

Conceptualising Malaysian Labour Law Syllabus Through Economic Analysis of Law: A Trans-disciplinary Approach

Kamal Halili Hassan

Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, 43600, Selangor, Malaysia

ABSTRACT

In this paper, the author explains the concept of economic analysis of law in understanding labour law. The emphasis is on the philosophical and theoretical aspects of labour law through the economic analysis of law perspective. Study of labour law in law schools has always been based on a purely legal method or perspective, with an instruction approach focused on statutes and case-law and with reference to a theoretical legal framework. However, labour law is a subject with multi-dimensional roots and facets consisting of components of sociology, economics, politics, religion and management disciplines. In this paper, the author will introduce a method, the trans-disciplinary approach, that is relevant to understanding the working of Malaysian labour law and that uses an economic analysis of law perspective. The enactment of legislation is to a large extent propelled by economic demand, which is apparent in labour law. The methodology used for discussion of this paper is 'legal analysis'. This new approach will not change the entire method of teaching conventional labour law. The introduction of this new approach will only comprise 30% of the current conventional labour law syllabus at Master level. Understanding the concept of economic analysis of law will enhance students' knowledge for future study of labour law and economics.

Keywords: labour law, Malaysia, economic analysis of law, Common Law, *Shari'ah*

ARTICLE INFO

Article history:
Received: 22 April 2013
Accepted: 7 July 2014

E-mail addresses:
kamalhalili60@gmail.com, k.halili@ukm.edu.my
(Kamal Halili Hassan)

INTRODUCTION

The study of labour law at law schools has always been based on a purely legal method or perspective (Kamal Halili, 2002). Methods of teaching this subject have always been conventional, as they are based on statutes and case law with reference to

theoretical legal frameworks. The reason for adopting this conventional method is that the curriculum prepares law students for the legal profession as judges, advocates or solicitors. Case adjudication and preparation, even during client consultation, is usually based on 'black letter law'. Lawyers are invariably consulted in cases of broken employer-employee relationships by parties seeking possible remedies. However, labour law is a subject that encompasses many dimensions, and in order to understand and appreciate the real workings of labour law, one cannot focus only on the legal perspective (Collins, 2003). Labour law has multi-dimensional roots and facets, including components of sociology, economics, politics, religion and management science disciplines, but it is the economic perspective that establishes the strongest theoretical framework (Davies, 2004).

In this paper, the author will argue that the teaching of labour law needs to be enhanced by enlarging its scope. Students require an inter-disciplinary approach to learning labour law that imports other disciplines, including economics, to explain the content of labour law. Labour law as currently taught is basically an explanation of legal provisions and judicial cases, and the approach of focusing on black letter law has dominated legal curricula for decades. Attempts to teach beyond the purview of black letter law have met with little success largely because labour law teachers were themselves educated through a linear legal education. Indeed, it would be a challenge for law teachers

to go beyond the conventional method, but the current job market that requires graduates to master multi-dimensional skills necessitates this inter-disciplinary approach. However, it is not the purpose of this paper to overhaul the conventional method of teaching labour law, which is in fact useful for future lawyers. It is actually to give another insight and dimension to the study of labour law, viewing it from the economic analysis of law perspective (Leff, 1974; Shavell, 2004). Much in the literature has been written on this subject, as Hsiung (2006) in "*The economic analysis of law: An inquiry of its underlying logic*" has remarked that, "the thriving field of *law and economics* is a success story of inter-disciplinary research. Both law journals and economic journals have been publishing an increasing number of papers in the area of law and economics." Cooter and Allen (2003) in *Law and economics* explained that, "Law and economics has become a central organizing philosophy in U.S. legal education. ... economic analysis tools for law students and legal analysis tools for economics students, uniquely... offer a combination of clear theoretical analysis supported by practical application. Economic theories in four core areas of the law are used to explain and analyze topics, illustrating how microeconomic theory can be used to increase understanding of the law and improve public policy."

In this paper, the author will introduce a method that is relevant to understanding the workings of labour law using an economic analysis of law perspective, as opposed

to the perspective that has typically been used in legal analysis. Several publications have discussed economic analysis of law in general, but few have focused on labour law, the best of which are by Davies (2004) and Posner (1998).

