

**UUMILC 2017**  
**9<sup>TH</sup> UUM INTERNATIONAL LEGAL CONFERENCE**

**MALAYSIAN LAWS RELATING TO 3D SECTOR: AN ANALYSIS  
FROM HUMAN RIGHTS PERSPECTIVE**

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***Abstract***

Safe and healthy workplace constitutes fundamental human rights that need to be ensured through a defined system of rights, laws and regulations. As such, the dangerous, difficult, and dirty (3D) job sectors require laws and regulations that guarantee a safe and healthy working environment. The absence of these laws will lead to multiple form of exploitation of employees, violation of rights, exposure to hazardous work and chemicals, deprivation of safety equipment, unpaid extra working hours, denial of insurance coverage and public holidays, and uncovered medical bills. This paper aims to analyse Malaysian laws regulating 3D sector from human rights point of view. First it explains the meaning of 3D sector and the domestic legal framework. Next, it discusses the basic employment rights as provided under the law and human rights point of view. This study provides some information on whether generally the 3D sector is adequately regulated make suggestion for the improvement of 3D sector in Malaysia to attract more Malaysians to work and eventually reduce the country's high dependency on foreign workers who currently dominate the employment in this sector.

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**Keywords:** Laws, Regulations, 3D sector, Human Rights.



## 1. Introduction

3D sector has always been a challenging job where the existence of various risks has made working in this sector less favourable to many people. 3D sector job can be defined as labour job that are dangerous, difficult, and dirty with low pay. However, there are thousands of workers who place themselves in danger every time they punch the clock. They are the ones who are willing to take the challenge to work in 3D sector even though possibilities of injuries and fatalities surrounded them. It was reported that manufacturing, construction, transportation, agriculture, forestry, and fishing recorded the highest number of industrial accidents from 2011-2015 (SOCISO, 2016). The construction sector recorded 969 deaths in 2008. These statistics seems to support the notion of 3D sector.

It is suggested that many accidents occur when workers take shortcuts, despite the available procedures that must be followed. Poor or lack of housekeeping is also a major cause of accidents especially when the workers or employers pay less attention to the hazards and safety signs. Owing to the hazardous nature of some working environment, it is high time for the 3D sectors to be seriously governed by laws and regulation to lessen the risk of injury and accidents in the workplace. In some industry workers are forced to live in cramped residential place which are uncomfortable and unreasonable for the workers to reside. Denial of minimum standard of housing is longstanding problem partly because the Minimum Standards of Housing and Amenities Act 1990 is only applicable to plantation area and no other industry.

Other violation of rights is also identified when workers are forced to work exceeding specified time of 44 hours per week, another a major concern of human rights. This is contrary to the Employment Act 1955 which imposed the maximum working hours and the duty of employer to pay overtime work or else violation of rights will take place. The fair wages must also be considered by the employers of 3D sector by virtue of the recent Minimum Wages Order 2012. All these rights must be protected to ensure that the workers' welfare is secured.

## 2. Problem Statement

The economy is blooming and the growth of some industries give rise to the recruitment of thousands of workers which are not met by local workers for various factors. To meet the demand of the industries for high number of cheap labourers, migrant workers are recruited and number is growing each year. This practice eventually scrap off local workers. It is hypothesised that employers are more keen to hire migrant workers since they are easier to be forced to work in less favourable condition, even when they are treated unfairly and as the demand increases, more foreign workers are employed and the working condition deteriorates that further push away local workers. Coupled with lack of enforcement and protection of the rights of the workers, 3D sector becomes more secluded from local workers and this is perceived as unhealthy because the country becomes more reliant towards migrant workers while the number of unemployment among youth is relatively high. Something must be done to ensure that local workers are attracted to work in 3D sector, which offers more than a million opportunities. Every human being is precious and entitled to the protection of his/ her human rights regardless of the skin colour, religion, race and social background.

### **3. Research Questions**

- 1) What are the current conditions of 3D sector in Malaysia?
- 2) What are the basic employment rights that should be protected and respected?
- 3) What are the laws and regulations to protect the employment rights of 3D workers?

