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# Instilling Core Islamic Values in Industrial Relations in Malaysia

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#### **Abstract**

Instilling religious values in maintaining good industrial relations is a much-neglected area of study in industrial jurisprudence. Evidently, trade disputes are usually referred to the Industrial Court whereby resolution of disputes are usually based on the reference of relevant Industrial Court awards, civil court judgments, statutes and best practices for industrial harmony. However, little emphasis has been given to religion as an important tool for resolving conflicts among mankind. Thus, the objective of this study is to identify core Islamic values relevant in maintaining good industrial relations in Malaysia. The transdisciplinary approach was chosen to correlate core Islamic values in meeting the two different sets of expectations; one of the employers and the other by the employee. The methodology used is legal and content analysis of Industrial Court awards, case laws, relevant statutes and the Qur'an being the primary source of the Shariah. The main finding of the study indicates that core Islamic values such as purity of intentions, contentment, patience and consultation are essential components in enhancing the harmonious relationship between the employer and the employee; apart from gaining spiritual satisfaction. Hence, future studies on religion as an important component of industrial relations law alongside other well-established components, namely economics, sociology and politics.

Keywords: Islam; industrial relations law; religious values.

#### Abstrak

Menanamkan nilai-nilai agama dalam menjaga hubungan industrial yang baik adalah bidang studi yang banyak diabaikan dalam yurisprudensi industri. Terbukti, perselisihan perdagangan biasanya dirujuk ke Pengadilan Industrial dimana penyelesaian perselisihan biasanya didasarkan pada referensi putusan Pengadilan Industrial yang relevan, putusan pengadilan perdata, undang-undang dan praktik terbaik untuk keharmonisan industrial. Namun, sedikit penekanan telah diberikan kepada agama sebagai alat penting untuk menyelesaikan konflik di antara umat manusia. Dengan demikian, tujuan dari penelitian ini adalah untuk mengidentifikasi nilai-nilai inti Islam yang relevan dalam menjaga hubungan industrial yang baik di Malaysia. Pendekatan trans-disiplin dipilih untuk mengkorelasikan nilai-nilai inti Islam dalam memenuhi dua rangkaian harapan yang berbeda; salah satu majikan dan yang lainnya oleh karyawan. Metodologi yang digunakan adalah analisis hukum dan isi putusan Pengadilan Industrial, hukum perkara, undang-undang terkait dan Al-Qur'an sebagai sumber utama Syariah. Temuan utama dari studi ini menunjukkan bahwa nilai-nilai inti Islam seperti kemurnian niat, kepuasan, kesabaran dan konsultasi merupakan komponen penting dalam meningkatkan hubungan yang harmonis antara majikan dan karyawan; selain mendapatkan kepuasan spiritual. Oleh karena itu, studi masa depan tentang agama sebagai komponen penting dari hukum hubungan industrial di samping komponen mapan lainnya, yaitu ekonomi, sosiologi dan politik.

Kata kunci: Islam; hukum hubungan industrial; nilai-nilai agama.

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# Introduction

Industrial relations concern the relationship between an employer and his employees pertaining to matters of employment and non-employment, such as terms and conditions of work and grounds of termination (D'Cruz, 2001). Three major areas in industrial relations are the relationship between employers and trade unions, the framework of the employment laws and disciplinary procedures and termination exercise (Sulaiman, 2014). One common expectation shared between employers and employees is the need to maintain industrial harmony so that the nett result of the relationship will be in the form of maximization of productivity (and profits) for the employer on the one part and the provision of continuous wages for the employee on the other part. Employers might have the tendency to emphasize on maximizing profit. Nevertheless, there arise a need for them to balance up their expectations to those of their employees' so that their employees may stay motivated in the workplace (Aminuddin, 2006). Similar to any other type of human relationship, the relationship between the employer and the employees may turn into a complex relationship due to the reason that each of them possesses diametrically opposing expectations and demands. Any unbalanced expectation from either party in terms of expectation and aspiration might result in conflict known as trade disputes.