METHODOLOGY

This study primarily used the qualitative method. The approach adopted was a critical analysis of a current situation or documentary evidence. Doctrinal research refers to a new, thorough, systematic, investigative or theoretical analysis. Its aim is to explore, revise, add value and improve the concept, theory, principles and application of the law. Using the *content analysis technique*, this research aims to resolve problematic situations and identify elements that constitute such problems and the regulations that are contained in each problem. For this research, the author adopted a theoretical analysis of current situation i.e. using a syllabus of a law programme, namely, of labour law, taught at Universiti Kebangsaan Malaysia (UKM) and enhancing it by analysing some aspect of labour matters from the economic analysis of law perspective. The author chose the LLM labour law course as a sample study. It is admitted that there are differences in the approach adopted in teaching labour law in other universities but it is argued that the gist of the labour law syllabus at different universities is the same. Thus, the author submits that the sample study (UKM) adopted in this article

sufficiently represented the problems to be addressed and the new idea to be proposed. Data collection in legal research relies on primary and secondary data. In legal research, primary data refer to legislation, parliamentary *hansards* and court cases from Malaysia and foreign countries. Secondary source refers to publication such as articles' journals, books, students' thesis and documents, official or otherwise. The primary data were analysed based on rules of interpretation such as literal, golden, mischief and purposive rules. Finally, all data collected was analysed using four legal research methods, namely: historical, jurisprudential, comparative and analytical and critical method. This method is also called *content legal analysis*, and is not based on coding as usually done in other social science or economic research. This legal technique of data collection was mostly made in the library, on-line and government departments and visits to some countries which had good and effective regulations and enforcement. For this research, the author only adopted a theoretical analysis on the concept of labour law from the economic analysis of law perspective. A short questionnaire was also sent to students of the LLM Labour law class Semester 2, Session 2012-2013. The primary purpose of the survey was to identify the preference (or otherwise) among students for the idea of using the disciplinary approach in the learning of labour law at law schools, in particular, UKM.

Syllabus of Labour Law

The scope of labour law taught at the Master level at UKM Law Faculty encompasses employment, industrial relations and industrial safety law. These three broad categories are well-known components of labour law, although some textbooks use the terms interchangeably. Employment law regulates the relationship between the employer and individual employees, with the main binding instrument being a contract of service that regulates terms and conditions (Selwyn, 1993). In this context, parties are bound under the realm of freedom of contract. Theoretically, the freedom of contract represents the nature of the employment relationship, but in reality, employees and subordinates submit to employers; this subordination is concealed in the legal fiction of 'contract of service' (Collins, 2003). The presence of such submission and subordination means that there is no equal bargaining power; to correct such imbalances, Parliament intervenes by introducing labour legislation that provides basic rights for labour (Wedderburn, 1994). This is a legal perspective. If the existence of the contract of service is based on employees' individual strength, industrial relations law provides and recognises the collective strength of workers when facing their employers (Smith & Woods, 2000; Kamal & Rose, 2003). In industrial relations law, the focus is on the laws regarding trade unions, collective bargaining, trade disputes and dispute resolution (Aun, 1995). This is also a legal perspective.

The other category of labour law, although considered a distinct subject by some academics, is industrial safety law (Kamal Halili, 2001; Barret & Howells, 2000). This category has gained significance due to the increasing number of accidents that occur in the workplace. Industrial safety law can be examined in the context of employment law with reference to the implied obligations of employers to provide a safe work environment under a contract of service (Deakin & Morris, 1998). However, with the increasing number of statutes enacted for industrial safety, breach of occupational safety is now viewed as a statutory breach of duty by the employer. The social security scheme, which in Malaysia is managed by the Employees' Social Security Organisation (SOCSO), is relevant to industrial safety law, as it manages benefits claims by local employees. For foreign workers, claims for employment injury fall under the Workmen Compensation Act 1952. This is also an examination of labour law from the legal perspective. A study of labour law from the economic analysis of law perspective is relevant in inter-disciplinary study. The narrative that follows explains the concept of economic analysis of labour law, with an emphasis on micro- and macroeconomics. It ought to be noted that *Shari'ah* law has gained a significant milestone as a subject taught in Malaysian law schools. Law faculties at institutions such as International Islamic University Malaysia, Islamic Science University Malaysia and Universiti Kebangsaan Malaysia have introduced

and implemented *Syari'ah* courses in their law programmes. Teaching of labour law also includes the *Shari'ah* perspective. Thus, it is appropriate in this article to include a discussion of labour law from the *Shari'ah* perspective. *Shari'ah* takes into consideration matters of law and economics in its framework.

Economic Analysis of Labour Law

Labour legislation is enacted only after the economic factors justifying a particular labour issue are settled (Cootle & Allen, 2004). A current example is minimum wage legislation. Economic calculations to determine the acceptable amount for a minimum wage will have to be performed before a statute is introduced. In other words, the economic factor is the propeller, while the legislation is the enforcer. This situation is especially true in microeconomics, where the individual contractual relationship between employer and employee is very much dependent on supply and demand (Davies, 2004). Economic analysis of labour law is also viewed from the perspective of the impact of labour law on the labour market or country (Coleman, 1988). For instance, the macroeconomic analysis is focused on the effect of labour law on patterns of unemployment and productivity. Understanding economic considerations is instructive in understanding why a particular legislation or legal provision is enacted (Deakin & Wilkinson, 2000). Although the enactment of a law is not necessarily wholly driven by economics, as the political struggles of unions also contribute,

economists contribute considerably to the adoption of labour policies, as the success of labour regulations is ultimately dependent on market acceptability (Deakin & Wilkinson, 1994).

