ASSESSMENT OF THE TERMINATION PROCESS BASED ON THE EMPLOYMENT CONTRACT IN MALAYSIAN PRIVATE SECTOR

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ABSTRACT

This paper aims to determine the elements in the termination simpliciter process. This paper also aims to assesses how the elements influence the termination process. This study used a qualitative method by conducting an interview with officers in handling human resource management cases in private sector particularly in dismissal. Semi-structured techniques are used to obtain information to enable in-depth study and comprehensive information on the objective of this study. The finding shows that the elements and evaluation of the termination process are very important to ensure fundamental justice to all parties. There are three elements that has be take into consideration before employment termination, which are, contract of services, disciplinary action and Labour Law. This paper provides specific elements before implement termination in private sector in Malaysia. This study focuses only on employment contracts regardless of other types of arrangements entered into by employers. The results used as a guide for private-sector employees, especially for potential workers in Malaysia.

Keywords: *contract of services, termination simpliciter, Employment Act 1955, Industrial Relations Act 1967*

1.0 INTRODUCTION

Termination of employment is an act of severing the relationship between the employee and the employer. Every employee and employer have differences of desire that lead to disputes (Sudiarawan, Tanaya, & Hapsari, 2021). According to a study conducted by ILMIA in 2018 there are several types of terminations that have been classified by the industrial relations department Malaysia, which are termination due to misconduct, retrenchment, constructive dismissal, force to resign and termination simpliciter (Norshamsidah & Wan Zulkifli, 2018).

Through S.12 of the employment act 1955, employers are also having the right to restructure the company or terminate the operations of the company. This termination action also known as retrenchment. The retrenchment action taken is also recognized through s. 13 (3) of the Industrial Relations Act 1967, where, the employer has the

management prerogative to make a reorganization of the company. Labour law in Malaysia also recognizes retrenchment acts done in good faith (bona fide).

Terminations made due to employee misconduct should be assess through the Natural Justice principle. A study conducted by Abdul Khalil (2007) found that there are 6 types of misconduct that are often committed by employees that cause employers to take disciplinary action, namely, absenteeism, non -compliance with employer's instructions, low quality of work, dishonesty, violation of rules and negligence. In S. 14 of the Employment Act 1955, the employer has the right to take disciplinary action against the employee if the employee violates the laws and regulations laid down by the company. However, employers are recommended to conduct a thorough and detailed investigation to prevent any injustice against employees (Maimunah, 2016).

In addition, there are situations where employees are force to leave jobs. In a study conducted by John Bower & Jeremy (2018) found that employers often tend to commit unreasonable actions that encourage employees to resign forcibly. This situation forces the employee to make a claim for constructive dismissal or termination due to coercion by the employer. These types of dismissal, place the burden of proof on the employee himself. In the event of a breach of the terms of the underlying contract by the employer, such dismissal known as constructive dismissal. Whereas, coercion, threats or intimidation made by the employer in oral or written form, is consider as force to resign. Such dismissal occurs solely on the basis of terms and conditions agreed upon by both parties at the beginning of an employee's service. In these circumstances, the employer is more likely to choose termination made based on terms agreed upon by both parties. However, this termination does not indicate any reason for the termination (Baskaran, 2019).

2.0 LITERATURE REVIEW

2.1 Scenario of Termination

According to statistics released by the Department of Statistics Malaysia (JPM), there is a percentage increase of 2.6% in the number of labour forces in Malaysia, until July 2018. This increase makes the total labour force is 18.88 million in Malaysia (Department of Statistics Malaysia, 2018). However, based on statistics released by the Ministry of Human Resources Malaysia in 2019, a total of 23,168 cases of retrenchment were recorded by the Department of Manpower, occurred in 2018. Of these cases, a total of 21,920 cases involved local workers, while a total of 1,248 cases involved foreign workers. Also worrying when there was a total of 6,315 cases filed with the Department of Industrial Relations Malaysia in the same year. This brings the total termination of service in Malaysia to 29,483 cases during the year (Ministry of Human Resources, 2019).

Recognizing that the issue of termination of service often gets widespread coverage and becomes a hot topic of conversation on a daily basis, several previous studies have been done on this matter. Through a study conducted by the Institute of Labour Market Information and Analysis (ILMIA), there are five (5) main reasons for termination of service that often occur in Malaysia, namely retrenchment, misconduct, termination simpliciter, dismissal constructive dismissal and force resignation (Norshamsidah & Wan Zulkifli, 2018).