The literature on how to ensure a conducive work environment from the legal perspective can be seen from the wealth of Industrial Court awards, case laws and relevant statutes. Main statutes governing employment and industrial relationship are the Employment Act 1955, the Industrial Relations Act 1967, the Employees Provident Fund Act 1951, the Employees Social Security Act 1969, the Occupational Health and Safety Act 1994 and the Minimum Wages Order 2018, The Minimum Retirement Age Act and The Personal Data Protection Act (PDPA).

The preamble to the Industrial Relations Act 1967 states the purpose of the Act is to regulate the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship. The main objectives of the Act are: (a) to regulate the relations between employer and their workmen; (b) to prevent trade disputes from getting out of control and thereby creating industrial unrest; (c) to settle any trade dispute or other related matters that have arisen between the employer and his workmen/trade union in an expeditious and judicious matter; (d) to establish the necessary machinery to settle trade disputes by way of negotiation, conciliation or arbitration. The Industrial Relations Act of 1967 functions as a guide to assist disputants (namely the employers and their employees) in the resolution of trade disputes. The Industrial Relations Act of 1967 governs employees in Malaysia, irrespective of whether they are local or foreign workers. The expected relationship between employers and their employees from the legal context is stated in this piece of legislation which uses the term 'workman' instead of 'employee'. By way of comparison, Employment Act 1955 only covers a person who is defined as "employee". For ease of reference, the term 'employee' is used throughout this paper.

Industrial relations is closely interconnected with emotions and sentiments. Thus, human conflicts or better known as trade disputes between employers and employees are unavoidable at times. In furtherance to such conflicts, the welfare of the workforce as well as the community is affected. Industrial relations are not only influenced by the existing legal system because culture, religious observance and way of life led by the employers and employees are also relevant factors that need to be taken into consideration. The use of religious values to improve industrial relations is not new, for there are ongoing publications on this subject such as that of Cui et.al. (2015), Cleveland et.al. (2013) and Martin & Bateman (2014).

Islam plays an important role in the lives of the majority of people in Muslim states. It is also possible to identify ethical conduct of employers and employees in Islamic ideology (2008). It is at times difficult to expect that industrial relations can only be managed by solely referring to the use of employment and industrial laws. Resolution through court hearings might not be the best solution to deal with trade disputes. Hence, religious values should also be considered in order to maintain a harmonious industrial relationship. Researchers such as Ansari and Ardakani (2013) and Sahraei et.al (2016) have found parallel findings that show positive relationship between Islamic work ethics and employees commitment. Thus, it is assumed that Malaysia being an Islamic state, is likely to gain benefit from the integration of Islamic values in matters relating to industrial relations.

#### Research Problems

There is dearth of study on the use of religious values to meet the expectation of employers and employees in Commonwealth countries, such as Malaysia in spite of the fact that the majority of Malaysians are Muslims. Until recently, there has been little discussion about core Islamic values that are applicable to maintain industrial relations in Malaysia. Thus, it is assumed that Malaysia being an Islamic state, is likely to gain benefit from the integration of Islamic values in matters relating to industrial relations. In view of this, the present study attempts to answer the following questions:

- (1) What are the core Islamic values relevant in maintaining good industrial relations in Malaysia?
- (2) What are the issues arising from the types of activities that are prone to cause disruption in industrial relations?
- (3) What are the core Islamic values that can be adopted by employers and employees in order to preserve good industrial relations?

### **Research Method**

The main objective of this study is to identify core Islamic values relevant in maintaining good industrial relations in Malaysia. The specific objectives are as follows:

(1) to identify the issues arising from activities that are prone to cause disruption in industrial relations; and

(2) to identify core Islamic values that can be adopted by both the employer and employee in order to preserve good industrial relations.

