

EVALUATE THE ROLE OF THE JUDICIARY IN INTERPRETING STRIKE LAWS AND DETERMINING THE LEGALITY OF INDUSTRIAL ACTION

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Abstract: *The Malaysian judiciary plays a crucial role in shaping employee relations by interpreting and enforcing strike laws. This paper examines how the judiciary balances employees' rights to protest with the broader public interest, particularly in essential services. This study contributes significantly to understanding how the role of the judiciary in Malaysia can be strengthened through improvements to the alternative industrial dispute resolution (ADR) system, as well as proposing reforms to the Industrial Relations Act 1967 to better align it with the principles of workers' freedom of expression and international labour standards. The judiciary's role in determining the legality of industrial action, including wildcat strikes, and its efforts to promote alternative dispute resolution (ADR) are explored. Challenges such as the time-consuming nature of legal processes and restrictions on essential services can hinder employees' ability to exercise their right to strike effectively. This study finds that judicial interpretations of strike laws in Malaysia tend to prioritise economic stability and the public interest, particularly in essential services sectors, over comprehensive protection of workers' rights to take lawful industrial action. To enhance industrial relations, the paper recommends streamlining judicial processes, promoting ADR, updating strike laws, strengthening trade unions, and fostering public awareness. By adopting these recommendations, Malaysia can create a more harmonious and equitable workplace for all.*

Keywords: *Judiciary, strike laws and industrial actions*

Introduction

The judiciary plays a crucial role in shaping employee relations, particularly when it comes to interpreting strike laws and determining the legality of industrial action. This is especially clear in Malaysia, where the courts' decisions play a big role in balancing workers' rights to protest unfair conditions with the need to maintain public order, economic stability, and protect employers' interests (Rajah, 2019). "The Industrial Relations Act 1967 (IRA) is the key legislation in Malaysia that regulates strikes and industrial actions (Jamaluddin et al, 2019). It sets out the procedure employees should follow to legally go on strike. Employees are required to notify their employer in advance, obtain approval from their union, attempt to resolve the issue through negotiation, and hold a vote to approve the strike. The law permits strike when happened over matters like wages or working conditions, but not for political reasons such as opposition to government policies, political beliefs or party support, protests against political leaders, social or political movements and other reasons (Twomey, 2023). If these procedures are not followed, the strike may be deemed illegal, and employees could face legal consequences.

Globally, employees' right to strike is seen as an important part of their rights, but it's often regulated by laws to prevent harm. For example, the International Labour Organization (ILO) sets guidelines to protect employees' right to strike while making sure that strikes don't cause major disruptions to essential services (like healthcare or transportation) or damage the economy. However, how these rights are applied can vary greatly from one country to another, depending on each country's laws, culture, and politics (Zaami et al, 2020). In Malaysia, the judiciary play an important role in interpreting these strike laws. The judges have to carefully balance two things which are protecting employees' right to strike when necessary and ensuring that strikes do not cause public disruption or affect essential services like public transportation or healthcare (Abd, 2024).

The Malaysian judiciary, particularly through its decisions on industrial disputes, has had a profound impact on employee relations in the country (Abd Razak, 2024). The judiciary are called upon to assess the legality of strikes based on the requirements set forth by the IRA, which mandates procedures such as prior notice to employers, trade union approval, and attempts at negotiation or conciliation before employees can legally down tools. The judiciary sometimes has to decide if specific industrial actions are unauthorized or unofficial "wildcat" strikes. Such strikes are illegal and can result in penalties. The judiciary thus play a crucial role in determining whether strikes are deemed legitimate, as well as in upholding or overturning the legality of industrial actions that may disrupt the functioning of key sectors such as healthcare, transportation, and education. Moreover, recurring issue in Malaysia's employees' landscape is the tension between the right to strike and the need to maintain public order, particularly in sectors that provide essential services (Mahyut et al., 2023). The judiciary is often tasked with interpreting the scope of what constitutes an "essential service" under Malaysian law, and this can have far-reaching implications for the legality of industrial action in such sectors. For example, public sector workers in essential services may face more stringent restrictions on striking, given the potential disruption to public safety and critical services. The judiciary's interpretation of these restrictions is a key point of contention, as it raises questions about the balance between individual rights and the collective good, as well as the role of the courts in regulating this balance.