Retrenchment, if defined in common terms means a reduction in manpower, while in legal terms, it is defined as the termination of a contract of service as a result of redundancy. The

power of the employer to restructure the company is a management prerogative recognized by the Industrial Relations Act 1967 through Section 13 (3). Through this section, the employer has the right not to negotiate with the union in connection with the termination of service of the employee. However, it is not an absolute power. Employers must first take appropriate measures to avoid such matters.

While, misconduct is often associated with absenteeism, non -compliance or disobedience to employer's instructions, low quality of work, dishonesty, breach of rules and negligence. Misconduct is often also associated with Section 14 of the Employment Act (AK, 1955), where an employer can dismiss an employee without notice, demote and impose any other light punishment deemed fair and appropriate if the employee is found to have committed misconduct which contrary to the terms of employment contract. The employer must also investigate on the offense committed, and may suspend the employee for a period not exceeding two weeks and must pay less than half the employee's wages for that period. a thorough and in -depth investigation process is recommended to the employer by providing detailed information related to the misconduct of the employee. This is to facilitate and assist the employer if the case of termination of service of the employee is heard in the Industrial Court.

The constructive dismissal scenario has a difference with misconduct where it is a situation where employees are forced to leave their jobs as a result of a breach of employment contract committed by the employer. Based on a study conducted by Adam (2018), employers are often unaware that their actions can cause them losses if employees take legal action against them, especially when employees find it difficult to get new jobs.

There is a difference of scenario in the case of constructive dismissal as it involves the situation of employees being forced to leave their jobs as a result of breach of employment contract committed by the employer. Based on a study conducted by Adam (2018), employers are often unaware that their actions can cause them losses if employees take legal action against them, especially when employees find it difficult to get new jobs.

In certain circumstances, a forced resignation made by an employer also poses a threat to a person’s employment. coercion or persuasion with the intention of forcing an employee to submit his resignation letter also contributes to the termination scenario in Malaysia. However, forced resignation is a termination of service which is also not recognized by labour law in Malaysia. In a study conducted by John Bower & Jeremy (2018), employers often perform unreasonable actions until those actions prompt employees to resign. The employer's actions such as asking the employee to sign the resignation letter provided by the company as well as giving a burden or pressure so as to pose a threat of danger to the position held, are among the actions that are often done by the employer. This also indicates the existence of an element of coercion or intimidation whether in the form of verbal, written or physical against employees.

In reality, terminating a relationship is not as easy as one might think. This is because there is a principle of simple termination that is made without stating a reasonable reason and reason. Termination based on terms in employment contracts alone, is no longer accepted in Malaysia. The clause contained in the employment contract does not give the employer an absolute right to terminate the service of an employee arbitrarily (Zulkiflee & Isa, 2019). Recently, the Labour Court in India has shown a trend to accept termination simpliciter if it is in accordance with the conditions contained in the employment contract and the termination is not stigma.

2.2 Contract of Employment

A contract is one of the most critical documents that need attention, especially when determining the relationship between two parties. The relationship between employees and employers are binding by contracts of service. In contrast, contracts for services are more likely to refer to

service providers and agents who perform those services. In determining an employee's relationship with an employer, an employment contract is a document that affects that relationship. It does not only involve a relationship, but it is also having a legal effect on it. According to Harlida & Mumtaj (2016), employees who serve under employment contracts have rights and privileges under the provisions of labour law in Malaysia, namely the Employment Act 1955. However, the Employment Act 1955 does not protect agents who operate the service under contracts for employment.

The contract of services signed at the beginning of the employment is a bilateral agreement. It contains the terms and conditions set out to apply throughout the years of services. Therefore, the terms and conditions have to review and agree upon before starting a job. Salary, date of commencement as well as other benefits have to negotiate by both parties. Negotiation at the beginning of service is necessary before one starts service. They must first accept the terms and conditions in the contract. The employee considered to have accepted the offer and agreed to whatever conditions upon signing the contract. According to Muhammad Faris (2017), it is common for employees not to read and understand the essence of the signed contract. Vice versa, trust and credibility of the employer as the criteria for accepting each term and conditions.