Thus, it is crucial to examine economists' role in shaping labour policy. We can divide economists into two categories: positive and normative economists. 'Positive' economists produce theoretical models that predict how people will behave, assuming certain facts and using empirical evidence to verify their assumptions (Davies, 2004; Friedman, 1953), while normative economists use data to produce policy recommendations. Legal drafters then take over the role of the normative economists when drafting labour legislation. Economists assume that workers make rational choices between maximising wealth through working hard to obtain a higher salary and maximising utility by enjoying more of their leisure time. Economists believe that people's preferences remain stable over time (Simon, 1986).

Economists believe that these assumptions reflect the real-world situation: although people's behaviour towards economic factors changes according to a particular environment or crisis, over time, the assumption that people's choices remain stable still holds. Economists utilise such assumptions by building theoretical models. Davies (2004), referring to Becker (1976), said that "without the assumption that people behave rationally, it would be impossible to predict how people would respond to changes in economic conditions."

However, the economic normative theory is what contributes to the enactment of legislation. The policymaker has to pay close attention to the assumptions made by economists so that the policy, which is later grafted into legislation, reflects market demands. Economic theory is divided into two broad categories: microeconomics and macroeconomics.

Microeconomics

In microeconomics, the market brings together the seller and the buyer, who eventually determine prices. In theory, the 'invisible hand' of the market will drive the seller and buyer to an 'equilibrium' or 'market-clearing' price (Davies, 2004). The same theory applies to the labour market. The employer and employee meet in the labour market with competing interests. The employer will first decide on the size of the labour force that he needs based on considerations of cost and expected production. He considers all factors in order to achieve maximum profit.

The cost/benefit factor is the primary driving force for the business operation of an entrepreneur/employer. Employees, on the other hand, enter the labour market with certain expectations. Wages are the primary consideration, but there are other factors that are considered, such as job security, distance between place of work and residence and occupational safety. Meeting both the employer and employee's expectations in the labour market determines the price of labour (for example, wages). Minimum wage regulations, although considered

a legal intervention, are not introduced in a vacuum; these regulations will not work effectively without prior economic consideration.

The enforcement of safety law in the workplace is another example. Although the law specifies that the employer has a duty to ensure safety in the workplace, this duty is qualified: several factors have to be taken into account such as cost to prove that the employer has discharged his duty 'as far as practicable'. The employer is not expected to incur huge expenditures to overcome a minimal risk. This is more of an economic consideration than a matter of legal interpretation.

Labour markets: theory of supply and demand. Labour economists conceptualise labour markets using the theory of supply and demand (Davis, 2004; Simon, 1986; Becker, 1976; Deakin & Wilkinson, 1994). In order to determine the price of labour, economic theories begin with the premise that workers offer their services for sale and that firms act as buyers. The theory of supply and demand determines the actual number of workers required by the employers. The price of labour, that is, the amount of wages, is similarly determined, and the employer will not pay wages beyond his financial capability. The whole cost of workers' wages is also determined by the total of the employer's human resources. However, the supply of labour is not determined solely by wages, as workers do not simply offer their services without considering other factors such as job security, workplace safety and

distance. Workers' decisions are closely tied to their behaviour as consumers (Davies, 2004; Williamson, 1979).

Employers also have their preferences in employing workers; however, cost remains the primary consideration because employers are unlikely to differentiate between the costs of labour and machinery or raw materials. Employers are also able to go around the law by reducing labour costs by, for example, hiring foreign workers who are willing to be paid lower wages. Parliament then intervenes by introducing minimum wage legislation to prevent employers from solely acting on economic considerations. The costs of labour are eventually determined by decisions made by both parties: the employer and the worker (Simon, 1986). The worker selects a combination of preferences in terms of his work or leisure: some people prefer to work longer hours than is typical, while others prefer to have more time for leisure. This preference may change, but economists assume that it remains stable over time (Deakin & Wilkinson, 1994).

Impact of labour law on the labour market. Economists disagree about the impacts of different aspects of labour law on the labour market (Simon, 1986). Two schools of thought have emerged from this debate: 'neo-classical' and 'new institutional'. The neo-classical camp is hostile to legal intervention, while the new institutional advocates support labour law intervention, believing that it eventually benefits workers (Epstein, 1984). The

neo-classical camp believes that employer-employee relationships should be left to develop on their own without any legal intervention; market forces and freedom of contract should reign supreme. This theory is centred on the belief that the labour market is able to find its own equilibrium, and employers should be allowed to run their business as they feel fit. These advocates feel that legal intervention will cause problems by limiting options and adding costs.

