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The 6th Advances in Business Research International Conference 2024

DoubleTree Resort by Hilton Penang, Batu Ferringhi, Penang, Malaysia, 30 May 2024
Organised by: Faculty of Business and Management, UiTM Puncak Alam, Selangor, Malaysia

Decoding Malaysia's Law and Practices on Minimum Wage and Career Growth for Gig Workers

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Abstract

This paper explores the legal protections for gig workers in Malaysia, focusing on career growth and minimum wage rights. This socio-legal study examines theoretical frameworks, legal provisions, stakeholder interviews, and real-world case studies from Malaysia and the selected foreign jurisdictions. It found that gig workers are not adequately protected by current laws, affecting their ability to receive a minimum wage and advance in their careers. The study concludes by analysing global patterns and offering policy suggestions to improve the legal framework for gig workers' employment rights in Malaysia. The aim is to inform policy enhancements for the gig economy.

Keywords: Labour law; Gig workers; Minimum wage; Career growth

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1.0 Introduction

The gig economy is a method where organisations contract with independent workers for short-term work (Abdullah et al., 2024), rapidly developing as more businesses adopt platform business models to remain competitive (Duggan et al., 2024). In 2020, 26% of Malaysia's workforce was found to work in the gig economy, representing four million freelancers, highlighting the growing popularity of this alternative to traditional employment models (Ignatius, 2022). Additionally, the gig economy is expected to grow to 40% of Malaysia's workforce by 2025, a significant increase from the global average of 20% (Ignatius, 2022).

The gig economy encompasses not only food/parcel delivery riders (p-hailing riders) and e-hailing drivers but also skilled and semi-skilled talent in sales, consultancy, and creative industries (Tai Hai, 2023). It includes two forms of work: crowd work and work-on-demand via app. Crowd work involves tasks completed online, allowing global connections, while work-on-demand via app distributes traditional tasks like transport, cleaning, and clerical work through digital apps managed by firms with minimum service standards and workforce selection and management (De Stefano, 2016). The focus of this paper is work-on-demand via app, as this category of gig work forms a large percentage of gig workers, particularly in the e-hailing and p-hailing sectors, and they are highly exposed to the deficit

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DOI: https://doi.org/10.21834/e-bpj.v10iSl26.6790

of two primary employment rights, specifically the right to receive a minimum wage and career advancement opportunities. As per a 2021 report, more than 700,000 Malaysians have registered themselves as p-hailing riders or e-hailing drivers (Aziz, 2021).

Even though many agree that flexibility offers the most attractive point to workers who choose the gig economy, it also has adverse effects. The gig economy is commonly associated with a lack of social protection and job security, uncertainty in career development, and low wages. Naharul (2022) reveals that the public was commonly misled by the data, claiming an e-hailing driver allegedly earned RM7,000 monthly. Eventually, the e-hailing driver worked 12 hours daily in a six-day week to earn a net of RM4,000, minus operating costs. A more worrying fact is that many gig workers are involved in temporary support services sectors that offer little or no upskilling opportunities or career development. These scenarios are viewed against Malaysia's direction to be a developed nation by 2030, which should possess a substantial percentage of a skilled workforce.

The working conditions of gig workers are often precarious due to the legal framework recognising them as independent contractors (Aloisi & Stefano, 2020; Abdullah et al., 2024). Driven by this status, this paper seeks to evaluate the extent to which Malaysian law protects the rights of gig workers while also examining the legal frameworks and practices in the UK and Australia that could enhance the working conditions for Malaysian gig workers, particularly concerning minimum wage entitlements and opportunities for career advancement. The paper outlines the theoretical framework regarding workers' rights, with particular emphasis on the right to a minimum wage and opportunities for career advancement, to rationalise the extension of workers' rights to gig workers. This is followed by a section that delves into the current legal and legislative frameworks in the United Kingdom (the UK), Australia, and Malaysia. Finally, a concise proposition is put forth to enhance protections for gig workers in Malaysia.

