.
- Against a review of the labour market and economic indicators, as well as existing measures to protect the unemployed in Malaysia, the project will then examine the implications for the design of an unemployment insurance system in the country.
- The project will support several social partners' consultations and specific satellite meetings for workers' and employers' representatives to come up with position papers of each group that will be shared at the tripartite workshop.
- Several options will be proposed and discussed in a tripartite workshop with government agencies, social partners and experts to reach a consensus on the introduction of UI and determine the main characteristics of the future system.

During a second phase, a feasibility study to define the parameters of the UI scheme based on actuarial and legal assessments, as well as proposed institutional set-up for the implementation, including linkages with employment and skills development programs, will be conducted. It is also expected that the feasibility study will analyse the UI impact on the production cost and enterprises' competitiveness. Findings of the feasibility study will be presented and discussed in a tripartite forum before the report is finalized and submitted to the government.

At the national level, the project implementation is coordinated by a Tripartite Project Committee composed of representatives of the Ministry of Human Resources (MoHR), Social Security Organization (SOCO), Malaysia Employers' Federation (MEF) and Malaysia Trade Union Congress (MTUC). The TPC is chaired by SOCO.

Hari Buruh 1 Mei MTUC Selangor & NUBE

Sambutan Hari Buruh telah dianjurkan oleh MTUC bahagian Selangor pada 1hb Mei 2012 diperkarangan MTUC jam 8.00pagi –10.00pagi. Majlis ini telah dipimpin oleh Sdra. Gopal Krishnam dan Sdra.Hamdan, telah turut disertai oleh Presiden MTUC Mohd Khalid Atan serta mantan Presiden MTUC-Syed Sdra.Shahir, Sdra. Hj. Mohd Shafie BP Mammal, P.Arunasalam(IMF), Ponniah(PSI) dan pemimpin-pemimpin kesatuan dari pelbagai sektor.



Sambutan Hari Mei juga telah diadakan oleh NUBE yang dipimpin oleh Sdra. J.Soloman. Sdra Khalid Atan juga telah menyertai perarakan ini bagi member sokongan kepada NUBE.NUBE telah melakukan perarakan dari Pasar Seni ke menara Maybank





Outsourcing Agents and their Practices: An 'Illegality' and Injustice that Must End

Employment relationships must respect worker rights guaranteed by law

Employment relationships must respect worker rights guaranteed by law

A worker who works in a factory, under the supervision and control of the employer using the tools provided by the factory or workplace, just like every other worker in the factory, and is remunerated for the work he does at the factory, is alleged to be not employed by the owner of the factory or the workplace but by some third party.

In Malaysia, we have outsourcing agents that supply workers to factories, plantation companies, construction companies and all sorts of different workplaces to people who own and control these workplaces (after this referred to as 'company'). The workers supplied remain the workers of the outsourcing agents. They are not employees of the company that they work at. This practice is odd. It differs from the practice employed by private employment agencies and/or 'head hunters'.

For the work done, the factory pays the outsourcing agent a fee that is calculated based on the days/hours of work, overtime, work on rest day and/or public holidays and which shift the individual worker works. The outsourcing agent, after taking their share pays the worker their wages. For example, in an eight-hour day, the company pays the outsourcing agent RM40. He then pays the worker RM20 only. Sometimes the outsourcing agent may take more than 50%. The more the worker works, the more the outsourcing agent gets.

In Malaysia, these practices that were previously used for migrant workers are now being used for local workers, including workers from Sarawak and Sabah. Instead of employing the workers, many employers prefer to use workers supplied by outsourcing agents directly in order to avoid employment relationships.

This reduces the duties and obligations imposed by law on employers such as ensuring that workers enjoy minimum legally guaranteed rights as provided for in the Employment Act 1955 and other laws in Malaysia. Outsourcing agents market this employment set up by emphasizing that the companies need focus only on their business without having to worry about their workers.

In this article, we consider, amongst others:

(a) whether the outsourcing agent is legal;

(b) whether what is being practised by these outsourcing agents, companies and workers is legal; and
(c) proposals about how to bring about more just situation especially for all workers in Malaysia.

The Employment Act 1955 also introduced minimum worker rights and employer obligations, and if an employment contract (contract of service) or an agreement provided for less favourable terms than what is provided by this law, then the more favourable terms in the Act prevails.

In the case of the practices employed by some outsourcing agents and companies, workers seem to be paid only for the day/hours that they work, but they do not get the other rights like paid one rest day per week, paid annual leave, paid public holidays, paid sick/hospitalisation leave and maternity leave and benefits. This is contrary to law.

These practices often result in discrimination at the workplace.

Workers supplied by these outsourcing agent are treated differently and often worse than other workers at the same company. This, is contrary to article 8 of the Federal Constitution which guarantees equality to all persons. This concern about non-discrimination at the workplace is something that Parliament felt important enough to insert by amendment a prohibition against discrimination on the basis of whether one is a local worker or migrant worker. As mentioned earlier, there can be no more middle-person in an employment relationship, and as such this also makes the practices of outsourcing agents and companies also wrong in law.