Meanwhile, new institutional advocates argue that workers are the weaker party in employment negotiations and thus unable to fend for themselves. For new institutional advocates, the freedom of contract is just a nice-sounding theory because in practice, workers are handicapped, as they are pressured to enter the labour market by economic necessity rather than being able to argue about rights (Williamson, 1979). Because the unequal bargaining power between employer and employee makes a mockery of freedom of contract and as a consequence employees are susceptible to exploitation, legislation needs to be enacted to protect workers. Legal intervention in the form of labour legislation provides basic or minimum rights to workers such as minimum wage, hours of work, time off and overtime payment. However, legal intervention in the labour market is not absolute, and to a certain extent, freedom of contract is still maintained. International and national laws do not intervene, as employers are only required to observe minimum standards. Employers have the option of providing better terms and conditions to

their workers. However, neo-classical theorists still argue that even legislation with minimal provisions hinders employers' freedom to run their businesses.

Macroeconomics

Macroeconomics provides a bigger perspective. Macroeconomists consider the impact of labour law, especially its amendment, on an industry or country as a whole (Wedderburn, 1994). Its concern is with productivity and unemployment. Productivity can be explained from a purely economic perspective measured by dividing input and output. If the output is equal to input, then productivity is considered to be level. If output exceeds input, then productivity is good; by the same calculation, if output is less than input, then productivity is low. Rising productivity is a sign of a healthy economy. When there is high productivity, firms will hire more workers and workers can demand better salaries. One strategy to increase productivity is using education and training. The law can play a role by making it compulsory for employers to send their employees for training or requiring certain categories of employees, for example, safety officers, to obtain prerequisite qualifications.

The effects of labour law on productivity can also be seen in unfair dismissal law (Davies, 2004). Neo-classical theorists argue that employers should be allowed to dismiss workers 'at will', based on the premise that employers know what is best for their firms; they know how to increase productivity by either reducing their human

resources or dismissing under-performing workers. Workers will perform better if the threat of dismissal constantly hangs over them. The integrity of dismissal law, to the neo-classical theorist, is a hindrance to the efficiency of organisational management. By contrast, the new institutionalist advocates maintain strong support for unfair dismissal law, arguing that job security propels workers to perform and increase their productivity; workers will be more productive if they feel secure about their jobs.

The effect of labour law is also analysed for the purpose of measuring unemployment. Many neo-classical economists believe that as labour law increases the costs of productivity, it also increases unemployment. Legal intervention is thus financially burdensome, as it limits the possibility of higher productivity. For example, having regulated hours of work results in output being curtailed and, consequently, productivity dropping. This drop results in the employer either not employing new workers or dismissing some current employees, eventually causing unemployment.

Shari'ah Approach

Conceptualising labour law from the *Shari'ah* can also be made from the economic analysis of law perspective. The *Shari'ah* approach or perspective may be adopted in teaching labour law. Teaching of labour law through *Shari'ah* perspective is by using sources which are Islamic based such as the *Qur'an*, *Hadith*, *Qiyas* and *Ijma'*. These sources differ from the common law method

that relies heavily on legislation and case-law. In Islam, apart from the original sources such as the *Qur'an* and *Hadith*, the opinion and explanation of jurists is highly regarded and has strong persuasive authority. In Islamic teaching, if the sources are clear they should first be resorted to. In this context, the *Qur'an* and *Hadith* have many principles and guidelines on employment relationship. The verses of the *Qur'an* as well as the *Hadith* of the Prophet outline many duties, rights and obligations on employers and employees. Authors have written quite a number of articles on the employment relationship in the Islamic context. For example, Kamal Halili (2012) discussed the concept of contractualism in employment relationship from both the common law and *Shari'ah* perspectives. He explained that there was a strong foundation of Islamic principles supporting the existence of a contract of service (*Ijarah*) in Islam. In teaching employment law from the Islamic perspective, this concept of Islamic contract of service must first be introduced as such a contract is the instrument that binds parties i.e the employer and employee. The terminology used in Islam such as *musta'jir* (employer), *ajir* (employee) connote parties to the contract of service. Islam recognises the existence of the employer-employee relationship as a *fitrah* in human relations where an element of command and control exists in the strata of working society: Allah SWT says: "It is we who divide among their livelihood in the life of this world, and We exalt some of them above others in rank, so that some may command work from the

others" (*Qur'an*, 43:32). This verse can be accepted as proof of contractual employment relations, which is a fundamental concept in the study of labour law.

