

INTEGRATING CORPORATE SOCIAL RESPONSIBILITY IN REFORMING TRADE UNION RECOGNITION PROCESS

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ABSTRACT

Employees are one of the most important stakeholders in organisations but their interests are often neglected by employers, particularly from the perspective of trade unionism that plays an essential role in safeguarding employee interests. Currently, the existing legislation has discouraged trade union activities and this has directly deprived the employees of their rights for a better working conditions at the workplace. There is also an evidence of anti-union actions taken by employer in recognition claims in order to prevent collective bargaining with trade unions. Corporate social responsibility (CSR) is an important tool in an organisation where the interests of the stakeholders is sustained. This paper investigates the relationship between employer's CSR practice and its role in reforming recognition process of trade union in Malaysia. Qualitative research is employed to achieve the objective of this study by way of analysing secondary data and conducting legalistic analysis of the case law and statutes related to the issue. Based on

the findings of this study, it is found that trade union recognition process can be reformed through integrating CSR practice in the organisation.

Keywords: corporate social responsibility, recognition process, trade union, collective bargaining, stakeholder theory

INTRODUCTION

Collective bargaining is a form of collective action by a group of employees to negotiate with the employer to improve their working conditions at the workplace and to improve their employment benefits (Aminuddin, 2020). Trade union represents the employees of the organisation in the collective bargaining action and the process is initiated when a trade union submitted a recognition claim to the employer. Recognition process of a trade union is a pre-requisite to collective bargaining action in Malaysia. Currently, employees in Malaysia are faced with various challenges in exercising their rights to be represented by a trade union in collective bargaining with employer due to the nature of restrictive legislative framework. It is reported that in 2019, out of 132 recognition claims, only 10 claims where the employer voluntarily recognised the trade union (Department of Industrial Relations, 2018). Employer is reluctant when dealing with trade unions in particular, when it comes to collective bargaining to improve employee's employment contract. Apart from that, employer has been practicing anti-union actions towards the employee who involved with the trade union either as a leader of trade union, workers joining activities of trade union and workers participating in the secret ballot to vote for trade union. Among the anti-union acts by employer is restructuring the employee's position during the process, discrimination of employees that become members of trade union and purposely delaying to process the recognition claims with the intention to avoid the bargaining action with the trade union (Abdul & Mahmud, 2018). These unfortunate events had caused unrest among the employees and affected their job performance at the workplace. In order to sustain the workforce, employer must change their attitude towards their employees and trade unions.

There has been an increasing interest in theorising corporate social responsibility (CSR) recently. The debate over the existence of corporations has triggered their relationship with the society by introducing a term as "corporate social responsibility" (Johns, 2003). Initially, it emphasised much on the interests of the investors who have invested in it with monetary terms. Later, social conscience such as philanthropy and care for the environment were evoked in corporate world in projecting ethical practice to the public. CSR is a concept for

enhancing business morality which is a voluntary and self-regulating activity of corporations (Afsharipour & Rana, 2014; Smith, 2011). It is a strategic tool to communicate with its stakeholders and to gain positive corporate image (Schultz & Wehmeir, 2010). One of the role of CSR is for the organisation to show concerns for stakeholders' needs and interests (Bauman & Skitka, 2012). Corporate ideology is represented in CSR as a corporation's philanthropic initiatives for the stakeholders with much citations in corporate policies, standards, and studies (Rajandran & Taib, 2014). Frynas and Yamahaki (2016) suggests that CSR discussion should combine with other theoretical insights such as stakeholder theory. Stakeholders consists of external and internal groups which its action will affect the organisation. Stakeholder theory brings the notion that organisation's action is a direct result of pressures from different stakeholders (Jawahar & McLaughlin, 2001). In this theory, legitimate interests of all the stakeholders in the organisation should be taken into account (Garriga, 2011). Studies have investigated the relative impact of different stakeholder attributes on CSR strategies and how stakeholder pressures impact CSR-related activities (Brammer & Millington, 2004; Lamberti & Lettieri, 2009; Surroca et al., 2013). However, the CSR to employee of the organisation are somehow neglected (Suhaimi, 2014; Bauman & Skitka, 2012; Ellemers et al., 2011; Young & Thyil, 2009). While a big section of the literature on CSR has been populated with studies that are related to stakeholder theory; there have been very few studies on the CSR to the internal stakeholder of the organisation in form of recognising the employee's rights at the workplace, in the context of this study, the recognition process of trade union. In consideration of these gaps, this study explores the role of CSR to reform the recognition process of trade union. Therefore, this paper will study how to integrate CSR in reforming recognition process of trade union in Malaysia through examining the employer's responsibility towards their employee as stakeholder. The main theoretical focus in this paper is on the CSR principles to the internal stakeholders of the organisation. The present study makes contributions to the literature on CSR and on the impact to employee as internal stakeholder.