2.0 Literature Review

2.1 Theories of employment relationship and workers' rights

The employment legal framework in most common law countries is founded on a narrow approach to employment relationship theory. The purview of labour law fully protects a worker if he is employed as an employee. It is strictly defined based on a few established tests developed by the judiciary whenever the statutory provisions are silent on their interpretation. In essence, an objective assessment of the nature of the relationship between the worker and the employer determines whether a worker is, at law, an employee (Selinger & Skoric, 2021; Abdullah et al., 2024). The answer is decided by applying a control test, an integrational test, a mutuality obligation test, an economic reality test, or multiple tests (Mohd Nadzri & Nordin, 2023). Leaving the task of interpreting the scope of employment relationships to the judiciary opened floodgates of diverse opinions and resulted, to an extent, in uncertainty about their legal position.

Workers' rights are rooted in the Justice Theory, a fundamental aspect of labour law (Collins et al., 2019). The theory emphasises the importance of social justice in ensuring equal rights for all workers, regardless of their type of employment. This theory, closely related to distributive justice regarding power and wealth, suggests that irrelevant differences should be ignored in determining employment rights (Henderickx, 2012). The authors suggest that the Justice Theory is a suitable foundation for formulating laws that protect contract workers' rights, such as the right to a minimum wage and career development.

2.2 Right to minimum wage

The role of the minimum wage in economic theory is divided into two schools: neoclassical theory, which views it as a market-determined wage, and the new institutionalist perspective, which views it as a wage determined by societal beliefs and values, encompassing principles of fairness and equality (Adams, 2019). Neoclassical theory argues that the minimum wage is influenced by supply and demand forces, while the new institutionalist perspective considers other factors, such as the cost of living, which serves as the foundation for employees to offer their services. Both perspectives argue that understanding the tensions arising from profit distribution and its integration into social production is crucial for effective economic policy. Adams (2019) argues that the concept of the minimum wage, as defined in most regulations, still aligns with neoclassical thought because it is contingent upon the existence of employment contracts. These factors limit workers who do not have the same rights as those with traditional employment contracts due to their contractual format, which does not fit the criteria of an employment contract. Considering the notion of a minimum wage from a social perspective rooted in justice, workers who do not conform to the usual employment model, such as gig workers, should be entitled to the same rights.

2.3 Right to career growth

Training support for employees is directly connected to their career advancement inside the job (du Toit, 2018). Enhancing one's talents leads to improved employment prospects and higher earnings while reducing job insecurity and work limitations (du Toit, 2018). Training is a crucial factor in determining promotions (Brooks, 2002). From the employer's standpoint, implementing an efficient training strategy for employees can enhance performance and productivity, resulting in the realisation of the advantages of investments made. These factors have led to worries that businesses do not believe it necessary to provide training programmes for gig workers, as platforms typically do not view them as employees and gig work itself does not align with the main characteristics of traditional employment. Wu and Huang (2024) argue that regardless of employment status, the right to training is crucial to advance workers' career growth, especially in a fast-changing and unstable environment.

3.0 Research Methodology

This socio-legal study, a qualitative approach, combines traditional legal research and the sociology of law (Mohamed, 2016). Traditional research focuses on legal rules and court judgments, with little reference to the world outside the law. The sociology of law studies the connections between legislation, legal practice, and social factors. The two main qualitative approaches used are interviews and document review. The legislation and reported cases are the key legal authorities examined, as well as secondary sources such as academic research journals, reports, and pertinent news stories. These sources of information are utilised to comprehend the law and resolve the legal issues concerning the deficiency of workers' rights among gig workers. Meanwhile, the examination of applicable laws is supported by empirical evidence primarily obtained from interviews with relevant respondents, such as representatives of digital platforms and associations of gig workers and gig workers. The data collected from the interviews were transcribed, coded accordingly, segmented according to the issues covered, and primarily used to verify the findings from the document review. This process added the credibility and reliability of the study and made it unique on its own. This approach ensures that the analysis of laws is not seen as separate from society, nor is it simply a reflection or duplication of other non-legal domains (Donovan, 2016).