An employment relationship is not only about command and control; it is more akin to brotherhood. In the study of employment law similar to Common law, Islam also emphasises on the philosophical of right; where Prophet Muhammad S.A.W. said, "your brethren whom Allah has placed on your custody; let him who has made custodian of his brother by Allah feed him from what he himself eats, clothe him out of what he clothes himself, and impose not on him work that will overcome him" (*Sahih Bukhari*). This *Hadith* discusses the notion of equality, fairness and compassion. Economic as well as human perspectives exist in Islamic labour law as proven in the narration by Anaas, who served the Prophet S.A.W., when he said, "the prophet never paid a low wage to a person. One of the three persons that will argue against us on the day of judgment is a man who engaged a labourer and enjoyed full benefit from him, yet did not pay him (his due) wages" (*Sahih Bukhari*). The Prophet SAW said, "pay the labourer his wages before his sweat dries" (as narrated by Abu Daud). Wages is an important component in the study of labour law and the above *Hadith* is a good example. In compassion, the worker should not be given a task beyond his physical capabilities. The holy Prophet S.A.W. said, "a slave should have normal food and clothing, and he is obliged to do such work as he is capable of doing" (Imam Malik, al-

Mawatta'). Good treatment must be given to employees. These verses refer to implied obligations of parties which are a component of employment right and underlie the economic perspective of labour law in Islam. The mechanism on employment dispute resolution is also outlined in the Islamic sources. Dispute resolution is an important component in the study of labour law, and Islam provides effective mechanisms for such resolution. *Sulh* and *Tahkim* are well-known mechanisms in Islam and they are indeed comparable with the resolution mechanism provided by common law (Kamal Halili, 2006, 2012).

As mentioned above, Islamic labour law may also be viewed from the economic perspective (apart from the human rights perspective). The economic perspective, as in other modern life activities, is clearly permissible by applying the *Maqasid al-Shari'ah* principle. This principle is a methodology that has been well established in the study of Islamic law especially in the context of modern knowledge and discourse (Jackman, 2006; Hallaq, 2006; Safi, 2006). Al-Ghazali, the well-known Islamic jurist, introduced the *Maqasid al-Shari'ah* principle followed by Imam Shayuti (Raysuni, 2006; Jasser, 2010). One also cannot deny the contribution made by Ibn Ashur in the explanation of this classic principle (Jackman, 2006). The *Shari'ah* purposes can be divided into two main categories, namely bliss and welfare in this world, and in the world hereafter. In order to attain bliss in this world, according to these latter scholars, it

is necessary to abide by the essentials of life (*daruriyah*), the complementary (*Hajiyyat*) and the embellishment (*tahsiniyyat*) (Jasser, 2010). There are five tenets of the *Maqasid* principle which human beings strive for in their life and the hereafter. Firstly, the human self (*Nafs*), which is vital to people in the pursuit of their daily life, materially or otherwise. Secondly, the intellect (*Aql*), which is interpreted as a gift from *Allah* to human beings because it is an important feature that distinguishes humans from animals. Thirdly, posterity or dignity or lineage (*Nasl/ al Ird*), which for everyone in the world, is one of the fundamental requirements of life. Fourthly, faith (*Din*), as Islam has always obliged Muslims to protect their faith through the performance of such Islamic activities as *Ibadah* (praying, fasting) *Hajj* and *Zakat*. Fifthly, wealth (*Mal*); since everyone in society owns property, and property needs to have security, Islam does not allow anyone to interfere with the property of other people without an agreement or other legitimate reasons. The fifth concept of *Maqasid* as propounded by al Ghazali, that is the creation of wealth (*Maqasid*) for the purpose of attaining property and security, is also the objective of labour law. In fact, if one were to look closely at the other tenets in the *Maqasid* principles such as *Aql*, *Masl*, *Din* and *Ibadah*, one would find that they are in tandem with the purpose of labour law, which aims to protect rights and obligations of parties. Work is not only a worldly affair but also an *Ibadah* where employer and employee are answerable for

all their deeds and actions while employing or working. Based on this methodology, we can argue that teaching labour law using the Islamic approach is relevant in the context of Malaysian law schools.

Malaysian Labour Law

Interestingly, Malaysian labour law reflects the same tension as seen in the neo-classical and new institutional debate, and Malaysian labour law contains both theories. On the one hand, it recognises freedom of contract so that employer and employee are free to enter into a contract of service and determine its terms and conditions. Under neo-classical theory, an employer enjoys prerogatives to organise its business, including the privilege to choose its employees' form of contract. On the other hand, legal intervention is also common in Malaysia. The Employment Act (EA) 1955 is a good example of legal intervention in the Malaysian labour market (Kamal Halili *et al*, 2007; Kamal Halili & Rozanah, 2009; Siti Zaharah, 2000; Siti Zaharah, 2011). The EA 1955 regulates hours of work, rest days, holidays, annual leave, sick leave and maternity leave. It also has several provisions for foreign workers (Anantaraman, 1997). The EA 1955 ensures that employers do not go below certain standards (Ayadurai, 1992).