### **4. Purpose of the Study**

- 1) To identify the current working condition in 3D sector in Malaysia
- 2) To highlight basic employment rights that should be protected and respected by both employers and government
- 3) To examine existing laws and regulations for the protection of employment rights of 3D workers.

### **5. Research Methods**

This research is based on qualitative empirical method involving legal analysis. It is library based, and various primary and secondary sources are referred to. The study is also supported by interviews of stakeholders and a mini survey.

### **6. Findings**

In its preliminary phase the study makes the following finding:

#### **6.1. Basic Employment Rights**

##### **6.1.1. Fair wages**

Wage is the: “remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered” (Protection of Wages Convention 1949 (No 95): Article 1).

Decent and fair wage is critical component of workers’ lives (ILO, 2003). Fair wages should be sufficient to cover the basic needs of the worker and his dependants. It must be a fair calculation based on the value of work done. Fair and just wage is a right of all workers and is a form of social protection. It promotes social justice by allowing a person to live with dignity. Constitution of the ILO stated that adequate living wage is a condition of world peace and harmony (ILO Constitution: Preamble). The wide wage gap in a society can lead to social and political tensions (ILO, 2010). Despite the absence of a universally accepted definition of fair wage, it can be described as “...a wage from full-time work that allows people to lead a decent life considered acceptable by society...” (ILO, 2013) Fair wages contribute towards workers’ efficiency (*Express Newspaper (P) Ltd v Union of India* (1958) All Indian Reports SC 578) and it is highly commendable for state government to have policies relating to wages and earnings to ensure fair distribution of wealth (ILO, 2008).

To further protect workers from unduly low wages, the ILO adopted the Minimum Wage Fixing Convention No. 131 that compels the authority to devise a system of minimum wages. Determination of

minimum wages requires the authority to consider the needs of the workers and their families and economic factors and changes in the cost of living lead to adjustment to the minimum wage (Belser, 2012). In Malaysia, the government had passed a Minimum Wage Order 2012 to provide minimum wages for all workers in Malaysia. By implementing the minimum wage, it is expected to cover minimum needs of the employees and his family including the daily nutritious diet, basic accommodation and clothing as well as other cost for survival (Thigarajah, 2000) including cost for cases of emergencies.

### **6.1.2. Proper Accommodation**

Workers are also entitled to proper accommodation, that is an “adequate and decent housing accommodation and a suitable living environment” This is defined in the ILO Workers’ Housing Recommendation, 1961 (No. 115), a standard adopted by the International Labor Organisation on workers housing. Among others, it requires that the workers to have a separate bed; an adequate headroom providing full and free movement; beds not to be arranged in tiers of more than two; reasonably comfortable bedding materials be; separate accommodation for different genders; adequate lighting; reading lamp for each bed; adequate ventilation; adequate supply of safe water; adequate sanitary facilities; adequate drainage; and adequate furniture for each worker to secure his or her belongings, such as a ventilated clothes locker which can be locked by the occupant to ensure privacy. The standard also requires that the accommodation for workers to be equipped with common dining rooms, canteens or mess rooms, located away from the sleeping areas. There must also be appropriately situated and furnished laundry facilities; reasonable access to telephone or other modes of communications, with any charges for the use of these services being reasonable in amount. It is also necessary to provide a rest and recreation room. China for instance has recently adopted a developed system which provides more comfortable accommodations and living conditions for migrant on-site workers with a lower residential density and a cleaner, safer, and higher-quality lifestyle.

### **6.1.3. Regulation of working hours**

Working hours must be based on the contract agreed by both employers and employees. Failure to follow the terms in the contract will violate the contract which is an abuse of the employees’ rights to the scheduled working hours. The normal working hours are 48 hours per week. The standard has been internationally recognized as prolonged non-stop working hours are dangerous to the employee health and efficacy of works. It is widely practiced to take care the welfare of the employees as well as to limit the possibilities of unfair competition (Lee, McCann & Messenger C, 2007).