Additionally, the strike was declared illegal by the Industrial Court because the employees had not followed the legal procedures, such as giving advance notice and conducting a ballot (Ahmad et al, 2023). The judiciary's decision underscored the importance of adhering to the legal framework established by the IRA and served as a reminder of how industrial actions that do not meet these requirements can be deemed unlawful. For example, a series of strikes by employees in the public transportation sector (such as train operators) were declared illegal by the Malaysian courts (Chalermpong et al, 2023). The judiciary ruled that, while the workers had legitimate grievances, their strikes had not adhered to the procedural rules outlined in the IRA, including the necessary pre-strike negotiation steps. This case highlighted the delicate balance the judiciary must maintain in protecting workers' rights to protest while also ensuring that essential public services, like transportation, were not unduly disrupted.

Furthermore, the "wildcat" strikes that occasionally erupt in Malaysia, particularly in the private sector, illustrate the complexities of employee disputes. These strikes, which occur without union approval or following proper legal procedures, are often quickly deemed illegal by the courts. A well-known example occurred in 2018, when workers at a major electronics factory engaged in a spontaneous walkout over wage disputes (Fans, 2019). The Industrial Court ruled that the strike was illegal due to its lack of union authorization and failure to follow the mandated dispute resolution process. These examples demonstrate the critical role that the judiciary plays in shaping employee relations in Malaysia. By interpreting strike laws and assessing the legality of industrial actions, the courts ensure that employees' rights are balanced with the larger public interest, maintaining social order and economic stability. However, these cases also highlight the challenges faced by the judiciary in interpreting the law in an evolving employee landscape, where economic conditions, worker demands, and public expectations often collide.

Despite the existence of various studies on industrial relations law in Malaysia, there is still a lack of critical research that examines in depth how courts interpret the validity of strike action (ILO, 2023) and the extent to which such interpretations balance the right of workers to strike and the public interest, especially in the essential services sector. Therefore, this study aims to fill this gap by analysing the role of the judiciary in determining the validity of industrial action and its implications for the employment relations landscape in Malaysia. This paper aims to evaluate the role of the judiciary in interpreting strike laws and determining the legality of industrial action in Malaysia. It will explore how judicial interpretations impact employee relations, with particular emphasis on the challenges faced by the courts in balancing the rights of workers with the broader social, economic, and public policy considerations. Through an examination of key case law, legal precedents, and relevant statutes, the paper will highlight how Malaysia's judiciary navigates the complex terrain of industrial action and its role in shaping employee relations in a rapidly changing economic and social environment.

Discussion

The Judiciary's Role in Interpreting Strike Laws and Industrial Action in Malaysia. The Malaysian judiciary plays a crucial role in shaping the landscape of industrial relations by interpreting and applying strike laws (Sumaworo, 2020). This ensures that industrial action is conducted within the legal framework, balancing the rights of employees to protest with the broader public interest.

Key Roles of the Judiciary

Interpreting Strike Laws

The Legal Framework for industrial action is primarily defined by the IRA in Malaysia, which sets out the rules and conditions under which employee can engage in strikes or other forms of industrial action (Jamaluddin et al, 2022). The judiciary's role is to interpret this law and other relevant legislation to determine whether a strike or industrial action is legally justified. This includes ensuring that all legal requirements, such as proper procedures and criteria for initiating a strike, are met. The courts interpret the IRA to clarify the rights and responsibilities of both employees and employers in industrial disputes, ensuring that any action taken is within the boundaries of the law. Additionally, the IRA empowers the government to declare certain services as "essential," limiting the right to strike in sectors critical to public interest, such as healthcare and public transportation (Katsaroumpas, 2023). This provision reflects the delicate balance between employees' rights and societal needs, a key consideration in Malaysia's strike law.