4.0 Findings and Discussion

4.1 Regulatory framework for gig workers' rights in Malaysia: Minimum wage and career development

Malaysia has implemented the English legal framework, which is established through judicial precedents and statutory provisions, to regulate the employer-employee relationship. The legal structure recognises two distinct groups of workers: employees and independent contractors. Only individuals classified as 'employees' are eligible for protection. The primary laws governing employment relationships, including the Employment Act 1955 (EA 1955), the Sabah and Sarawak Labour Ordinances, the Industrial Relations Act 1967 (IRA 1967), and the Trade Unions Act 1959, primarily define an employee as an individual under an employment contract with an employer. Gig workers classified as independent contractors under the contractual model of platform relationships are not protected by these laws. The stance is substantiated by the High Court's decision in the case of *Loh Guet Ching v Minister of Human Resources & Anor* [2022] 1 LNS 2388, which the Court of Appeal subsequently upheld. The Court of Appeal ruled that there was no employment agreement between the appellant, who worked as an e-hailing driver through Grab and Grab. The court further stated that this arrangement was a commercial transaction in which the appellant functioned as an independent third party and service provider (Anbalangan, 2023).

The Minimum Wage Order 2022, a regulatory measure in Malaysia, specifically safeguards the rights of categories of workers who are considered an 'employee'. Therefore, the minimum wage statute excludes gig workers. The Minimum Wage Order 2022 mandates that the minimum wage be set at RM1,500. The interview with Abdul Rani, Deputy President of Persatuan Penghantar P-Hailing Malaysia (Penghantar) (2023), revealed that food delivery riders who work 12–15 hours daily get an average weekly gross salary of RM1,000. The data aligns with the results of Goh and Omar's research (2019), which serve as very sound insights into the financial vulnerability of gig workers. It revealed that 60% of gig workers earn a weekly salary below RM1,000 (Goh & Omar, 2019). This involved the respondents working part-time, meaning they worked less than 8 hours daily. 42% of the responses fall into this category (Goh & Omar, 2019). This research demonstrates that to achieve a weekly gross pay above RM1,000, individual gig workers must work at least 8 hours every day. Essentially, gig workers can earn an average gross wage of RM4,000 per month or higher based on the number of hours they work. Goh and Omar (2019) also discovered that 74% of the respondents have a monthly net pay of less than RM3,000. The average monthly net salary is determined by subtracting the average expenses for operations such as petrol, vehicle maintenance, and other costs. Thus, in essence, gig workers have the potential to earn a higher income than the minimum pay stipulated in the Minimum Wage Order 2022. However, this income level excludes additional funds for emergency savings, such as healthcare expenses, social security protection, or retirement reserves. Indeed, the research findings of Goh and Omar indicate that 54% of the respondents rely solely on income from this profession (Goh & Omar, 2019).

Another concern with the minimum wage entitlements of gig workers arises when their earnings are solely determined by the wage rate structure established by the digital platform, even if they are not officially classified as employees by those platforms (Mohd Nadzri & Nordin, 2023). Hence, the remuneration earned by gig workers is contingent upon periodic evaluations of the hiring mechanism conducted by the platforms (Ahmat, 2023; Abdul Rani, 2023). This leads to an unsteady income rate. However, the platforms assert that they regularly update their payment systems to maintain competitiveness. They have also implemented various methods to impose fair rates on their service providers. This includes offering incentives for working during peak or late hours and demonstrating consistent performance (Saipuddin, 2023).