Negative implication to workers and their unions

The practices employed by some outsourcing agents and companies are detrimental to other workers and/or their unions. The influx of migrant workers weakens the bargaining powers of local unions when in disputes between employers and workers or when negotiating collective agreements. For the company, outsourced workers are not considered as their workers (employees) so they would not be allowed to form and/or join unions, or participate in any negotiations and worker actions to get better terms and conditions for workers in the company.



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Even when these migrant workers complain and claim their rights, it is easy for the company to 'terminate' and dismiss them. No due process is needed. All they need to do is instruct the outsourcing agent to remove the worker. Strikes or protests would be less effective as more and more workers working at companies are supplied by outsourcing agents. These workers are often too fearful to stand up for rights for fear of losing their jobs at the company which can be done without any requirement of due process or domestic inquiries.

Attempts to evade employment relationship is not peculiar to Malaysia

The use of various arrangements and practices to evade or disguise employment relationship is becoming ubiquitous in many countries. So serious is the concern that it led the International Labour Organisation ("ILO") to respond by coming out with *R198 Employment Relationship Recommendation 2006*.

ILO's wants, amongst others, to "combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due...Where there has been an attempt to disguise the employment relationship, there is a particular danger that workers will be deprived of the protections due to them." ILO provided guidelines that could be used to counter or unmask attempts to evade employment relationships so that worker rights can continue to be recognised and protected.

'Illegal' unjust practices must end

It is sad that this practice of outsourcing agents and companies that continue to avoid employment relationships are allowed to exist for so long without any legal challenge. This was probably because earlier on most of these 'outsourced workers' had been migrant workers. Even if they tried to claim their rights they would have likely been terminated and sent back quickly to their home country.

There are still no clear provisions in Malaysia's Employment Act 1955, like the one found in the Industrial Relations Act 1967, that prohibit employers from dis-

criminating against and/or terminating workers that resort to claiming their rights, be it to the employer or by utilising some other legal avenue of access to justice like the Labour Department. It is commendable though that some labour departments, when they do receive complaints from even 'outsourced workers' do consider the company as employer, and the outsourcing agent as agent.

The lack of transparency in government is another problem. Though the decision to allow this 'outsourcing' concept by the Cabinet Committee was formulated in July 2005, it only came to light in a report in 2007. Malaysia should emulate neighbouring Thailand where every Cabinet decision is immediately published and made available to the public as Cabinet Resolutions.

Malaysian Trade Union Congress (MTUC) and other groups have been calling for an end to outsourcing agents and their practices for many years but to no avail. Workers and unions are losing out, as the Malaysian Government becomes more pro-employer. The government have meetings with employers and workers representatives, being the Malaysian Employers Federation (MEF) and MTUC but today whilst workers are still being represented by one organisation, the employers are represented by many more organisations. This is unjust to the workers.

Outsourcing practices benefit employers to the detriment of workers. The government's statement about 10 months ago that employers should be fully responsible for their workers, not outsourcing agents has proven to be empty talk.

The way forward

It is sad that there may be over 200 outsourcing agents in Malaysia, which are not only illegal but also prejudicial in the practices they employ. Short of eliminating them completely, the only solution may be to bring them under the Private Employment Agencies Act 1981. This would restrict their role to just supplying workers to companies who would then enter into a transparent direct employment relationship with these workers.

Statements of intentions alone are insufficient. What is urgently needed is immediate action for the good of all workers in Malaysia, both local and migrant workers, to ensure that justice be done. As a caring nation that upholds the law, what is illegal and unjust must be discarded but not forgotten.

Source: Charles Hector (aseancats@group.com)

Latihan dan Aktiviti



Kursus Kepimpinan Belia dan Wanita MTUC/ACILS telah berlangsung selama lima hari di MTUC Subang Jaya. Seramai 26 peserta dari kesatuan gabungan telah menyertai kursus ini. Kursus ini telah memberi pendedahan terhadap pelbagai subjek seperti peranan wanita dan cabaran yang dihadapi, pentadbiran dan pengurusan yang efektif, dasar kerajaan kearah Negara berpendapatan tinggi, peranan kesatuan, serta prinsip penting pemimpin, corak kepimpinan

dalam era global dan sebagainya.

Workers Memorial Day

28 April 2012 by MTUC Pinang at Pinang Bridge.

Sambutan memperingati pekerja yang tercedera dan meninggal semasa melakukan kerja juga telah diadakan di Pulau Pinang.

Pelbagai aktiviti telah di adakan oleh MTUC bahagian Pulau Pinang yang dipimpin oleh Sdra.Ravidran bagi mengenang jasa mereka. Setiap tahun sememangnya lokasi yang sama telah menjadi tumpuan bagi mengelolakan aktiviti ini.



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