Procedural Requirements

The IRA imposes strict procedural requirements on unions before they can legally strike. These procedures include giving adequate notice to employers, making genuine attempts at conciliation through the Industrial Relations Department, and conducting secret ballot votes among union members to gauge support for the strike (Abd, 2021). By adhering to these procedures, the IRA aims to promote industrial harmony and minimize disruptions to businesses and the economy. It ensures that strikes are a legitimate tool for workers to use in pursuit of their rights, but only as a last resort and under strictly regulated conditions. Additionally, the IRA empowers the Director-General of Industrial Relations to intervene in industrial disputes and to appoint conciliators to facilitate negotiations between the parties involved (Dhillon & Juet, 2018). This intervention can help to prevent strikes from occurring or to bring them to an end more quickly.

Essential Services

Essential Services are sectors deemed crucial to public welfare, where a disruption could pose significant risks to public health, safety, or national security. The judiciary defines which sectors are classified as essential services and determines the extent to which strikes can be restricted in these areas. In Malaysia, essential services include sectors like healthcare (hospitals, emergency medical services), transportation (public transport systems), utilities (water and electricity supply), and law enforcement (police and fire services). In these sectors, strikes are heavily regulated to ensure that the public is not affected. For example, if healthcare employees, such as doctors or nurses, decide to go on strike, it could lead to a collapse in emergency medical services, putting lives at risk (Ruso et al, 2019). Therefore, in such essential sectors, while employees have the right to strike, the courts often impose strict conditions, such as requiring minimum staffing levels during a strike or limiting the types of services that can be withdrawn.

A notable example in Malaysia occurred in 2019 when a doctors' strike was threatened over issues like working hours and pay (Craveiro et al, 2024). While healthcare employees have the right to protest, the government intervened by negotiating to prevent widespread disruption in hospitals. The judiciary may also intervene to ensure that essential services continue to operate,

even if some employees choose to take industrial action. In sectors like public transport, strikes are similarly limited because they directly affect the daily lives of the public. A train or bus strike can cause significant disruptions, making it harder for people to commute, which can harm economic activities. In such cases, the courts often step in to ensure that strikes are carried out with limited impact on public services, possibly requiring the provision of alternative services or restricting the duration of the strike.

Determining the Legality of Industrial Action

Wildcat Strikes

According to Malaysian law, wildcat strikes refer to unauthorized strikes that occur without trade union approval or adherence to the proper legal procedures outlined in the IRA (Cuellar, 2020). These strikes are typically spontaneous actions by employees, often taken without the necessary legal steps, such as notifying the employer, seeking conciliation, or conducting a secret ballot. Under Malaysian law, industrial action must follow a set process to be considered legal. Employees are required to exhaust all alternative dispute resolution mechanisms, including conciliation or arbitration, before resorting to a strike. Additionally, strikes are only considered lawful if they are approved by the union and conducted in accordance with the rules governing industrial action, including the necessary notice periods and procedures for a secret ballot. Wildcat strikes violate these legal requirements and are therefore deemed illegal. Judiciary in Malaysia consistently rule against such strikes, emphasizing the need for adherence to established procedures and union involvement (Rodiyah, 2023). For example, in a wildcat strike scenario, employees who go on strike without following the procedural steps outlined in the IRA can face legal consequences, including potential dismissal or legal actions from the employer. A notable case in Malaysia involved a wildcat strike by workers in the public sector in the late 1990s, where the strike was deemed illegal because it had not been properly sanctioned by the trade union or followed the required legal process. In these cases, the courts uphold the principle that industrial actions must be legally sanctioned to avoid chaos in employees' relations and ensure that the rights of both employees and employers are protected under the law.

In the context of illegal strikes or wildcat strikes, the blanket ban on spontaneous action by workers raises questions from a fundamental rights perspective (Tucker, 2025), particularly with regard to freedom of expression and the right to association as guaranteed by Article 10(1)(c) of the Federal Constitution and the fundamental principles of the ILO Convention. This study finds that while the courts play an important role in maintaining public order, there is a tendency to interpret strikes narrowly and to prioritise economic interests and social stability over legitimate expressions of workers' dissatisfaction with their employers. For example, in the case of a spontaneous strike by workers in an electronics factory that did not obtain union approval, the action was immediately declared illegal without consideration of the context of power imbalance or delays in the negotiation process. This raises the question of whether such judicial decisions are more punitive than substantive in resolving conflicts. This study therefore calls for a reassessment of the judicial approach to dealing with wildcat strikes, taking into account the principles of social justice and the need for more inclusive and responsive channels of workers' expression.