The study is based on a trans-disciplinary approach to correlate core Islamic values in meeting the two different sets of expectations; one of the employers and the other by the employee. The methodology used is legal and content analysis of Industrial Court awards, case laws, relevant statutes and the Qur'an being the primary source of the Shariah.

### **Discussion**

Based on the analysis of the literature review, the following results were found. Firstly, main core Islamic values such as purity of intentions, contentment, patience and consultation confirms the association between spiritual attainment and intention to maintain good industrial relations. These core Islamic values are seen as essential components in enhancing the harmonious relationship between the employer and the employee and support the purpose of resolution of trade disputes under the Industrial Relations Act 1967 and other related employment enactments.

Issues arising from the types of activities that are prone to cause disharmony in the relationship between employers and employees are relating to the exercise of employer's prerogatives without sound decision, curtailment of trade union activities, collective bargaining exercise and unlawful dismissal which is not based on just cause or excuse.

The formation of trade union, for instance is to protect the interest of its members, regulate the relationship between employees and their employers and to conduct collective bargaining with the employer/employee with a view to concluding a collective agreement. But yet, there are issues of victimization of employees due to their involvement in trade union activities. For example, the issue of victimization for participation in trade union activities is mentioned in the Industrial Court case between Kesatuan Kakitangan Akademik KYP Education Sdn. Bhd. and KYP Education Sdn. Bhd. (Malaysia Industrial Court Award Number 2 Year 2019). Although the Industrial Relations Act 1967 (Section 5(2)) empowers employers in suspending, transferring, terminating or excusing a worker for specific reasons, such exercise of powers should be used wantonly.

Employers may tend to avoid hiring prospective employees known to have active involvement in trade union activities in spite of the fact that such action is prohibited under the Industrial Relations Act 1967 (Section 5(2)). Apart from that, section 5 of the Act also provides that employers are not suppose to impose any condition in an employment contract seeking to restrain the right of an employee to join a trade union, or to continue his membership in a trade union; refuse to employ on any ground that he is or is not a member or an officer of a trade union and to discriminate against any person in regard to employment, promotion, any condition or employment or working conditions on the ground that he is or is not a member or officer of a trade union.

Discrimination of employees due to active participation in trade union activities is not uncommon and may affect the livelihood or right to promotion of the employees, being union members. This stand can be seen in Harris Solid State (M) Sdn. Bhd. & Ors

vs. Bruno Gentil Pereira & Ors. ((1996) 3 MLJ 489 (CA)). In this case, the employees contended that their termination of employment was tainted with *mala fide* and actuated by reinstatement for the employees without loss of wages, allowances, bonus, seniority, service or benefits whatsoever.

Although it is known in industrial jurisprudence that promotion and retrenchment is a matter which falls under the prerogative of the employer, such exercise of powers is subject to challenge if it is found to have been tainted with *mala fide* (bad faith). Industrial Court cases in general have laid down the legal principle that the prerogative of the employer is based on certain limitations. Any enforcement that is not done properly can be challenged in the court as seen in the case of Pentex Sdn Bhd and Penang & Prai Textiles & Garment Industry Employees Union (Malaysia Industrial Court Award 320/1988).

In Hotel Perdana and Kesatuan Pekerja-pekerja Hotel, Bar and Restoran Kebangsaan (Malaysia Industrial Court Award 226/1984), the Industrial Court decided that the aspect of promotion of employees was the right of the employer based on certain criteria and terms that have been decided. On promotion and transfer of workers, the learned Chairman of the Industrial Court said as follows: "The right to promote and employee or not is an administrative one and thus is related to the power of the employer. However, the request that a present employee be given preference as against an outside employee fulfilling a higher post and in the event of such promotion be given terms and conditions commensurate with the promotion does not affect the prerogative of the management."

