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UNIONISATION RIGHTS OF PLATFORM WORKERS IN MALAYSIA: A LEGAL PERSPECTIVE

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Abstract:

Digital platforms have transformed traditional business models, fostering communication, innovation, and flexibility across industries. The growth of digital labour platforms expands job options through greater internet access and remote work. The active participation of platform workers has further driven this expansion due to the flexibility and variety of job opportunities available. However, platform workers are facing various labour issues, including inconsistent payment, unfair account suspensions, and inadequate compensation while working on the digital labour platform. The current regulatory framework prohibits platform workers from forming and joining trade unions, hindering platform workers's rights to unionise and directly affecting their chance to improve their employment contract. This study examines the issues faced by platform workers and recommends improvements that can be made to the current regulatory framework to improve the association rights of platform workers in Malaysia. A qualitative research method in the form of a semi-structured interview with platform workers and the committee member of the E-Hailing Coalition Malaysia is conducted. Content analysis is used to examine parliamentary statutes, academic articles and interview feedback to identify key themes and patterns in the study. The findings reveal gaps in current legal protections and suggest recommendations for reclassifying platform workers as employees to ensure they can engage in collective bargaining and protect their labour rights. This study contributes to the growing discourse on digital labour platforms by advocating for policy reforms that foster a more equitable, sustainable, and just working environment for platform workers in Malaysia.

Keywords:

Digital Labour Platform, Platform Worker, Gig Economy, Employment Law, Trade Union

Introduction

Digital platforms are shaping the landscape of information systems and transforming traditional business models (De Reuver et al., 2017). The digital platform is essential for facilitating communication, encouraging innovation, and driving digital transformation in many industries (Ruggieri et al., 2018). Traditional organizational ties have been altered, and flexible structures have taken the place of rigid structures, making digital platforms a desirable business model and a potential driver of economic growth (Asadullah et al., 2018).

Digital platforms facilitate interactions and relationships between buyers, sellers, service providers and customers by connecting users either directly or indirectly. The COVID-19 pandemic has significantly increased the use of online platforms for sales and services. The rise of digital labour platforms is enabled by improvements in digital platform technologies matching workers to tasks, thus increasing the variety and volume of tasks available due to greater access to the internet and remote work opportunities (Gen et al., 2021). Digital platform technologies have enabled workers to find jobs and incomes both locally and globally. The emergence of digital labour platforms allows people to work from anywhere and increases access to jobs by removing geographic restrictions (Fuchs & Sevigani, 2013). It has certainly reduced unemployment and promoted inclusivity in this employment landscape as it provides opportunities for women, youths and disabled persons to earn income.

However, platform workers are facing various issues while working on the digital labour platform. Platform workers are facing labour rights issues such as inconsistencies in payment and unfair suspension of accounts by the platform provider. Besides that, platform workers are not qualified to claim injury and death compensation from the platform provider. These drawbacks occurred due to the inadequate legislation protecting the interests of platform workers in Malaysia. A trade union can play a role in improving the rights of platform workers through collective bargaining action with the employer to improve their employment contract. However, the current legal framework disqualifies platform workers from forming a trade union or even being members of any existing trade union. Due to these unattractive situations, it has reduced the interest of gig workers in joining digital labour platforms, directly increasing the unemployment rate.

This research aims to examine the issues faced by platform workers. Besides, this study recommends improvements that can be made to the current regulatory framework to improve the association rights of platform workers in Malaysia. This study starts off with the research method employed to achieve the objectives of this study. Next is the literature review on the concept of digital labour platforms, the current regulatory framework on employment rights and unionisation rights among workers. The following part of this paper is about the discussion and findings of the data collected from this research. The last part of this paper concludes the discussion of this study.