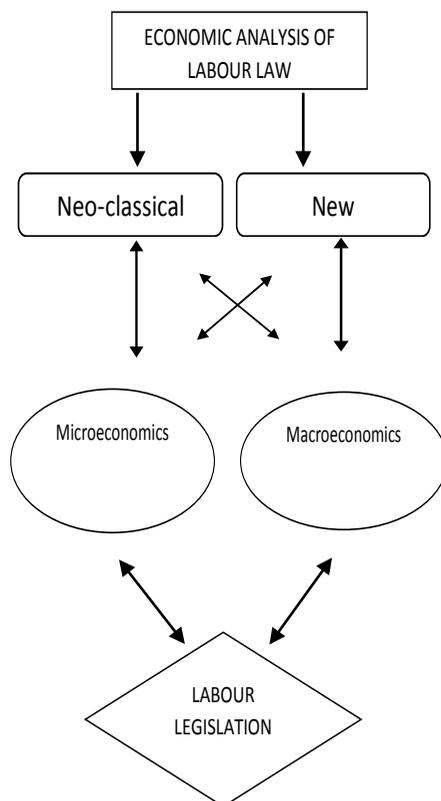
In addition, the Malaysian Parliament promulgated a new legislation, the National Wages Consultative Council Act 2011, which is applicable throughout Malaysia. By virtue of the Act, the Ministry of Human Resources enacted the Minimum Wages Order 2012, which came into force in January 2013

but was later delayed in implementation to 1 January, 2014. Paragraph 4 of the Order makes it mandatory for employers to pay minimum wages of RM900 per month (RM4.33 per hour) for employees in Peninsular Malaysia and RM800 (RM3.85 per hour) for employees in Sabah, Sarawak and the Federal Territory of Labuan. It covers both local and foreign workers except for domestic helpers and gardeners.

It will be interesting to see the actual effect of the Act on labour markets now, after its implementation. Will there be many violations committed by employers, or will employers reduce their workforce to overcome the strain of paying higher salaries? These are the questions that will arise in upcoming years. Although legislation is enacted with the intention of protecting workers, the lack of enforcement or employers 'innovating' ways in evading the law will render legal intervention in the labour market ineffective. The 2012 Act represents an interesting example of a legal instrument as economic forces and factors had influenced its enactment. Before the Act was enacted, the Employers' Federation objected to its enactment while the Trade Unions of Workers (especially the Malaysian Trade Union Congress) supported it. Finally, the Malaysian Government decided to enact minimum wages for workers employed in the private sector.

The Parliament also legislated the Retirement Age 2012 for employees of the private sector. It is submitted that the enactment of the Act was propelled by economic factors. The Malaysian Deputy

Diagram 1



Minister of Human Resources was quoted as saying in Parliament that “there will be no compromise with employers on the Minimum Retirement Age Act 2012.” The Act helps to increase the workers’ total saving in the Employees’ Provident Fund Act (EPF). He said that 14% of retirees exhaust their EPF savings within 3 years, 5% of retirees exhaust their EPF savings within 5 years and 70% of retirees exhaust their EPF savings within 10 years (Bernama 2014).

Economic analysis of law (Diagram 1) is an interesting option for teaching

labour law in Malaysian law schools. This method of teaching and analysis should be adopted, especially at the post-graduate level. Furthermore, such knowledge is useful for legal research, either at the doctor of philosophy level or among labour law scholars. The methods of teaching of labour law (which include explaining the concept of economic analysis of labour law) are as follows:

- First stage – students are taught the basic of Malaysian labour law: definitions, various legislations, sources, history and the courts.

- Second stage – students are taught the philosophy of labour law with emphasis on economic right and political and civil rights. The concept of economic analysis of law such as macroeconomics and microeconomics is introduced to students, including the *Shari'ah* perspective.
- Third stage – students are taught employment law from the economic-legal perspective of various employees' rights as provided for in legislation (for example, the Employment Act 1955 on economic rights such as wages, leaves, overtime etc.).
- Fourth stage – students are taught the concept of dismissal from economic-legal analysis.
- Final stage – students are taught issues of industrial dispute resolution with emphasis on the economic benefit of dispute resolution. Discussion is made on the best option, from the economic point of view, of dispute resolution between Alternative Dispute Resolution and court litigation.

These are, however, not specific recommendations. The author merely outlines the steps that need to be taken. Each university may have their own approach in the new method of teaching labour law using trans-disciplinary methodology. It is argued that the recommendation is viable for undertaking at the postgraduate level teaching.

Preferences and Knowledge of Students – A Survey

The author carried out a survey among his Master's degree programme (LLM) students in labour law class (18 respondents), principally to measure their preferences (or otherwise) on the suggestion of the cross-disciplinary approach in the study of labour law. Demography of the respondents is as follows:

1. Student status: part-time (18); full-time (0).
2. Age: <20 (0); 21-25 (8); 26-30 (4); 30-35 (3); >36 (3).
3. Sex: Male (2); Female (16).
4. Occupation: Public sector (5); Private sector (3); Self-employed (0); Others (10)
5. Have attended labour law course: Yes (8); No (10).
6. Experience in managing human resources: Yes (4); No (14).

A *Likert* scale of 1 to 5 was used for the other questions.