In several reported cases on retrenchment exercise, it is observed that the employers are bound to provide acceptable reasons to the court. In Stephen Bong vs. FBC (M) Sdn Bhd & Anor ((1999) 3 MLJ 411), the court decided that work shrinkage is a valid reason for retrenchment exercise. Similarly, in Kumpulan Perubatan (Johor) Sdn Bhd vs. Mohd Razi Haron ((2017) 2 ILR 20), the Industrial Court held that the massive retrenchment was a genuine measure and and without any element of victimization. Further, the court found no evidence that the employer had acted with *mala fide* (bad faith) in the retrenchment process.

In Malayan Commercial Banks Association and National Union of Bank Employees (Malaysia Industrial Court Award 117/1982), the Industrial Court provide guidelines as regards the content of the collective agreement for the court's approval pertaining to statutory matters; the relationship between employers and workers' union; the terms and conditions as regards the relationship between employer-employee in collective agreements; the responsibilities of employers and conditions of work for the workers and also those related to workers' compensation, and other workers' benefits such as bonus payment, overtime rates, retrenchment benefits; holidays, leave benefits and medical benefits. Notwithstanding this fact, the relationship between employers and their employees may be affected due to dissatisfaction and disagreement as to the terms mentioned in the collective agreement.

Complaints of Non-Compliance to an award made by the Industrial Court or terms of a collective agreement pursuant to Section 56(1) of the Industrial Relations Act 1967 are

examples of disputes that create disharmony between the employer and their employees (See Tan Poh Tee and Cairnhill Hotel (M) Sdn. Bhd. (Malaysia Industrial Court Award Number 371 of 2020) the court has referred to the case of Kesatuan Pekerja-pekerja Perkilangan Perusahaan Makanan v. Gold Coin Specialities Sdn. Bhd. ((2017) 2 ILR 260) at p. 262 referred to a decision by the Supreme Court case of Holiday Inn, Kuala Lumpur v. National Union of Hotel, Bar and Restaurant Workers ((1988 1 CLJ 133)). These cases tend to show that the non-compliance of a term of the award or collective agreement is an antecedent fact before the Industrial Court can exercise its power.

Several methods are prescribed under the Industrial Relations Act 1967 to assist parties to solve trade disputes, namely: Inquiry and investigation (Section 34) and Conciliation (Section 18). If settlement fails to reach through direct negotiation, the employer or the trade union of workmen concerned may report to the industrial relations department. The Industrial Relations Department established under the auspices of the Ministry of Human Resources may assist both parties to reach a fair and just settlement through conciliation. The process of seeking a settlement through conciliation is voluntary and without any constraint (Section 18 and 20). Where a settlement fails to reach through conciliation, the dispute may be reported to the Minister of Human Resources (Section 18(5).

In facing misconduct cases, employers must exercise patience prior to forming opinion as to whether an employee who is alleged to have committed an offence has in fact committed it. Since intention is a subjective state of the mind, employers must afford every opportunity for the employee to defend his case. The burden of proving that the employee is guilty of the allegation – as the case may be – and establishing the reasons for dismissal rests squarely upon the employer. This was aptly stated by the Learned Industrial Court Chairman in Stamford Executive Centre v. Puan Dharsini Ganesan ((1986) 1 ILR 101) as follows:

"i6. It may further be emphasised here that in a dismissal case the employer must produce convincing evidence that the workman committed the offence or offences the workman is alleged to have committed for which he has been dismissed. The burden of proof lies on the employer. He must prove the workman guilty, and it is not the workman who must prove himself not guilty. This is so basic a principle of industrial jurisprudence that no employer is expected to come to this Court in ignorance of it."

In the same vein, the learned Chairman of the Industrial Court in the case of Kesatuan Pekerja-Pekerja Perusahaan Simen (SM) v. Lafarge Cement Berhad ((2013) 3 ILR 632) stated that "the issue of discharging the burden of proof by a party who makes the assertion on the existence or the non-existence of certain facts by adducing sufficient and satisfactory evidence".