LITERATURE REVIEW

CSR for Employee as the Stakeholder

As the growing evidence supporting the effect of CSR towards employees' work performance, the stakeholder theory should be highlighted among employers in giving employees a fair attention (Bauman & Skitka, 2012). Stakeholder theory proposed the idea that the business opportunity of corporations is granted by the

society. Corporations, in return to the gains from the society, should also perform the duties to the parties where the business activities are involved. Studies on CSR found that companies are required to have ethical and moral obligations to society (Carroll, 2004). Additionally, stakeholder theory also suggests that all the stakeholders' interests should be in equal proportion, it means that "employees, customers, suppliers, owners, financiers and the community should be treated fairly and justly" (Bauman & Skitka, 2012). Communication with stakeholders in the organisation can be improved through integrated reporting and can be part of CSR activities (Camilleri, 2018). Employees are internal stakeholder of the organisation as they are based on resource exchanges between input and output of the firm (Boodoo, 2020). Employees have an inward focus on the working conditions, compensation programs, and labour relation issues in CSR activities (Rhee et al., 2018). Among CSR practices for internal stakeholder is in form of quality employment, lifelong learning, information, consultation and participation of employees, and equal opportunities. Therefore, CSR for employees is an important tools to address employment-related matters. CSR for internal stakeholder can also be in the form of setting up safe working conditions for employees at the workplace (Boodoo, 2020). Recognising union is necessary as part of organisation CSR and is deemed to be a positive management-employee communication for eliminating workplace dissent and industrial disputes (Arvinen-Muondo & Perkins, 2008) and promote industrial harmony.

Adopting CSR depends on how the organisation shaped the interaction between them and their stakeholder (European Commission, 2002). There is a positive relationship between CSR and employee engagement (Nazir & Islam, 2020). Employee perceived internal CSR significantly related to affective organisational commitment (Luu, 2020). While Duthler and Dhanesh (2018) found that employees' perception of CSR will influence the social and affective dimension of employee's engagement, and a healthy dialogue between employee and employer will increase employee's engagement in the organisation. Besides, CSR is a good corporate strategy towards employees in attracting talents, increasing commitment, encouraging organisational citizenship behaviour, or decreasing turnover (Bauman & Skitka, 2012). In one study, hotel employees' perceived CSR had a positive effect on their basic and growth needs of quality work-life which led to job satisfaction (Lina et al., 2020). Besides, employee's perception of CSR is a key role in enhancing employees' performance. Studies showed that CSR presented a strong positive correlations between internal CSR and employee's motivation (Asante et al., 2019; Agarwal et al., 2014). Internal CSR also plays an important role to establish job satisfaction and organisational identification (Cek & Eyupoglu, 2019). CSR for employee can create an

atmosphere of trust within organisation and will lead to a stronger commitment of employees (European Commission, 2002). Implementing fair remuneration, ensuring job security, and compliance with laws related to employee are found to be part of the instrumental CSR (Lee et al., 2012). Imposition of CSR activities by government to company in developed countries has given an institutional pressure for the companies to include CSR in their activities. While in developing countries, the absence of legislation on CSR has stunted the growth of CSR activities in companies (Jamali & Carroll, 2017). In order to gain a better understanding on the relationship between CSR and its role in reforming trade union recognition process, it is critical to investigate the CSR to the internal stakeholder, in the context of this study, the employees. This paper has attempted to bridge a gap between the relationship between CSR and its role in reforming the trade union recognition process.

Recognition Process of Trade Union in Malaysia

The freedom to form and join association is virtued under the Malaysian Federal Constitution. Trade union had emerged in Malaysia since pre-independence period as a result of unfair treatment of employer towards employees. Uncontrolled strikes by unions had caused concerns to the colonial power as it affected their economic interest in Malaya, therefore, registration of union and limitation of union activites were introduced in the legal framework to curb the trade union movements. Eventually, more restrictions imposed by the government after the independence for political and economic reason. Generally, trade union formation and registration is governed under the Trade Unions Acts 1959 while the rules on recognition and collective barganing is stated under the Industrial Relations Act 1967 (IRA 1967). Collective bargaining action is a negotiation process between trade union and the employer to improve employees' employment contract. Employees of the organisation have to be represented by a trade union to negotiate with their employers. It is necessary for a trade union to gain recognition before they can proceed with the collective bargaining action. The law stipulates that trade union have to serve recognition claim to the employer on behalf of the employees they wish to represent and the employer have 21 days to give recognition or to refuse recognition to the claim made by trade union. In case where the employer decided to grant recognition to the trade union, the employer have to ascertain the scope of membership of the trade union concerned and is in accordance with the constitution of the trade union making the claim. For example, the Electronic Workers Union can only represent the electronic employees of the employer. It is reported that only in few cases where employer gives recognition to the trade union (Abdul & Mahmod, 2019). In some instances, employer resorted to