In maintaining industrial harmony, any changes in the signed contract are considered a breach of contract. According to Baskaran (2019), the relationship between employer and employee will end upon the breach of contract. This situation also shows that the existence of a contract does not prevent dismissal from occurring. The termination also affects employees when the action opens up space for injustice against employees. The principle of natural justice is still not practised in the employment contract itself. Although the law gives employers the right to dismiss an employee, there are still principles that must be adhered to before retrenchment (Suharne, 2018). These principles are to ensure justice to employees.

In each case of termination, the employer has a liability to prove the cause and reason. However, constructive dismissal gives the responsibility to the employee in providing evidence of the breach of contract committed by the employer. The success of the termination claim can occur when the employee proves the violation committed. This situation shows that the existence of a contract can protect the rights of employees. Ling & Dhillon (2018) emphasized that each claim depends on the employment contract itself.

The existence of an employment contract is necessary. In the case of Sivabalan a/l Poobalasingam against Kuwait Finance House (Malaysia) Berhad, the Industrial Court ruled that there was additional compensation called punitive compensation in the event of unfair dismissal. As a result, the compensation payable is assessed based on the duration of the employment contract. The decision proves the ability of employment contracts to protect in particular to employees.

Under S.10 of the Employment Act 1955, every contract entered into is required to lay down termination terms. Freedom of contract theory is elevating by providing space and opportunity for both parties to enter into employment contracts. Everybody has the rights to enter the contract as well as freely agrees with the term and condition stated (Semeryanova et al., 2019). However, this theory does not give absolute rights to employers (Zulkiflee & Isa, 2019). Although the law gives the prerogative to the employer to dismiss the employee, the employer still has to provide a reasonable cause and reason for the dismissal. In reality, termination simpliciter is not accept in the labour law in Malaysia. This termination is considering an unfair action to the employee.

With the spread of the Covid-19 epidemic, the employment contract plays a role in determining the value of compensation that workers were entitled to receive. Many companies and employers are affected by the implementation of the Movement Control Order by the Malaysian government. The expenses increased, forcing the employer to dismiss the employee

and make compensation payments as agreed in the employment contract. This situation illustrates the contract of service is an important document to ensure that the employee will receive the benefits even after the termination. Therefore, this study will answer the question of what elements need to be evaluate before termination. This study also answers how this element can influence the actions of an employer in the process of termination of service. This study will also be able to answer why this termination process is so important in employer-employee relations in the industrial relations system, especially in Malaysia.

3.0 METHODOLOGY

Qualitative methods are use in research, as these methods tend to explore and understand the meaning of individuals or groups in-depth towards perceptions of social or human problems. This research uses a case study method by focusing on the respondent of the study. The respondent of the study involves officers who have experiences enforcing two acts, namely the Employment Act 1955 and the Industrial Relations Act 1967. Two criteria were used to identify the suitable respondents which are (1) years of services (2) experience enforcing two acts. The purposive sampling technique used on industrial relation officers currently serving under the Ministry of Human Resources Malaysia as a respondent. This research uses a semi-structured interview method on four respondents. All four respondents are identified as Ra, Rb, Rc and Rd. Interview sessions is conduct for approximately 40 to 60 minutes for each interview session using tape recording. A total of 4 respondents were interviewed, as at Table 2.1.

Table 1: Number of respondents

	JTKSM	JPPM
Johor	2	2

After each interview session, the process of transcribing interview data begins. The data transcription process is then performed and analyse using thematic methods. Three elements are identify based on the responses from the interviews, which include contract of services, disciplinary action and Labour Law. Scripts are read and analysed to facilitate the process of analysing data to obtain study findings. Thematic analysis is used to collect the interview data. The results were coded by category and sub-category based on the objectives of the study, as shown in Table 2.2.

Table 2: Coded

CATEGORY	**SUB CATEGORY**	**CODE**
Element of Termination	Contract of services	E- Cs
	Disciplinary Action	E -Da
	Labour Law	E -Ll

Besides, this study also involved a document analysis method. There are two Acts which been analysed to determine whether existing legal provisions permit termination by the terms and conditions specified in the employment contract. The document analysis was performed on the Employment Act 1955 and the Industrial Relations Act 1967, which focuses on the employment contract and dismissal.

4.0 RESULT AND DISCUSSION

Theory of Natural Justice is often use to evaluate the effectiveness of law enforcement in the action of employment termination (Ashgar Ali, Mohd Akram & Farheen Baig, 2016; Suharne, 2018). Under the general contract principle, the contract can be terminated by any party either the employer or the employee. However, it become dispute when there is another theory used as a basis on employment termination, which is Theory of Employment Termination.