Research Method

This study employed a qualitative method to achieve its research objectives. The qualitative method is a type of inquiry that focusses on gathering and analysing non-numerical, descriptive data to gain an understanding of individuals' social reality, including their attitudes, beliefs, and motivations (Aspers & Corte, 2019). This study also conducted interviews with platform workers and the committee member of E-Hailing Coalition Malaysia (R4) to understand the issues involving platform workers. In particular this study uses content analysis. Content analysis is a research method that systematically examines communication content to identify patterns, themes, and meanings within various forms of media. It can be applied to written, oral, or visual data, including texts, speeches, social media posts, and photographs (Jarvelin & Vakkari, 2019). Content analysis is applicable in this study to analyse the relevant parliamentary statutes, journal article and feedback from the interviews.

Coding	Description	Gender	Age	Education	Experience as Platform Worker
R1	Delivery rider	Male	21	Degree	2 years
R2	Driver	Male	22	Degree	8 months
R3	Driver	Male	20	Degree	3 years

Table 1: Respondent's Coding

Literature Review

Digital Labour Platform

A digital labour platform connects labour supply and demand in real-time across a variety of industries, including freelance employment, delivery services, and transportation, using algorithms and data. In contrast to traditional employment models, digital labour platforms usually do not directly hire workers. Rather, they serve as a bridge to connect clients or customers with independent freelancers (Silberman, 2023). Digital labor platforms provide workers with flexibility in terms of when and how much they work, which can be advantageous for individuals who are trying to balance employment and other responsibilities. Moreover, workers can complete their tasks at a designated location or remotely using electronic platforms like websites or mobile applications.

Platform provider refers to a company that creates and manages a digital platform, serving as an intermediary to connect different groups, such as buyers and sellers, service providers and consumers, or employers and workers (Lerch et al., 2024). These providers include drivers, hosts, and other independent contractors who deliver services to consumers through digital intermediation. Platform providers facilitate transactions, interactions, and the exchange of goods, services, or information within the digital ecosystem they operate (Davlembayeva & Papagiannidis, 2023). Platform providers also play a crucial role in the digital labor market by creating and maintaining the infrastructure that connects workers with job opportunities. Their role is significant as they manage digital platforms that connect workers and consumers, facilitating transactions and interactions with each other (Lerch et al., 2024). While a platform worker is a person who works for a company that offers particular services to people or organizations directly through an online platform. Platform workers are people who connect

with requesters through online labor platforms to provide short-term service labor requests, including food delivery services, where they can operate as independent contractors and set their own hours (Wang et al., 2024). Additionally, this job differs from the usual employee-employer dynamic and offers platform schedule flexibility, allowing them to choose to work concurrently for several businesses or groups (Won et al., 2023).

Working Conditions of Platform Workers

One of the main benefits of platform workers is the ability to swiftly and flexibly sell labour for a living, which is essential to workers' survival. However, platform workers have several drawbacks, including long working hours, the pressure to deliver perfect service to every client, and the possibility of losing their job or income if they disregard platform guidelines or directives (Wang et al., 2024). The lack of a comprehensive social security system, inconsistent revenue, and the absence of customary employee benefits like health insurance and retirement contributions are among the other drawbacks. Additionally, labor management duties are unclear (Won et al., 2023). Platform workers deprived of standard benefits like health insurance, paid time off, or retirement contributions, instead, they are categorized as independent contractors. This may also lead to inconsistent earnings and decreased job stability (Fuchs & Sevnani, 2013). Furthermore, platform workers usually do not have many opportunities to show their autonomy. They also can be afraid of AI algorithms and view algorithmic management as gatekeeping. Due to this, their sense of independence and desire to use the platform more may decline (Won et al., 2023). This type of supervision is essential to the platform economy and is frequently used to guarantee that platform workers provide high-quality services regularly. They frequently face unfavourable work conditions, work longer hours, maintain high productivity, control unpleasant reactions by strict supervision, inhibit basic wants, and avoid distractions, all of which might wear down their reserves of self-control.