anti-union actions that will reduce the support of employees to the trade union such as delay in replying to the recognition claim, change the job scope of the employees to make him disqualified from voting in secret ballot, and victimised the union members in the organisation. Trade union can bring the matter to the Director General of Industrial Relations (DGIR) in case where employer reject or fail to reply the recognition claim, however, it will take longer time for the recognition process to be completed. In some cases, the period for recognition claim extended to one year whereby at that point of time, changes occurred in the workplace. The recognition process of trade union in Malaysia should be reformed immediately in order to ensure a speedy path to collective bargaining action between employer and employee by encouraging employer to voluntarily recognise the recognition claim of trade union and cooperate with the union in harmonious way. This can be done through CSR, where as the employee is a stakeholder of the organisation, employer must respect the employee's interest for collective bargaining and help to ease the recognition process of trade union in Malaysia.

METHODOLOGY

This study employs qualitative method to investigate the relationship between CSR practice of organisation and its role in reforming the recognition process of trade union through secondary data from online library database which consists of article journals and books. The researchers referred to relevant websites and online newspaper article to search for the concept of CSR in the context of stakeholder and institutional theory to find how the CSR practice can encourage the employer to ease the recognition process of trade union for collective bargaining between employer and trade union. Government statutes is referred to understand the recognition process of trade union in Malaysia, in particular, the IRA 1967. Additionally, law database is used to search for the relevant case law.

This study conducted a qualitative contextual analysis to analyse the legislation related to the recognition process of trade union in Malaysia. The goal of contextual analysis is to uncover manifest meanings within a text (Atkinson, 2017). According to Krippendorff (2012), contextual analysis can help to uncover any underlying meanings behind a text. Additionally, contextual analysis is applied to untangle the concrete and underlying meanings that govern rules, patterns, and relationships within texts (Mayring, 2000). Therefore, this study analysed the relevant provisions under the IRA 1967 by contextual analysis in order to understand the rationale of law on recognition process of trade union set by the government and how it can be improved. Apart from that, to highlight the

issues in the recognition process of trade union, Malaysian case laws are selected from the law database and important facts and judgment of the case are extracted by careful case selection (Linos & Carlson, 2017). Case laws are selected by searching in the law database by using relevant keyword such as “trade union” and “recognition claim.” The list of case laws were further limited to only cases between the year 2010 and 2020. Content analysis method is then used to analyse the facts and judgment of the case law selected. This study will be relying on case law, judicial precedents, and legal philosophy derived from judicial reasoning that form a significant rule in revealing the practical application of the law on the recognition process in Malaysia.

RESULTS AND DISCUSSION

Legal Issues in Trade Union Recognition Process

Section 9 of the IRA 1967 is the provision that explains the procedure on recognition claims for a trade union in Malaysia. Recognition of trade union is a prerequisite to collective bargaining action between employer and a trade union that wish to represent the employees. According to the said provision, a trade union must submit recognition claim to the employer and once the trade union is recognised, a collective bargaining action can be initiated. The employer is given 21 days to reply to the said recognition claim. However, in situation where there is no reply from the employer after the statutory period or the employer rejected the application, the trade union can notify the DGIR within 14 days for the following action. According to Abdul and Mahmud (2018), employer’s recognition is vital before a collective bargaining action can be initiated as it is to inform the employer on the employees’s intention to start bargaining for their rights in the employment contract. The recognition process of trade union is important for the employer to determine the competency of the trade union to represent its employees based on the nature and jobscope of the employer. However, it is reported that in most recognition claims, the employer rejected or silent on the application submitted by the trade union (Abdul & Mahmud, 2019). This situation forced the trade union to report the matter to the department of industrial relations for further actions.