Industrial Action and Public Order

In Malaysia, the judiciary plays a crucial role in balancing the right to strike with the need to maintain public order, particularly in sectors critical to public safety and welfare (Rodiyah, 2023). Under the IRA, employees are entitled to engage in industrial action, but only after following legal procedures such as providing notice, seeking conciliation, and obtaining trade union approval. The courts ensure that strikes comply with these procedures to minimize disruption and maintain orderly employees' relations, particularly in essential services. The judiciary is particularly vigilant in sectors classified as essential services, such as healthcare and transportation, where a strike could harm public safety. For instance, healthcare employees' strike, the courts ensured that emergency services continued to operate, requiring minimum staffing levels to prevent disruption to critical medical services (Ruso et al, 2019). Similarly, in transportation strikes, like the 2018 public bus drivers' strike, the courts intervened to ensure services resumed quickly and required that legal procedures, including conciliation, were followed to avoid severe disruptions. In sectors like law enforcement and emergency services, the judiciary imposes even stricter restrictions on strikes due to the potential impact on public safety. Strikes in these sectors are generally prohibited, as the courts prioritize the public's need for security and law enforcement over workers' right to industrial action. Overall, Malaysia's legal framework and judiciary ensure that while workers can exercise their right to strike, public order and essential services are preserved, maintaining a balance between employees' rights and public welfare (Reddy, 2020).

Injunctions and Court Orders

Injunctions and Court Orders are important legal tools used by Malaysian courts to control industrial actions like strikes, especially when these actions threaten public order or cause economic harm (Chakravarty, 2020). Judiciary can issue injunctions to stop strikes that are illegal or cause major disruptions, ensuring that employees' rights are balanced with the need to maintain public safety and economic stability. For example, in 2013, employees at a manufacturing company went on strike, causing serious problems for production and financial losses (Todd, 2020). The employer went to court, asking for an injunction because the strike did not follow the proper procedures, like conducting a secret ballot or giving notice in advance. The court agreed and ordered the employees to stop the strike and return to work, saying the strike was harming the company's finances. Another example is from 2018, when public bus drivers in Malaysia went on strike, affecting public transportation. The authorities asked the judiciary to stop the strike because it caused major disruptions to people who needed buses to get to work and school. The judiciary issued an injunction, ruling that the strike was illegal because it didn't follow the required legal steps. The court's action ensured that public transport services were restored and that the needs of the public were met.

In both cases, the courts used injunctions to stop harmful strikes and protect the economy and public services. These court orders help ensure that strikes are fair and legal, without causing unnecessary harm to the public or businesses.

Encouraging Alternative Dispute Resolution (ADR)

ADR is an essential aspect of resolving employees' disputes in Malaysia, and the judiciary actively promotes the use of methods like mediation and arbitration to address conflicts without the need for strikes or prolonged legal battles (Magiri, 2019). These ADR mechanisms are seen as more effective in facilitating amicable resolutions, preserving industrial harmony, and minimizing disruptions to public services and economic activities (Sumaworo, 2020). In

Malaysia, the judiciary encourages the use of mediation and arbitration as ways to resolve employees' disputes before they escalate into strikes. Mediation involves a neutral third-party facilitating communication between the employer and employees, helping them reach a mutually acceptable agreement (Sumaworo, 2020). Arbitration, on the other hand, involves a third party making a binding decision after hearing both sides of the dispute. An example of this is the 2014 dispute between employees and a large private sector employer in Malaysia, where employees were dissatisfied with their working conditions and pay. Rather than resorting to a strike, the Industrial Relations Department intervened and referred the case for mediation. The mediation process allowed both parties to negotiate and agree on improved working conditions, avoiding the disruption of a strike (Munduate, Medina & Euwema, 2022). If the parties had not reached an agreement, the case would have been escalated to arbitration, where an arbitrator would have made a binding decision.