Islam, being known as a way of life, has provided clear guidelines in the Qur'an on how to deal with fellow human beings. For instances, the wealth of Quranic verses provide guidelines on many interpersonal relations based on mutual respect and accord. The instances are aplenty, such as in fulfilling promises/agreements (Ar-Rad 13: 25 and Yunus

10:71); consultation (Ash Shura 42: 38); fairness in dealings (Al Mumtahina 60: 8 and Al Maidah 5: 8); fairness in providing wages (Al-Imran 3:57), justice (Al-Baqarah 2: 177, Az-Zumar 39: 2), patience (Al-Ahqaf 35, Al-Baqarah 2: 153; Hud 11: 11) and truthful (Al-Anfal 8: 27 and Yunus 10: 61).

Piety (taqwa) is an asset that purifies the act of a person and with higher level of piety, he is God-fearing and is not easily tempted to commit evil doings. The Qur'an explicitly mentions as follows: "O you who believe! Observing fasting is prescribed for you as it was prescribed for those before you, that you may become the pious" (Al-Baqarah 2: 183).

Islam also calls for decent earning for it is obligatory to earn only through *halal* (permissible) means. The verses of Qur'an emphasise as follows: "O you who believe, eat of the good things We have provided to you and be grateful to Allah, if it is he whom you worship (in real terms" Al-Baqarah 2: 172). In another verse, the Quran states as follows: "Eat from what Allah has provided you as good and lawful, and fear Allah in whom you believe (the Qur'an, 5: 88).

The important values of consultation and gentle treatment are clearly emphasized in several verses in the Holy Qur'an (for instance, Al-Imran 3: 159, Ash-Shura 42: 38 and At-Taha 20: 103). The guidance from the Qur'an on the importance of consultation is as follows: "And by the Mercy of Allah, you deal with them gently, and if you had been rough and hard-hearted, they would surely have broken away from you; so pardon them and ask forgiveness for them, and consult them in matters of administration; then, when once you make up your mind (to do a thing), trust in Allah (and do it)" (Ali-Imran 3: 159).

Core Islamic values that can be integrated into the practice of industrial relations are purity of intention, piety, patience and consultation. The following is an explanation of each of these items:

# 1. Purity of Intention

In Malaysia, section 13(3) of Industrial Relations Act 1967 essentially recognizes the employer's managerial prerogatives to employ workers, dismissed them due to proven misconduct or to terminate them under a retrenchment exercise. Having said this however, this provision does not mean that the employer is vested with the power or liberty to do as he likes for he can only do so with a proper cause or excuse. Industrial court cases tend to show that the court will not interfere with the *bona fide* exercise of power given to the management. It is however noteworthy to state herein that the law requires the employer to provide a proper cause or reason before terminating the employees as mentioned in the cases of Stephen Bong vs. FBC (M) Sdn Bhd and Anor ((1999) 3 MLJ 411) and Kumpulan Perubatan (Johor) Sdn Bhd vs. Mohd Razi Haron (2000) and Harris Solid State (M) Sdn.Bhd. & Ors vs. Bruno Gentil Pereira & Ors ((2000) 2 ILR 20).

Pure intention (*ikhlas* in Arabic) is the guiding force that moves employers to be sincere in the exercise of their managerial actions. The Qur'an states in the following words: "No reward do I ask for it; my reward is only from the Lord of the worlds" (The Qur'an

19:109). In addition, the Qur'an states: "We feed you for the sake of Allah alone. No reward do we desire from you, nor thanks" (The Qur'an, 29 Al-Insan: 9). As such, employers who are guided by pure intention are not tempted to deviate from the right path or even go to the extent of arguing that any managerial decision-making is not subject to challenge. Employers need to view their right to hire, dismiss, promote, and demote employees must be done on sound purpose and with purity of intention to avoid causing injustice to their employees. Although retrenchment is deemed as an employer's prerogative right, it does not mean that the employer can exercise such without any legal guidelines. The employer must demonstrate good reasons to do so. The law clearly provides that it is incumbent for the employer to exercise such right in a fair and just manner and in a unionized company, the respective trade union must be consulted with prior to exercising the decision to declare that a particular employee is redundant to the workforce.