Subsequently, the department of industrial relations shall conduct investigations and competency check based on the ground of refusal provided by the employer. It is observed that the delay of the recognition process of trade union is causing the deprivation of rights of the employee for collective bargaining with the employer. For example, in one recognition claim, the period it took for the

department of industrial relations to make the competency check on the union membership was 21 days from the date of application and the decision was only given out to the trade union three months later [Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Alat-Alat Pengangkutan dan Sekutu vs. Menteri Sumber Manusia & Anor (2016) MLJU 1215]. While in other case, it took the department three months to make the competency check on the trade union and another three months on the decision [Kesatuan Kebangsaan Pekerja-Pekerja Syarikat-Syarikat Pembuatan Keluaran Getah vs. YB Menteri Sumber Manusia and Anor (2012) MLJU 620].

Additionally, the recognition process is further delayed by the employer's anti-union action in form of disputing the competency of their employees to vote in the secret ballot to show their support for the trade union [Holiday Villages of Malaya Sdn. Bhd. vs. YB Menteri Sumber Manusia and Anor (2009) MLJU 575]. The argument made by the employer is based on one of the provision under IRA 1967 which provides that majority of the members in the trade union must not consist employees who are employed in the managerial, executive, confidential, and security position in the employer's organisation. Currently, the IRA 1967 is silent on the definition and nature of the work or the types of employees that belongs to the said categories. It is reported in one case where the employer took this opportunity to declare the employees that joined the union to be categorised as either managerial, executive, confidential, and security in the organisation which later disqualified these employees to vote in the secret ballot [Kelab Lumba Kuda Perak vs. Menteri Sumber Manusia, Malaysia & Ors (2005) 5 MLJ 193]. Besides, it is reported that in some cases, the employers maliciously revoke the recognition given to the trade union in order to avoid the collective agreement with the employees [Kennesion Brothers Sdn. Bhd. vs. Construction Workers Union (1989) 2 MLJ 419]. One case reported that the employers had been interfering with the rights of the employees to join union of their choice by inducing and coercing them to join the in-house union which had been formed for the interest of the employers instead of the independent union [Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam vs. Director General of Trade Unions & Ors (1990) 2 MLJ 419].

CSR in Reforming the Recognition Process of Trade Union

From the perspective of employees, CSR is an internal mechanism in safeguarding employee's rights and equity (Ewing & Hendy, 2017). One of the rights of the employee at the workplace is to form and join trade union. Trade union is a form of employee voice-mechanism that can represent employees of the organisation to negotiate with the employer to improve employee's

employment contract through collective agreement. Employer plays a vital part in reforming the current trade union recognition process in Malaysia. As part of CSR practice of the organisation to the employee as a stakeholder, employer should cooperate with the trade union in the recognition process. This can be done through taking the action to voluntarily recognise the trade union that wish to represent the employees in the collective bargaining. Consequently, through this initiative, the period it takes for the trade union to gain recognition will be reduced. Apart from that, employer should only reject the recognition claim made by the trade union with a strong ground reason. Unnecessary rejection will only caused deprivation of rights of the employees to bargain with the employer. CSR of the employer includes the action to avoid anti-union practices to the union members, instead the employer should support the employees and giving them awareness about their rights to participate in union activities and their rights as employees at the workplace.

Additionally, CSR of the organisation plays a big role in increasing the employee's job performance especially when employer is willing to give the opportunity to the trade union to conduct collective bargaining action with the employer. An organisation should integrate Adam Smith's theory of commutative justice into its CSR initiative. According to Adam Smith, as employee is a stakeholder of the organisation, therefore employee rights must be maintained by the employer (Brown & Forster, 2013). Thus, expanding this theory to the context of this discussion, as collective bargaining is one of the employee rights at the workplace, employer must be just in providing a path for employee to improve its employment contract which can be done by giving full cooperation to trade union in the recognition process. Employee is regarded as weak stakeholders and thus a fair treatment to the employees in the organisation provides them feelings of self-worth for being part of the organisation. A powerful employees' sense of belonging in the organisation will refrain them from exercising their bargaining power (Bridoux & Vishwanathan, 2020). In order to effectively engage in external CSR, a firm needs to provide adequate organisational support and justice to employees (Shen & Zhang, 2019). According to Abdelmoteleb and Saha (2018), the employee tendency to display organisational citizenship behaviour is increased if employees were given a fair treatment in the workplace. CSR initiative to increase employee compensation might be able to increase employee wellbeing and directly will increase employee productivity (Brown & Forster, 2013). Study shows that if employees are satisfied with their rights to negotiate collectively over some aspects of work with the employer, the tendency of stronger job motivation and higher job performance is increased (Babalola & Ishola, 2017). Vice versa, dissatisfaction on their rights to collective bargaining will reduce employees' job performance at the workplace (Laroche,