On the other hand, the primary problem with e-hailing drivers' income is the absence of legislation governing the establishment of minimum and ceiling rates in their industry (Mohd Nadzri & Nordin, 2023). Consequently, rivalries among digital platforms operating in the e-hailing sector result in fare reductions that are deemed arbitrary. As a result, the pay earned for each drive decreases. Regarding advancement in their careers for gig workers in Malaysia, the primary obstacle is the absence of access to training opportunities, which serve as a pathway for career development. As independent contractors, gig workers are ineligible for training programmes regulated by the Pembangunan Sumber Manusia Berhad Act 2001 (PSMBA 2001). The primary objective of the PSMBA 2001 is to assist companies in delivering training programmes to their employees.

The PSMBA 2001 defines an employer as any individual who has entered into a contract of service to hire someone else as an employee, including agents, managers, or commercial representatives. In contrast, an employee is a Malaysian citizen who engages in employment and receives compensation through a contractual agreement with an employer. Consequently, gig workers do not have the legal assurance to get training when the largest category is those aged 45 and below with a longer work span (Abdul Rani, 2023).

Despite this, platforms like Grab Malaysia provide training courses on essential skills like safety and customer service (Saipuddin, 2023). Grab Malaysia has also partnered with private universities to streamline the process of providing short courses for gig workers.

In summary, the absence of wage rate regulations renders gig workers susceptible to oppression and deprives them of a legal guarantee of a minimum wage. Indeed, this situation is alarming. The compensation rates of gig workers are vulnerable to manipulation due to the employment operations monitored by digital platforms. Besides, they do not have any legal entitlement to training, but the platforms have provided some restricted training opportunities. The following section presents the practices of actors in the gig economy, legal frameworks regulating the gig economy, and selected rights from the UK and Australia, with a substantial focus on recent developments in both countries.

4.2 Recent gig workers' rights regulations: The UK and Australia

The Australia Fair Work Act 2009 (FWA 2009) fundamentally establishes a framework for safeguarding employment rights, focusing on the employee segment in Australia (Rawling, 2021; McCrystal, 2014). The term 'employee' in the FWA 2009 lacks a precise interpretation, but consensus suggests that in the FWA 2009 context, it implies the existence of an employment contract, aligning with common law principles (McCrystal, 2021; Pittard, 2021). The reference to the case law is very significant in determining the status of an individual working either as an employee or an independent contractor (Stewart, 2021). The Australia High Court in the cases of Construction, Forestry, Maritime, Mining and Energy Union v. Personnel Contracting Pty Ltd [2022] HCA 1 and ZG Operations Australia Pty Ltd v. Jamsek [2022] HCA 2 make it clear that nearly all platform workers will be treated as independent contractors, so long as the contracts that the digital platform created specifically state that they are contractors. Consequently, Australian law failed to adequately safeguard gig workers' rights in terms of minimum wage and training.

However, the recently proposed Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Closing Loopholes Bill 2023) may have addressed concerns about a lack of employment rights, particularly the entitlement to a minimum wage, among Australian gig workers. The Closing Loopholes Bill 2023, specifically Schedule 1, Part 7, Division 2, grants the Fair Work Commission the authority to establish regulations regarding various aspects of employment for road transport contractors and digital platform workers. These regulations pertain to payment terms, deductions, working time, record-keeping, consultation, representation, and the rights of union delegates for the 'regulated workers'. The Closing Loopholes Bill 2023 distinguishes between two primary categories of regulated workers: 'employee-like workers' whom a digital labour platform operator employs and 'road transport businesses' who work under a regulated road transport contractor. Therefore, gig workers are classified as 'employees-like workers' under the Closing Loopholes Bill 2023 framework.