Unionisation rights in Malaysia

The best way for any employee to improve their employment rights at the workplace is through unionisation (Daud & Tumin, 2013). Trade unions act as a crucial aspect in representing workers' interests through collective bargaining, ensuring that their voices are heard during negotiations with employers (Abd Razak & Nik Mahmud, 2021). According to a study, having a collective agreement is linked to increased productivity (Svarstad & Kostøl, 2022). Many of the terms and conditions of employment for workers in a bargaining unit are outlined in a collective agreement, which is a written contract between the employer and a union. Freedom of association in Malaysia is governed by Article 10 of the Federal Constitution, which grants every citizen the right to form associations. However, this right is not absolute and is subject to restrictions imposed by federal law for reasons such as national security, public order, or morality. Trade Unions Act 1959 is the main legislation that governs the formation of trade union in Malaysia. Trade union is defined as any association or combination of workmen or employers, being workmen, whose place of work is in Peninsular Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in Peninsular Malaysia, Sabah or Sarawak, as the case may be. The establishment of trade union must be for the purpose of regulating relations between workmen and employers for the purposes of promoting good and harmonious industrial relations between workmen and employers, improving the working conditions of workmen or enhancing their economic and social status, or increasing productivity, to represent either workmen or employers in trade disputes.

Discussion and Findings

Platform Worker as Independent Contractor

In Malaysia, the main legislation that spelt out the minimum employment rights of workers is the Employment Act 1955 (EA). The EA defines employee as any person, irrespective of occupation, who has entered into a contract of service with an employer. The EA provides protection to both full-time and part-time workers, specifying terms and conditions of service such as working hours, rest days, notice periods, wages, deductions, and more. It also details entitlements like sick leave, annual leave, public holidays and overtime payment. Employers are free to provide better terms, but penalties await employers who provide inferior terms. Non-EA employees will be governed by the terms of their employment contract. A contract for service refers to a business relationship where an individual, often self-employed, provides services to a client or company on a freelance basis. Unlike a contract of service, there is no employer-employee relationship in this arrangement. Key characteristics include the individual operating independently and not being controlled by the client. They typically provide their own tools and equipment, and the relationship is usually project-based or for a fixed term. The individual assumes responsibility for their business expenses and liabilities. Importantly, individuals under a contract for service are not entitled to benefits and protections under the EA because they are not considered employees under its provisions.

Platform workers fall under the category of contract for service and thus known as independent contractor because they provide services on a freelance basis. They use their own cars and resources for their work, and they are responsible for their operating costs and liabilities. This is supported as in the case of *Loh Guet Ching v Minister of Human Resources and others* [2022] MLJU 2503, an e-hailing driver brought an action for unfair dismissal to the Industrial Court for cancellation of his account by Grab. However, the Ministry of Human Resources refused to refer his case to the Industrial Court on the ground that the Department of Industrial Relations had no jurisdiction because there was no employee-employer relationship in the said case. Grab contended that no employment contract was signed between them and he did not receive a salary but instead paid a 20% commission to Grab from his earnings. Additionally, Grab did not make EPF, SOCSO, or Employment Insurance Scheme contributions, nor did they provide an income statement for claimant's tax purposes. Grab stated that the company did not control the driver who was free to use the app following his availability. Based on these arguments, it was determined that the driver was not under a contract of service, but rather a contract for service. This is because Grab drivers are self-employed and offer their services on a freelance basis for a fee. Grab Company also applied the control test to support these conclusions. Consequently, the driver was not covered under the EA. This landmark case shows that platform worker is disqualified from minimum benefits under the EA due to their status as independent contractor.

Inadequate Labour Rights Protection

Platform workers are facing various labour rights issues due to their employment status as independent contractor. The main issue is on the inconsistencies of payment. According to R3:

“One significant issue I have faced regarding wages is that we do not receive a basic salary or any allowances. It is only our customers who provide us with income. For instance, if I work an average of 8 hours a day, my gross earnings are around RM300. However, after deducting expenses such as vehicle maintenance, my net income is approximately RM150 per day.”

According to the above statement, R3 stated that he does not receive a base salary like any other employee, and their wages are solely determined by the number of customers they receive on any given day. He receives low earnings after deducting other expenses needed to maintain his vehicle.

“The X system will deduct a 20% commission from my earnings immediately with each order. For example, via the X e-wallet, if a fare is RM12, I will receive RM9.60 after the commission is taken out.”