# 2. Piety (taqwa)

It is generally known as a fact that the law relating to 'hire and fire' is no longer relevant or applicable in industrial relations. This is because any employee who is aggrieved by such action may challenge such dismissal in the Industrial Court. Section 59(1) of Industrial Relation Act 1967 stated that it shall be an offence for an employer to dismiss an employee or injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice. The Occupational Safety and Health Act 1994 protects the safety, health and welfare of all Malaysian workforce at workplace. It is also created to prevent employees from receiving any threats in the workplace. By virtue of Section 15(1) of Occupational Safety and Health Act 1994, it was stipulated that:

"(1) It shall be the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health and welfare at work of all his employees."

Thus, God-fearing employers will ensure that they acknowledge the fact that they are not above the law and should avoid aggressive attitude towards their employees or taking unfair disciplinary actions against their employees. In addition, employers should not make managerial decisions that are detrimental to the interest of their employees or are clearly in violation of the laws. On the other hand, employees who fear Allah as part of *Taqwa* will not involve in personal activities within his working hours to ensure that his family is fed from lawful (halal) earnings. Employees will also tend to be trustworthy and are dependable and avoid from involving in union activities during working hours. Time is of the essence of their contracts entered into with their employers. Hence, such time should only be allocated for the conduct of their obligations as employees. Employees ought to realize the need to obey lawful instructions from their employers and not conduct themselves in a manner that would disrupt the cordial relationship with their employers as their paymasters. Being piety, prevents employees from doing acts that are considered as acts of insubordination that undermines the very structure of the industrial relationship.

### 3. Patience and Consultation

The cited verses of the Qur'an in the literature review has shown that patience (*sabr*) is an important virtue to prevent a person from getting overwhelmed with uncontrollable emotions. With patience, a person is prohibited from doing things and keeps them calm from transgressing the law and ensure that they perform according to acceptable norms. Thus, employers who observe great patience may avoid from making hasty managerial decisions pertaining to summary dismissal, demotions or transfer of a particular employee to another branch office without assigning any valid reason. With patience, employees also will not tender resignation hastily by way of constructive dismissal, involve with unnecessary arguments with the management and will emphasize on the need to maintain cordial relationship with their employers rather than having trade disputes litigated in the courts.

Employers as leaders need to consult with those they lead (the employees) in order to enable the formation of a coherent opinion. This effort may also help to boast confidence in decision-making. With good and effective consultation, correct judgment can be made by either party in preserving good industrial relationship. The Holy Qur'an mentions about the importance of listening to both sides of arguments (Al-Qur'an 38: 21-24). Employers need to avoid rushing into making a managerial decision that affects the welfare of the workers. In matters relating to disagreement as to the terms in the collective agreement, employers must be willing to bargain with the employees so that a win-win situation is achieved without having to resolve trade disputes via court action. In the same vein, employees need to avoid making decisions that might cause further deterioration of industrial relationship with employers. Thus, issues must be handle in a timely and thoughtful manner. In brief, the Qur'an teaches that consultation must be done in a soft manner so that employees are willing to obey orders from employers and be motivated.

#### **Conclusion**

Based on the discussions above, it is clear that observing core Islamic values are not directed towards achieving worldly benefits alone for they uplift spirituality of the employers as well as their employees. Hence, core Islamic values possess both material and spiritual in its purpose and direction. Important values such as patience, piety, consultation for settlement is directed to improve industrial relations. Observing such values helps to alleviate trade disputes relating to discontentment about trade dispute issues such as promotion, demotion, termination of service and trade unionism. Industrial relations built in tandem with such values will see significant improvements in terms of work life, a greater sense of social responsibilities, contentment and a sense of improving one's relation with God.

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