In the UK, the rights of gig workers as to the minimum wage have been disputed and ruled by the highest court in the country. The majority of Supreme Court judges in the *Uber BV v Aslam* [2021] UKSC 5 case uphold the verdict of the Employment Appeal Tribunal and the Court of Appeal, concluding that the individuals involved in this case are considered workers. The claimants, Yaseen Aslam and James Farrar are e-hailing drivers who provide transportation services via an intermediary digital technology, specifically the Uber application. The primary question in this appeal case is whether the Employment Tribunal had the right to rule on whether drivers who work for Uber through the Uber app are covered by labour contracts that grant them rights such as paid annual leave, minimum wage, and other benefits, or if the drivers lack those rights because they are independent contractors. The Supreme Court conclusively determined that the claimants were indeed working as drivers under a contractual agreement with Uber, wherein they had the autonomy to select the location and time for providing their driving services. Despite acknowledging the freedom of drivers to choose their work schedule and location, the Supreme Court classifies them as Uber workers based on the overall nature of their connections, including their interactions with passengers. Uber has demonstrated significant control over several aspects of the relationship it establishes between the parties involved. The key determinant elucidating this stance is the remuneration paid to the drivers for the transportation services pronounced by Uber. It differs from the approach used by the authority to establish taxi fares. Drivers are prohibited from imposing a driving fee beyond the amount determined by the Uber application.

The matter concerning the methodology for determining working hours has also been resolved through a legal ruling in *Uber BV v Aslam*. According to the court, working hours start when the claimants log into the digital application and are ready to take driving assignments in the authorised driving region. Concerning access to training, gig workers' rights in the UK and Australia were not typically protected by law.

5.0 Conclusion and Recommendations

Based on the aforementioned considerations, it can be concluded that gig workers in Malaysia have insufficient legal protection regarding their rights concerning minimum pay and training access. The UK legal structure is highly advantageous for gig workers, as judicial attitudes have strongly indicated that gig workers can be classified as workers and are entitled to minimum wage entitlements. Nevertheless, the status of gig workers remains uncertain in light of the definition of workers involved in judicial disputes, given the propensity of courts to reverse previous rulings.

On the contrary, the Closing Loopholes Bill endorsement could elevate the gig economy's standing in Australia by designating gig workers as a legally protected group. Regarding Malaysian gig workers, their situation might have improved with the creation of Suruhanjaya Ekonomi Gig Malaysia (Malaysian Economy Gig Commission) (SEGiM), an organisation whose primary goal is to oversee the country's gig economy environment (Adnan, 2023).

Despite the government's stance against intervening in the price-setting processes initiated by platforms (Yusof et al., 2023), the formation of this SEGiM will facilitate effective social dialogues and ensure that the government is promptly informed of the most recent

industry developments. Consequently, any determinations that may impact the rights and welfare of workers in the gig economy can be safeguarded to a greater extent. Although there is debate regarding the greater impact that legislative intervention will have in safeguarding the rights of platform workers, establishing SEGiM would be a more moderate approach that ensures economic sectors maintain their independence and flexibility. This would allow for greater employment opportunities for locals and attract foreign investors to further invest in this industry. Furthermore, the underpinning theories, such as justice theory and economic theory from the new institutionalist perspective, and contemporary workers' rights theory, are regarded as sound as the foundation to support equal rights for gig workers as the traditional workforce.

Future research should prioritise further investigations into the impacts of SEGiM's establishment, particularly concerning the enhancement of protections for gig workers in various aspects beyond the two rights addressed in this study. Additionally, it is essential to conduct more extensive studies to analyse gig workers in a broader framework, particularly focusing on the crowd work segment that this study did not address, enabling authorities to develop more effective strategies in this regard.

Acknowledgement

This research was supported by the Centre of Research and Innovation, Open University Malaysia (OUM) through Internal Research Fund (Ref: OUM-IRF-2023-021).

Paper Contribution to Related Field of Study

The study has two main contributions. From a theoretical perspective, it contributes to the current corpus of knowledge concerning the rights of gig workers. The research findings offer useful insights for policymakers and stakeholders in the gig work ecosystem, enabling them to effectively address the issues and risks encountered by gig workers in Malaysia.

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