2017). An effective CSR towards the employee enhances employees' perception that they have been treated fairly by their organisations and results in higher job satisfaction (Lee & Chen, 2018). Additionally, legal CSR would provide a salient cue for employees to evaluate the fairness of employer. Employees would evaluate the fairness of the organisation based on the fair or unfair treatment they received from the employer (Chen et al., 2019). Therefore, from these findings, it can be seen that there is a correlation between CSR and its role in reforming the trade union recognition process in Malaysia. One of the challenges in adopting CSR practice among organisations stem from insufficient knowledge on the benefits of CSR and lack of awareness and resources among organisations (European Commission, 2002). Hence, effort must be made to increase knowledge about positive impact of CSR on organisation's business. According to Cheng and Ahmad (2010), employee is one of the significant drivers of CSR which will influence the achievement of the organisations' objectives. Therefore, economic, ethical, and legal concerns of the employees must be taken into consideration (Cheng & Ahmad, 2010). The adoption of CSR practice will be more effective if all concerned parties shared the same objectives (European Commission, 2002). In the context of this study, if employer, employee, and trade union concerting on the same effort to reach social justice, then CSR practice will accelerate the process.

THEORETICAL IMPLICATIONS

The study suggests that employer need to be more cooperative with the trade unions in the recognition process for collective bargaining action to improve the employees positive organisational attitude and behaviour (Diener et al., 2020; Smithikrai & Suwannadet, 2018). Incorporation of CSR in business is important to nurture employees' positive work behaviour bolsters employee commitment to the company (Farrukh et al., 2019; Jamali & Carroll, 2017). Employee is a significant stakeholder which its conduct will contribute to the organisation success. Therefore, understanding the relationship between the CSR practice and its role to reform the recognition process of trade union will help the employer to make a better decision when dealing with recognition claims from trade union. An effective recognition process of trade union will ease the path for the employees to improve the terms and conditions by way of collective bargaining action which will directly improve the employees job performance and motivation at the workplace. The concept of CSR should be expanded to more areas considering the different values and background of organisation in different

countries (Jamali & Carroll, 2017). Therefore, the integration of CSR to recognition process of trade union may bring many benefits to the employer and employee in an organisation.

PRACTICAL IMPLICATIONS

The cooperation of employer in recognition process of trade union is crucial to determine the employee's opportunity to improve their working conditions. Therefore, this study highlights how CSR practice of the organisation can help to improve the recognition process of trade union in Malaysia. Additionally, through this study, it will promote CSR practice or organisation to its internal stakeholder in form of treating its employees with fair and just, which eventually will form a harmonious relationship between employer and employee at the workplace. Overall, this study contributes to the industrial relations theory and its relation to CSR practice of the organisation. This study will also contribute to the CSR policies of the nation and evolution of CSR theory.

LIMITATIONS AND FUTURE SCOPE OF RESEARCH

Understanding the relationship between CSR practice and its role in reforming the trade union recognition process might lead to an effective collective bargaining process between employer and employee. CSR of the organisation can help the employees to be represented by the trade union in negotiation with employer to improve their employment contract. While we posit that CSR contributes to the improvement of employee's right to collective bargaining, there is still much work to be done in integrating CSR and recognition process of trade union in Malaysia. This study has certain limitations. It only analyse secondary data from library databases and court cases and did not consider the employer's perception on the CSR practice in reforming the recognition process of trade union. The employer's view must be taken into consideration into future studies. Future research should examine the employer's perception in integrating CSR in reforming trade union recognition process. Secondly, this study only focusing on internal CSR practice, in specific the employees of organisation to improve the employee's right at the workplace. Further study should assess the external CSR practice of the organisation and its role in reforming the trade union recognition process of trade union in Malaysia.

CONCLUSION

Conclusively, this study attempts to investigate the relationship between employer's CSR practice and its role in reforming recognition process of trade union in Malaysia. Various issues in the recognition process of trade union has circumvented employee's right to negotiate with trade union in form of collective bargaining, particularly when the employer is reluctant to give recognition to the trade union. This research highlights that CSR for employees is an effective tool to address employee concerns in employment-related matters. Easing the recognition process will help employees to be represented by the trade union in negotiation with employer to improve their employment contract. Hence, it is recommended that as part of CSR practice of the organisation to the employee as a stakeholder, employer should cooperate with the trade union in the recognition process for collective bargaining action. Directly, this practice will improve the relationship between employer and employee in the organisation.

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