According to R3, he performs work using his own vehicle and they have to cover all operational costs themselves. Expenses such as car maintenance, fuel, and car rental fees can significantly reduce net earnings. Not only that, X also deducts a 20% commission from each fare, further lowering take-home pay.

When asked about his satisfaction with his current wages as a e-hailing driver, R1 pointed out:

“Because of the decline in the rate per kilometer, which has had a major impact on my income, I am not totally satisfied with my current wages. My income has decreased by nearly 40% from what it was previously. I used to be able to make about RM250 a day working 12 hours. However, there is now a discernible difference, with the rate at RM0.70 per kilometer, meaning that between RM100 and RM120 are lost every day.”

The above statement from the driver concludes that the dissatisfaction from the drivers stems from the decrease in the rate per kilometer and how it has been impacting their earnings. Additionally, he stated that X company does not guarantee a minimum wage and that drivers are paid according to the distance driven at a rate of RM0.70 per kilometer.

Additionally, according to R4, the system set by the provider is unfair to the platform worker:

“self-developed mapping is not accurate. It shows a journey time of 30 minutes, but the actual time taken by drivers is 45 minutes to 1 hour. This raises concerns about possible exploitation.”

Apart from that, job security is also lacking for platform workers. Davlembayeva and Papagiannidis (2023) stated that the algorithms used by platform providers to match workers with tasks can affect the distribution of work and platform workers' earnings. This is because platform providers set the terms of service, which can influence working conditions and the level of protection for workers. This is supported with statement by R2 which states that:

“drivers face the risk of having their accounts suspended based on customer complaints. For example, if a passenger loses an item and the driver cannot prove it is not in the car, the driver's account may be suspended.”

R4 also shared his insights on the complaints received from e-hailing workers which include the e-hailing drivers being blacklisted and terminated from the platforms without a strong justification, payment disputes, low and unstable wages and system issues.

Therefore, it would be beneficial for platform workers to have more options for welfare support and benefits. This could include improved options for health insurance, safety for cars, and cash support in the event of a natural disaster. As platform workers fall under the category of independent contractor, when asked to decide between full-time employment with legal protections and freelance driving with flexibility, R1 stated:

"Given that e-hailing businesses use digital platforms, paying drivers a base salary might force X to forfeit its commission, which could be detrimental to the company's bottom line. In response, I value the current model because it allows me flexibility and freedom. In contrast, full-time employment may involve many more administrative complexities, which I find undesirable."

According to R1, platform work offers much-needed flexibility and independence. R1 also mentioned how platform work, which is especially advantageous for managing personal obligations and preserving a work-life balance, enables him to work without being constrained by rigid schedules or employment contracts.

Improving the Unionisation Rights of Platform Worker

Platform workers have become the fundamental part of modern economies, offering flexible services to millions. However, their classification as independent contractors have prevented them from enjoying the same rights and protection given as the traditional employees. Therefore, there are some recommendations that can help to improve the situation. These include, establish a distinct legal classification for platform workers, amend the law under the Trade Union Act 1959 to explicitly include platform workers in the definition of workers who have the right to join or form trade as well as provide the platform workers with the same level of work injury compensation insurance as traditional employees. According to R4:

"The government must create a new act to protect gig workers, cloudworkers, and intermediary businesses that use applications to perform tasks. Amendments must be done to the Employment Act 1955 to include platform worker as third category of workers, ensuring their welfare and rights are protected."

Additionally, R4 stated that:

"The platform workers lack avenues to voice their concerns, leading them to express them through social media. The government must engage discussions with the platform providers."

An alternative approach that the government should take to improve the legal system is by establishing a distinct legal classification for the platform workers that acknowledges their unique working conditions and provides a tailored set of rights and protections. Platform workers often lack access to health insurance, paid leave, retirement plans, unemployment benefits or the right to unionize (Katiyatiyaa & Lubisi, 2024). Thus, this distinct classification aims to balance the flexibility of the platform workers with the necessary legal protections and benefits, ensuring them to be treated fairly while preserving the freedom that they have. It would allow them to access the benefits and protections without imposing all the strict rules that regular employees have such as fixed hours and exclusive service to one company. The government must introduce legislation that defines the criteria for platform workers, considering factors such as control over work, flexibility, and economic dependence on the

platform. To sum up, this classification will ensure platform workers are treated fairly while keeping the unique aspects of their work intact.