Employment termination has a negative impact on the employee in terms of social, psychological and physical. In addition, it is also affecting the family (Huizinga, 2018). Upon termination, an employee will lose the financial source. However, it also affects the employer when there is the amount of compensation have to pay to employees following termination of service made without meeting the principles of fundamental justice (Ashgar Ali, Mohd Akram & Farheen Baig, 2016). According to Suharne (2018) lack of awareness among employees regarding labour laws become one of the factors of termination. Termination by using the terms and condition in the contract also raise the question whether termination actions based on those terms and conditions are permissible.

One of the elements that has to be considers before the termination happen is the employment contract. According to Employment Act 1955, the employment contract also known as the "contract of service". The contract become a medium of protection for the rights and responsibilities of the parties involved. The terms and conditions stated in the employment contract is use as a source of reference in the event of termination. The contract of service seen as very important to employees in management and executive positions, as this position is not cover under the Employment Act 1955. Although the provisions of Section 69B of the Employment Act 1955 provides protection for workers earning less than five thousand, it still relies on the terms and conditions contained in the employment contract (Baskaran, 2019).

The second element that have to be consider before the termination is disciplinary action. Based on a study conducted by Abdul Khalil (2007), there are six types of misconduct related to termination of an employee in the organization, namely absenteeism, non -compliance or disobedience to employer's instructions, low quality of work, dishonesty, violation of rules and negligence. Unfair dismissal is one of the problems plaguing workers in developing countries (Anushiem, 2014). This situation causes the employer to incur liability for an indefinite period. Upon termination of the employment contract, he will only cease the main obligations namely the responsibility to work, and the obligation to pay wages. A thorough and in -depth investigation process is recommended to the employer by providing detailed information related to the misconduct (Maimunah, 2016). This is to facilitate and assist the employer if the case of termination referred to the Industrial Court.

Enacted labour laws govern the interests and justice between employers and workers. There are two acts that are directly involved in termination based on employment contracts in Peninsular Malaysia, namely the Employment Act 1955 and the Industrial Relations Act 1967. These two acts have different implications on termination based on employment contracts. The Employment Act 1955 protects manual workers and workers earning less than RM2,000 per month, as provided in Schedule 1, Employment Act 1955 (AK, 1955). Meanwhile, the Industrial Relations Act 1967 regulate to maintain industrial harmony in Malaysia by provides for the rights of employees and employers in industrial dispute. Through Section 20 (1) IR Act 1967, the employee has the rights to make a representation for reinstatement regardless of whether the employee is a member or not of a trade union.

In determining a fair termination process, players in the industrial relations system have their respective responsibilities and roles. Madinda's (2014) study tends to see employers as key players in termination of service. The employer has the right to terminate the employment contract or give the employee an opportunity to improve job performance or discipline (Suharne, 2018).

Workers who have lack knowledge of labour rights and laws are also at risk. The situation becomes more complicated when employers and employees are both a shallow knowledge of labour law. The fact of loopholes in the termination procedure also affects the termination action.

4.1 Contract of Services

One of the factors in determining the termination process is by looking at the validity of the employment contract entered into at the beginning of the service. An employment contract defined as a contract executed orally or in writing that contains express or implied terms when an employee agrees to provide his services and another party agrees to hire the person.

An employment contract is a document that must be entered into and given to each employee. Its play an essential role in protecting the worker. The contract of employment must be reviewed and understood by both parties before being signed and agreed. The terms and conditions agreed upon by the employment contract have significant implications for an employee's employment. The employer is open to determine the terms and conditions of employment that both parties need to agree. For workers earning more than RM2,000 a month, the terms or conditions contained in the contract of employment are a viable medium when the termination based on the contract of employment is made by the employer

Employment contracts are particularly relevant to the employees. The contract of service is one of the most persuasive evidence that the employee has to make sure the employee is a legitimate worker. Through employment contracts, employees can prove that there is a labour relationship with the employer. Through employment contracts, employees are aware of the rules and regulations set by their employers. It's also to avoid any breach of contract or company rules as the rules set by the employer vary by business type. It also stated by the respondents that employment contracts were a medium of protection for workers' rights, particularly those who had exceeded their qualifications under labour law. Employees who are earning more than RM5,000 a month need to concentrate on the contents of their employment contracts since the Employment Act does not apply to them. It also gives the employee the right to claim any benefits specified in the employment contract if unfair dismissal occurs.