In some cases, the judiciary may take a more active role in promoting ADR by mandating mediation or arbitration. Malaysian judiciary have the authority to order both parties to engage in these processes, aiming to resolve employees' disputes before they lead to industrial action. A clear example of this is the 2006 dispute between employees' and the management of a Malaysian government-linked corporation (GLC) (Khair, 2023). The employees were threatening to strike over wage issues, but the court ordered the parties to enter mediation. The court-appointed mediator helped facilitate discussions between the employees and employers, and a settlement was reached without the need for a strike. The judiciary's involvement ensured that the dispute was resolved amicably and that the public sector continued to function without interruption. These examples demonstrate how the Malaysian judiciary promotes ADR mechanisms like mediation and arbitration as effective tools to resolve employees' disputes and prevent strikes. By encouraging these alternative methods, the judiciary helps to maintain industrial peace and ensure that disputes are settled in a way that benefits both employees and employers, without harming the broader economy or public order.

Challenges and Considerations of Legality of Industrial Action

One of the significant challenges for employees in Malaysia is adhering to the strict legal procedures outlined in the IRA before engaging in industrial action (Sudiarawan et al., 2022). These procedures include requirements such as providing a notice of dispute, holding a secret ballot, and attempting conciliation to resolve the dispute before resorting to a strike. Failure to follow these procedures can result in the industrial action being declared illegal. For instance, if employees do not provide the necessary notice or conduct a secret ballot before striking, the action may be deemed unlawful by the judiciary. This often leads to employees being hesitant to proceed with strikes, as failure to comply with the legal requirements could result in the loss of their right to strike, fines, or legal consequences (Mahyut et al., 2023).

Another challenge is the time-consuming process of resolving industrial disputes. The legal processes of conciliation and arbitration can take extended periods, sometimes leading to frustration among employees (Amadi et al., 2020). Employees seeking immediate improvements in their working conditions or pay may be forced to wait for a prolonged period for a resolution. This can cause financial hardship for employees, particularly if the dispute drags on for months or longer, without a timely resolution. For example, a 2016 strike by employees at a Malaysian factory was delayed for months due to the lengthy conciliation

process. This prolonged uncertainty only intensified employees' frustration, as they struggled with ongoing dissatisfaction over their pay and working conditions (Anuar, 2022).

Additionally, restrictions on essential services present another significant challenge. Employees in sectors such as healthcare, transportation, and law enforcement are often legally prohibited from striking or face severe restrictions on their ability to engage in industrial action, due to the potential risks to public safety and welfare (Oleribe et al, 2019). For example, if healthcare workers engage in a strike, it could jeopardize patient care and disrupt critical medical services (Ruso et al, 2019). The IRA restricts strikes in essential services to ensure public safety, leading to frustration among workers in these sectors, as they are often unable to protest effectively or make demands for better working conditions, even when they are facing unreasonable workloads or unsafe conditions.

Moreover, the need for trade union approval before industrial action can proceed adds another layer of complexity for employees (Wad, 2019). In many cases, trade unions must approve the industrial action, and this can create divisions among workers, especially if they feel that the union leaders are not adequately representing their interests. If union leadership decides not to approve the strike, employees may feel powerless, which can lead to frustration and resentment. This was seen in 2014, when workers at a large plantation in Malaysia attempted to strike over poor conditions, but union leaders did not approve the action. Many workers felt their grievances were ignored, resulting in feelings of discontent and a weakened collective bargaining position.

Finally, there is always the risk of legal action if industrial action is deemed illegal. If a strike or work stoppage is found to be in violation of the law, workers and unions could face legal penalties, including fines, orders to return to work, or even dismissal. For example, wildcat strikes, strikes that occur without union approval or legal authorization are considered illegal under Malaysian law. Workers involved in wildcat strikes risk facing disciplinary actions, which may include losing their jobs. This legal risk can deter workers from engaging in industrial action, even when they feel strongly about their demands, as they fear losing their livelihoods or facing other legal consequences.

The study also identified that among the most marginalized groups in the Malaysian industrial relations legal system are gig and migrant workers, who are generally not protected by the Industrial Relations Act 1967 (IRA). The lack of formal employment status means that they are not considered "workers" in the legal sense, thus preventing their access to legal strike protections, including the right to bargain collectively or engage in organized industrial action (Idris & Kosoko, 2025). This highlights the existence of significant legal gaps, which enable exploitation and make it difficult for vulnerable workers to claim their rights through legal channels. In this context, the role of the judiciary is increasingly important in interpreting the definition of "worker" in a progressive and inclusive manner. The study recommends that legal reforms be enacted to broaden the definition of worker, including the recognition of gig workers as part of the modern workforce landscape. This is important so that the principles of labour justice can be enjoyed comprehensively and not limited to formal sector workers only.