The current Trade Union Act 1959 does not adequately support the rights of platform workers to join or form trade unions, leaving them without a formal platform to voice their grievances (Md Radzi et al., 2022). To address this, the government should amend the law under the Trade Union Act 1959 to explicitly include platform workers in the definition of workers who have the right to join or form trade unions. This change would provide platform workers with a more structured way to express their concerns and advocate for policy changes that protect their rights within the evolving gig economy. This amendment would empower them to collectively address issues such as unfair dismissals, inadequate compensation, lack of benefits, and unsafe working conditions. Moreover, granting them the right to join or form trade unions would enhance their ability to stand up for their rights to push for fair compensation, better working conditions and policies that safeguard their well-being. For instance, the e-hailing drivers could negotiate for more equitable fare structures or improved safety measures. In short, amending the Trade Union Act 1959 will ensure the platform workers are not excluded from protections and benefits granted to the traditional employees.

The government should provide the platform workers with the same level of work injury compensation insurance as traditional employees. Platform workers lack access to adequate insurance coverage in the event of work-related injuries, leaving them vulnerable to financial hardship. Even in some countries there is no work injury compensation insurance available for the platform workers (Ran & Zhao, 2023). Besides, platform workers like e-hailing drivers face similar or even worse risk of accident and injury compared to those traditional employees, but they often lack the same protections. Hence, mandating injury compensation insurance for platform workers is necessary to ensure that they are safeguarded against work-related injuries, promoting their health and safety. They are obligated to be given comprehensive coverage for medical expenses and rehabilitation resulting from work-related injuries or accidents. This benefit will serve as the necessary support and security to recover from injuries without facing undue financial strain. In essence, this approach will uphold the rights and welfare of platform workers by ensuring they receive adequate insurance coverage, similar to that provided to traditional employees, in terms of workplace injuries.

This is supported by R1:

“Establishing a trade union for delivery riders is a good idea. The union can help the riders by voicing out our concerns and improve our protection especially on our safety through collective agreement”

If platform workers deprived of safety net performing their work, two consequences may occur. Firstly, they will not be able to solely rely on gig work as their source of income which will compel them to do multiple jobs. Having multiple day jobs might become stressful for the drivers which can hamper their mental well-being, and this stress may lead them to be dissatisfied with their lives. Secondly, many full-time drivers might consider leaving this gig work due to the lack of job security and stress, and there might be cases where they are unemployed for a long time. This unemployment issue, if prolonged, may cause further stress in the overall economy of Malaysia and halt its progress.

By forming a union, platform workers will have a dedicated platform to address these issues directly with the government and negotiate for fair treatment. R4 stated that proper legislation would allow the formation of unions, enabling direct negotiations with the ministry for their rights and inclusion in the National Labour Advisory Council. Additionally, R4 emphasized that unionization would provide e-hailing workers with the same recognition and rights as traditional workers, ensuring fairness and equity in the industry.

Conclusion

To conclude, the legal framework in Malaysia, including the Trade Unions Act 1959 and the Employment Act 1955, needs significant amendments to reclassify platform workers as employees and include them in the definition of employees. Platform workers have become an essential part of modern economies, allowing flexible services, but at the same time, they often lack the same rights and protections as traditional employees. Platform workers within the context of digital labour highlight the control and direction applied by digital platforms to the workers, which is similar to traditional employer-employee interactions, hence why they argued for these legal changes. If the formation of trade unions were to be allowed, it would empower platform workers to engage in collective bargaining, pushing for better benefits. By implementing the recommendations provided, it is possible for Malaysia to create a more equitable and sustainable working environment for platform workers, ensuring they receive the protections and benefits they deserve, aligning their rights more closely with those of traditional employees, and ultimately fostering fairer and more just gig workers.

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