However, the law is often disobeyed by certain companies and organizations due to weak enforcement of the regulation itself (Lee, McCann & Messenger C, 2007). Many complaints are heard from developing countries like China as well as other industrialized countries which put a major concern to human rights activists. Concerns are expressed in terms like ‘time squeeze’, ‘time poverty’ and ‘karoshi’ (death from overwork). Meanwhile, as reported in a research by Denison (1962), economists took the position that workers employed for fewer working hours are more productive and it is suggested that, at the level of 49 working hours, a reduction in hours would be fully offset in gains that would leave the output unchanged.

#### **6.1.4. Safe and healthy environment**

Safe and healthy environment is one of the issues that has captivated the interest of experts and policymakers on workers' rights and responsibilities. Contemporary discourses on safe and healthy environment highlight the importance of understanding the principles that govern the organizational practices as mechanisms in protecting the lives of thousands of workers involved in 3D sector. Majority of them are exposed to chemical and physical hazards which endanger their lives in the working sites. Many policies and regulations are made purposely to decrease the risk of injuries, accidents and even deaths. It is quite unfortunate that meeting the challenges faced by workers, i.e. Chemical and physical hazards, are due to the failure of employers to provide an information on the existing policies and in handling a safety training to the workers. Some employers have not implemented the good practices under the OSH and the principles of hazard identification, risk assessment and risk control. As an instance is the construction workers' case, if they load heavy things using cranes and failed to take safety precautions for themselves and others, calamities will occur. There are many dangerous equipment's used in the construction sites that can directly injure workers or potentially caused damages to other properties. Flammability, corrosion, and explicability are also the potential danger in the workplace. These are human errors that demonstrated the lack of working reliability and risk assessment on a safety construction work.

Another case where safety is taken for granted is when the workers are exposed to chemical hazards which can cause irritation, sensitization, and carcinogenicity. It is the employers' responsibility to improve the well-being and the health and safety of the workers from serious hazardous chemical agents. In order to lessen the risk of injuries and accidents, the government must provide an educational program principally giving an information about the use of hazardous chemicals in the workplace. Occupational Safety and Health Act Hazard Communication Standard (HCS) has its own goals to effectively disseminate and communicate such information related to hazardous chemicals. Labels and safety data sheets must be provided by the chemical manufacturers to the workers as to convey the hazard information to their downstream customers. The employers are responsible to train the workers on how to handle the chemical appropriately. This rule must not be neglected by both manufacturers and employers to avoid injuries and other dangers against the lives of these workers.

One of the important regulations developed by the ILO is the OSHA Permissible Exposure Limits (PELs) where this rule decides on exposure rate that can be exposed in the working area. This is to protect workers against day to day exposure from the adverse effects of hazardous substances, and for safety concern, airborne concentrations should not be beyond the limits on hazard substance in the air. If the substances will endanger the respiratory system, then the respiratory protection equipment's must be used by all employers in the said workplace. There are PELs provided specifically for the general industry, shipyard employment, and for the construction industry.

One of the serious effects of the unsafe and unhealthy environment is workplace stress. Stress can be costly as it produces more accident, and more errors and defects in the workplace. The employer can be liable for those errors and defects, particularly, if worker's injuries are reasonably foreseeable. The government has made efforts on executing safety and health policies through the enforcement of guidelines as well as conducting safety seminars and certifications. But then, the existing record indicated

that the present occupational safety and health situation in the workplace are still very much adverse and below expectation. The employers must provide a positive environment to produce workers with more positive work attitudes to avoid related sickness and injuries. An employer cannot reply the workers complain of an unhealthy and unsafe environment by the old maxims, 'that if you cannot stand the heat, get out of the kitchen' (Speake, 2015).

#### **6.1.5. Collective Rights**

Freedom of association and the effective recognition of the right to collective bargaining are fundamental rights of workers which is internationally recognised under the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Therefore, measures appropriate to national conditions must be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers' organizations. This is to regulate terms and conditions of employment by means of collective agreements. Malaysian law also recognises the right of workers to form and join a trade union as well as to participate in lawful activities of the union (S 4 Industrial Relations Act 1967).