Generally, the respondents expressed the view that there is a need to enter into employment contracts to protect workers' rights. It is necessary to enable workers to claim termination benefits in the event of termination of service under a contract of employment. Employment contracts are also seen as compulsory for employees who are paid more than the provisions of the Employment Act 1955. Indirectly, in the event of a breach of the terms of service, the employment contract may serve as evidence or guidance to the department in resolving the dispute. There are also significant improvements to specific terms and conditions not specified in the employment contract, which can be stated explicitly in the Company Handbook as an additional document to the employment contract. In this regard, employment contracts are indispensable for the security of workers' employment while protecting the rights of workers and employers.

However, employment contracts are contrast with "contracts for employment". This is because; the contract signed has an impact on the relationship and legislation between the employer and the employee. As mentioned by Respondent D, "*When an employee is terminated, he must prove that he is an employee. The document that can show the validity of the relationship is the employment contract*". A person who enters into a contract for services is not consider as an employee. He also not subject to existing labour laws.

Employment contracts seen as a medium of protection, especially to employment relationships. For employees covered under the Employment Act 1955, the terms and conditions contained in the contract of service may be challenge upon termination. The employment contract

will be the source of reference for each claim. Respondent Rb indicated that the contract of service is one of the evidences that shows the employee -employer relationship. Any terms that not specified in the employment contract shall specifically state in the employee handbook as an additional document to the employment contract.

Through the labour law, there are 10 details on the terms and conditions of employment that must be register and kept by employer. Each of the terms and conditions must be review and agreed by both parties. There is an open space for both parties to make improvements to the terms and conditions set. All agreed benefits should be included.

However, the contract is an essential medium of protection for employees who earn more than the provisions of the Act. Each claim is making in accordance with the agreed terms. It is difficult to claim and can result injustice if the agreed terms are not state in the contract of service. Respondent C also expressed the same situation where, the employment contract is very necessary in ensuring the job security of employees. As stated by Respondent C *"Employment contract is as one of the strong evidences that shows the employee's relationship with the employer, in addition to the salary statement"*

Therefore, the employer is obliged to give a copy of the employment contract to each employee who enters the contract for reference. It is a requirement in complying with the provisions of labour law in Malaysia. In addition to employment contracts, employees also need to review the rules and regulations provided by the employer through the company's handbook. Each term must be explained, including the policies, rules and regulations enforced. Employees must identify the validity of the employment contract. The availability of employment contracts is particularly important for workers who are not cover under the Employment Act 1955.

4.2 Disciplinary Action

Misconduct is often also associated with Section 14, Employment Act (AK, 1955), where an employer can dismiss an employee without notice, demote and impose any other light punishment deemed fair and appropriate if the employee is found to have committed misconduct contrary to terms of service. The employer must also investigate (due inquiry) on the offense committed, and may suspend the employee for a period not exceeding two weeks and must pay less than half the employee's wages for that period.

Research shows that discipline problems and misconduct are major contributors to termination simpliciter factors. Disciplinary problems prompted employers to terminate employee services. As experience by Respondent Rb that *"Factors that drive termination simpliciter are disciplinary problem and misconduct of the workers*". Fail to follow every instruction of the employer is seen to be the cause of termination simpliciter. The employee's reluctance to change after several warnings caused the employer to take a shortcut by terminating the employment based on the terms in the contract. As mentioned by Respondent Ra, "*When an employee breaks the rules, the employer refuses to conduct the domestic inquiry. Employers take the easy way out by making termination based on employment contracts".*

However, Respondents A indicated that the obligation to investigate the misconduct is the responsibility of the employer before any punishment is carry out. The decision to hold a due inquiry is also enshrined in the provisions of the Employment Act 1955. However, no specific procedure is prescribing. The findings of this study are in line with the literature of Maimunah (2016) where the thoroughly and in-depth investigation process needs to be done. Each offense needs to be investigated to give justice to the employee.

It is in line with the regulations set to protect the rights of employees and employers. The provisions of the law seen as merely the minimum requirements that employers have to follow.

The employer needs to provide justice by investigating the offense in detail. As mentioned by Respondent A, "*The court will assess whether the employee is given a chance to defend himself or not. The basic principle of justice is necessary in protecting the rights of workers and employers"*.