- 1: do not agree at all
- 2: do not agree
- 3: not sure
- 4: agree
- 5: very much agree

The questions and the responses by the respondents are as follows: (The number in bracket is the total responses of the respondents)

- a. Prefer that labour law course be taught legalistically: 1 (2); 2 (11); 3 (2); 4 (2); 5 (1).

- b. Teaching of labour law in multi- or cross-disciplinary approach involves economic, management, religion and sociology: 1 (0); 2 (0); 3 (2), 4 (12); 5 (4).
- c. Labour law course needs to be taught using multi- or cross-disciplinary approach: 1 (0); 2 (1); 3 (0); 4 (13); 5 (4).
- d. Labour law course needs to be taught from economic perspective: 1 (0); 2 (1); 3 (1); 4 (11); 5 (5).
- e. Labour law course needs to be taught from religious perspective: 1 (0); 2 (0); 3 (2); 4 (9); 5 (7).
- f. I understand the teaching of labour law using multi or cross disciplinary approach: 1 (0); 2 (0); 3 (6); 4 (10); 5 (2).
- g. All problems at the workplace can be solved legally: 1 (0); 2 (4); 3 (4); 4 (10); 5 (0).
- h. International labour law needs to be taught: 1 (0); 2 (0); 3 (0); 4 (5); 5 (13).

Analysis

All the respondents (100%) were full-timers, indicating that they were working or under training, which shows their understanding and experience regarding situations at the workplaces. Age was quite well-balanced, representing maturity of the respondents; however, 67% were below 30 years old. Female students (89%) dominated the class. Respondents working in the public

sector (28%) were slightly more than those working in the private sector. The working status of the majority of them was unknown; perhaps they were doing training or were jobless. Their background knowledge of labour law was quite balanced, as almost half of them (44%) had attended a law course. But the majority of them (78%) had no knowledge of management of human resources. On the question whether labour law needed to be taught legalistically, the majority (72%) did not agree. In terms of their understanding of the meaning and concept of cross-disciplinary labour law, the majority understood it (89%). The author found the next question important to this survey: on whether the labour law course needed to be taught using multi- or cross-disciplinary approach, the majority (94%) agreed. To emphasise the question, the author asked almost the same question but rather narrowly (on economic and religious perspectives). The answer was still in the affirmative with the majority (89% and 89%, respectively) agreeing with the adoption of such an approach. The author had used the cross-disciplinary approach in his class but only on a small scale to test if students would understand it. Based on the survey, the majority of the respondents understood what was taught although some were not sure. On the question whether all problems at the workplace could be solved legally, 56% agreed that it could not. Finally, all of the respondents (100%) agreed that international labour law should be taught in this Master's level programme.

CONCLUSION

Currently, the teaching of labour law in law schools is based on a purely legal method or perspective based on statutes and case law. Thus, a trans-disciplinary approach based on a sound economic-legal theoretical framework needs to be adopted. Labour law has multidimensional roots and facets consisting of components of sociology, economics, politics, religion and management science disciplines, which should be reflected in the study of labour law, but the economic perspective establishes the strongest theoretical framework. A clear module based on such an inter-disciplinary approach needs to be introduced into the study of labour law, both from the national and international perspectives (Betten, 1993; Valticos & Potobsky, 1995). This article is a preliminary study on the economic analysis law of labour law in the Malaysian context with emphasis on its theoretical and philosophical aspects.

ACKNOWLEDGEMENTS

The author would like to thank the anonymous reviewers for their inspiring comments and all his postgraduate students for their inquisitive participation in class and during supervision. The author would like to express their appreciation to the Ministry of Education, Malaysia for providing a research grant No: FRGS/2/2013/SS110/UKM/01/1 to enable this research and article to be published.

REFERENCES

- Anantaraman, V. (1997). *Malaysian industrial relations: law and practice*. Universiti Putra Malaysia Press.
- Wu, M. A. (1995). *The industrial relations law of Malaysia* (2nd ed.). Kuala Lumpur: Longman.
- Ayadurai, D. (1992). *Industrial relations in Malaysia: Law & practice*. Kuala Lumpur: Butterworths Asia.
- Becker, G. S. (1976). *The economic approach to human behavior*. University of Chicago Press.
- Barret, B., & Howells, R. (2000). *Occupational health and safety law: Text and materials* (2nd ed.). UK: Cavendish.
- Bernamea (2014, June 16). Retrieved from www.bernama.com.my
- Betten, L. (1993). *International labour law: Selected issues*. Netherlands: Kluwer.
- Cooter, R., & Allen, T. (2004). *Law and economics* (4th ed.). Boston: Pearson Addison Wesley.
- Coleman, J. (1988). *Markets, morals and the law*. Cambridge, England: Cambridge University Press.
- Collins, H. 2003. *Employment law*. Clarendon law series. Oxford: Oxford University Press.
- Davies, A. C. (2004). *Perspective on labour law*. Cambridge: Cambridge University Press.
- Deakin, S., & Morris, G. (1998). *Labour law* (2nd ed.). London: Butterworths.
- Deakin, S., & Wilkinson, F. (1994). Rights vs. efficiency: the economic case for transnational labour tandards. *Industrial Law Journal*, 23, 289.
- Deakin, S., & Wilkinson, F. (2000). Labor law and economic theory: A reappraisal. In H. Collins, P. Davies, & R. W. Rideout. *Legal regulations of the employment relation*. London: Kluwer Law International.