Impact of the Legality of Industrial Action

The legality of industrial action can have significant economic consequences for both employees' and employers. When employees' go on strike, especially in large sectors like manufacturing or public services, it can disrupt production and harm the economy (Yu et al, 2021). If the industrial action is illegal, both parties can face financial losses. Employers might experience delays or disruptions in their operations, while employees could lose wages or even face job insecurity if the strike is deemed unlawful (Zakiyy, 2022). For example, a strike by employees in a Malaysian manufacturing plant was declared illegal, leading to financial losses for the company and penalties for the employees involved.

Moreover, the social impact of industrial action can also be significant, especially when strikes affect essential services like healthcare or transportation (Abd, 2021). For instance, a strike by bus drivers may leave people without public transport, causing frustration for citizens who rely on these services to get to work or school. In such cases, the legal framework helps minimize the disruption by requiring essential services to operate at a minimum level during a strike, ensuring that public safety and daily activities are not severely impacted (Abd Razak, 2023).

Furthermore, the impact on industrial relations is crucial. In Malaysia, the IRA aims to balance employees' rights to protest unfair practices with the need to maintain social and economic stability (Amin, 2023). Strict regulations can sometimes limit workers' ability to express their dissatisfaction, but without clear rules, illegal strikes, or wildcat strikes can increase, leading to tension between employees and employers. For example, if employees feel their concerns are not being addressed, they may resort to illegal industrial action, which can damage relationships and lead to legal consequences (Amin, 2023).

Finally, the public perception of industrial action is influenced by whether the action is legal or illegal. Legal strikes are more likely to gain public support, especially if employees are fighting for better wages or improved working conditions. However, when strikes are illegal, employees may face public backlash for disrupting essential services. For example, if a strike by healthcare workers leads to delays in patient care, it may result in negative public opinion, even if the employees' demands are legitimate. Judiciary often intervene to mediate such disputes, and public support can shift depending on how the strike is perceived in terms of fairness and legality.

Conclusion & Recommendation

The Malaysian judiciary plays a pivotal role in shaping the landscape of industrial relations by interpreting and enforcing strike laws. This role is essential in balancing the rights of employees to protest unfair conditions with the broader public interest. The judiciary's decisions on the legality of strikes, essential services, and wildcat strikes have far-reaching implications for the nation's economic and social stability. While the judiciary has been instrumental in maintaining industrial harmony, there are areas where further improvements can be made. Enhancing judicial efficiency in resolving industrial disputes, particularly through the timely handling of cases and the promotion of alternative dispute resolution mechanisms, can contribute to a more harmonious workplace environment. Additionally, reviewing and updating strike laws to address contemporary challenges and ensure they remain relevant to the evolving needs of workers and employers is crucial.

To enhance Malaysia's industrial relations landscape, several key measures should be implemented. Streamlining judicial processes is essential to expedite the resolution of industrial disputes, such as establishing specialized industrial relations judiciary or simplifying procedural requirements. Additionally, promoting ADR through mediation and arbitration should be encouraged as effective tools to resolve employees' disputes before they escalate into strikes. To ensure the legal framework remains relevant, regular reviews of the Industrial Relations Act 1967 are needed, focusing on updating provisions related to essential services, notice periods, and conciliation procedures. Strengthening trade unions is also crucial, as supporting their growth will enable them to better represent employees' interests and promote effective collective bargaining. Public awareness campaigns should be launched to educate employees and employers on their rights and responsibilities under employee laws, particularly regarding industrial action. A collaborative approach, fostering cooperation between the judiciary, government, employers, and trade unions, is vital for developing a comprehensive industrial relations strategy based on dialogue, negotiation, and compromise. By adopting these recommendations, Malaysia can ensure employees' rights are protected while maintaining economic stability and social harmony. The judiciary plays a key role in this process, and by adapting to the changing needs of the workforce, it can help create a more just and equitable workplace for all.

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