The right is essential for workers to associate among their circle of the same interests to efficiently negotiate work relations. It ensures that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable. According to ILO, countries with highly coordinated collective bargaining tend to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established (ILO, 2014). Besides, as bargaining facilitates coordination, it enables the labor market to coordinate its responds to shocks and to eliminate their adverse effects faster (Aidt & Tzannatos, 2005).

### **6.2. Malaysian Regulatory Framework**

#### **6.2.1. Employment Act 1955**

Employment Act 1955 is an act relating to rights of workers and it covers both foreign and local workers as Section 2 does not specifically mentioning types of workers. It refers to any person from any class stipulated under Schedule 1 of the Act. Schedule 1 refers to any person who has entered into a contract of service with an employer and receives an amount of wage of less than RM2, 000. It also includes any person who has entered into a contract of service and receiving an irrespective amount of wages from an employer and doing manual labour. It means that construction workers are also included in this Act and shall be protected by this Act.

#### **6.2.2. Occupational Safety and Health Act 1994**

Occupational Safety and Health Act 1994 (OSHA 1994) provides the legislative framework to secure the safety, health and welfare among all workforces in Malaysia and to protect other person against risks to safety or health in relation with any activities mentioned under this Act. This Act is gazette on 24th February 1994 and recognized as a practical tool covering on existing safety and health legislation. This Act is also responsible in establishing the National Council for Occupational Safety and Health and other related matters. Another significant effort done by the International Labor Organization is to make

the injury reporting system as compulsory for the employers when any calamities happened in the workplace. The provision is stated in Occupational Safety and Health (Notification of Accident, Dangerous Occurrence, Occupational Poisoning and Occupational Disease) Regulations 2004 where part II of this regulation states the conditions when the notification, reporting of accidents, and dangerous occurrences should be made. The reports made are important to help the authorities to investigate and to identify causes and how such accidents happen.

### **6.2.3. Employees Social Security Act 1969**

Another important statute regulating work is the Employees Social Security Act 1969 which applies to all Malaysian employees who is employed for wages under an expressed or implied, oral or written contract of service on or in connection with the work of an industry to which this Act applies. This Act provides the social security of the workers with numerous benefits such as insurance, contributions by the employer, pensions, and also benefits in the events of accidents, injury or other calamities. Section 28 also deals with occupational disease i.e., caused by the nature of work. Attached with this Act is also the Employees' Social Security (General Regulations) 1971 where Regulation 68A that imposed the duty on an employee who suffers from an occupational disease to report to his employer as soon as the disease is confirmed. In addition, the employers, upon receiving such report, must also report to the Social Security Organisation within 48 hours from the time the employee provides notification under Regulation 71A of the regulation.

### **6.2.4. Workmen's Compensation Act 1952**

This Act applies to foreign workers who earns not more than RM500 per month and all manual workers irrespective of the wage received. Malaysian workers are no longer covered under this Act as Employees Social Security Act 1969 is already designed for their protection. This Act is enacted to compensate injured employee or worker due to or in the course of employment or when a person contract occupational disease. The compensation is also provided for the worker's dependants. It is compulsory for every employer to insure the foreign workers under their employment by paying an insurance premium of RM86 per year per worker. The premium payment should never be deducted from the worker's wage and violation of the prohibition, upon conviction, may give rise to a fine of RM5, 000 or to imprisonment for a year term or to both.

## **7. Conclusion**

To become a country with an effective regulation on employment rights, Malaysia has to put more efforts to ensure utmost compliance of human rights. All relevant authorities need to play their role in managing employment rights along with the employers to eliminate exploitation of workers despite the need to maximize the profits in construction industry. We are all human being and human being must live in a good working condition, comfort and hygienic accommodation, and enjoy fair wages. This research therefore concludes what are the laws and regulations that deal with the employment rights issue and what are the responsibilities of the employers in taking care of the welfare of the workers.

## Acknowledgments

This study is a part of a research entitled 'Developing Legal and Human Rights Guidelines for Improvement of Employment in 3D Sector: A Way Forward to Attract Malaysian Nationals' (USIM/FRGS/FSU/32/51616) funded by Ministry of Higher Education, Malaysia for sponsoring this research under the Fundamental Research Grant Scheme (FRGS)

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