- Epstein, R. A. (1984). In defense of the contract at will. *University of Chicago Law Review*, 947-982.
- Friedman, M. (1953). *Essays in positive economics*. Chicago University Press.
- Jackson, S. A. (2006). *Concretizing the Maqasid: Islam in the modern world in Maqasid al-Shari'ah and its realization in contemporary societies*. In Proceedings, International Conference on Islamic Jurisprudence and the Challenge of the 21st Century, International Islamic University Malaysia (pp. 1-9), Malaysia.
- Hallaq, W. (2006). *Maqasid and the challenges of modernity*. In Proceedings, International Conference on Islamic Jurisprudence and the Challenge of the 21st Century, International Islamic University Malaysia (pp. 10-28), Malaysia.
- Hsiung, B. (2006). The economic analysis of law: An inquiry of its underlying logic. *Maqasid Al-Shari'ah As Philosophy of Islamic Law*(1), 1-33.
- Auda, J. (2010). *Maqasid Al-Shari'ah As Philosophy of Islamic Law*. Kuala Lumpur: First Published by The International Institute of Islamic Thought.
- Hassan, K. H. (2001). *Undang-undang keselamatan industri di Malaysia*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Hassan, K. H. (2002). Pengajaran undang-undang buruh di Malaysia. *IKIM Law Journal*, 55-70.
- Hassan, K. H. (2006). Employment Dispute Resolution Mechanism from the Islamic Perspective. *Arab Law Quarterly*, 20(2), 181-207.
- Hassan, K. H., & Shatsari, R. S. (2012). ADR in employment disputes: considering common law vis-à-vis Islamic law principles. *The Social Sciences*, 7(2), 209-215.
- Hassan, K. H. (2012). Contractualism in Employment Relationships: A Conceptual Discourse of Common Law and the Shariah. *Arab Law Quarterly*, 26(2), 175-192.
- Hassan, K. H., & Hussein, R. E. (2003). *Undang-undang pertikaian perusahaan dan mogok di Malaysia: Penerbit Universiti Kebangsaan Malaysia*.
- Hassan, K. H., Mahmud, N., Kamal, N. A., & Hassan, M. (2007). *Undang-undang pekerjaan*(No. 7). Dewan Bahasa dan Pustaka.
- Hassan, K. H., & Rahman, R. A. (2009). *Hubungan undang-undang majikan dengan pekerja*: Dewan Bahasa dan Pustaka.
- Leff, A. A. (1974). Economic analysis of law: Some realism about nominalism. *Virginia Law Review*, 60(3), 451-482.
- Posner, R. A. (1998). *Economic analysis of law* (5th ed.). New York: Aspen Law & Business.
- Al-Raysuni, A. (2006). *Imam al-Shatibi's theory of the higher objectives and intents of Islamic law: The Other Press*.
- Safi, L. (2006). *The Maqasid approach and rethinking political rights in modern society*. In Proceedings, International Conference on Islamic Jurisprudence and the Challenge of the 21st Century, International Islamic University Malaysia (pp. 29-43), Malaysia.
- Selwyn, N. M. (1993). *Selwyn's law of employment* (8th ed.). London: Butterworth
- Shavell, S. (2004). *Foundation of economic analysis of law*. USA: Harvard University Press.
- Simon, H. A. (1986). Rationality in psychology and economics. *Journal of Business*, 59, 209-224.
- Jamaluddin, S. Z. (2000). *Pengenalan kepada Akta Kerja 1955*. Kuala Lumpur: Penerbit UM.

- Jamaluddin, S. Z. (2011). *Undang-undang Perhubungan Perusahaan di Malaysia* (2nd ed.). Kuala Lumpur: Penerbit Universiti Malaya.
- Smith, I. T., & Wood, J. C. (2000). *Industrial law* (7th ed.). London: Butterworths.
- Valticos, N., & Potobsky, G. (1995). *International labour law* (pp. 295). Deventer: Kluwer.
- Wedderburn, K. W. (1994). Labor law and the individual in post-industrial societies. In K. W. Wedderburn (Ed.) *Labour law in the post-industrial era: essays in honour of Hugo Sinzheimer*. Aldershot. Dartmouth.
- Williamson, O. E. (1979). Transaction-cost economics: the governance of contractual relations. *Journal of law and economics*, 233-261.