When dissatisfaction arises from termination, the employee has the right to make a representation through the Employment Act 1955 or the IR Act 1967. Through the Labour Court, the employee has the right to claim payment in accordance with the employment contract. While the IR Act 1967 gives the right to be reinstate to the former employer. This situation gives the employee a greater opportunity to make a claim on the termination. Every claim made through the Labour Court or the Industrial Court has an impact on the industrial relations system.

Therefore, a thorough investigation has to conduct in order provide space and opportunity for a good trial. The investigation process shall be through a show cause letter at an early stage. After the initial investigation, a detailed investigation through domestic inquiry shall be carry out; this is to give employees the opportunity to present defence witnesses. The element that needs to be consider in the termination process is the "domestic inquiry". The employer is required to conduct domestic inquiry into the allegations made.

The variety of court awards also gives employers the option to follow or deny the investigation process. For Respondent A, it is enough for the employer to state the offense or accusation in writing. Respondent B also emphasized the principle of justice where workers have be given the opportunity to defend themselves. Termination without stating reasonable cause and reason will invite the risk of labour lawsuits against the employer. The term "appropriate" seen as an opportunity of self-defence given to employees to make an explanation for each allegation made.

Therefore, in order to maintain the stability of productivity and motivation of other employees, the employer cannot terminate without cause and reason. If the breach of contract is not due to misconduct, further discussions need to be conduct to reach an understanding in protecting the rights. In addition, misconduct stemming from non -employment such as drug taking or imprisonment is a breach of contract. When this happens, the employer has no obligation to conduct a domestic inquiry into the misconduct, as it is a criminal offense.

4.3 Labour Law

In the event of a breach of contract, there are two acts that allow termination simpliciter, namely the Employment Act 1955 and the Industrial Relations Act 1967 which are applied by two departments under the Ministry of Human Resources, namely the Department of Manpower and the Department of Industrial Relations Malaysia. Respondent Rb stated, "*There are two different laws which look the same but are not identical"*. There is a difference in the limitations of the scope of application of the Act when there are specific provisions that are so synonymous with termination simpliciter. The provisions of Section 12 EA 1955 are specific provisions that give employers and employees the right to terminate a contract of employment entered into.

As respond by Respondent C, "*I expect the Employment Act is allow termination simpliciter but in fact it is so subjective. The employer must follow the correct termination procedure*". Pre-caution in contract-based termination actions is essential. This is because; termination made based on the terms of the employment contract still be challenge through legislation and must follow the principle of Natural Justice. The Industrial Relations Act 1967 gives an employee the right to file a representation to be reinstate when the employee is dissatisfied with the termination. As stated by Respondent Rd "*The evaluation and approach in the Department of Industrial Relations is fair, which refers to the procedures and processes before termination is mad*e". The right conferred through Section 20, APP 1967 indirectly limits

termination simpliciter by employers. Although the Employment Act 1955 allows such action, the employee remains entitled to submit representations against the termination action deemed unreasonable by the employee.

Indirectly, each party involved in the industrial relations system must have knowledge in all actions involving employees, in particular the Employment Act 1955 and the Industrial Relations Act 1967. Every amendment in the legislation shall take into consideration to avoid misunderstandings of legal provisions. This is because every provision of the law has financial implications as punishment for violating the law. The contradiction of two different acts needs to be view positively to give justice for both parties. The situation of lack of knowledge of labour law needs to addressee. Although both acts allow termination based on agreed terms and conditions, the minimum provisions set must be adhered to ensure that the action taken gives justice to all parties. Disputes over rights need to be eliminate in order to protect the common interest.

5.0 CONCLUSION

The implementation of termination actions based on employment contracts has a huge impact not only on employees but also on the employee's environment, including the family. It also to some extent affects the company's financial position as well as the country's economic stability. It is a well -known fact that there is no obstacle from the government for employers to take termination action against employees. However, the action of terminating an employee's service based on the terms and conditions stated in the employment contract alone, is no longer acceptable in labour legislation in Malaysia. The existence of such minimal rules also affects the action taken because there are still disputes regarding the process that needs to be implemented. This study outlines some process evaluation guidelines that employers and employees need to consider, before any termination action can be implemented.

There are elements that need to emphasize in the service of an employee. Each of the terms and conditions stated in the employment contract shall be understand and agreed. Appropriate investigations such as domestic inquiry and consultations shall be conduct prior to termination, in order to give justice to the parties involved. Every applicable law needs to observe and scrutinize. The existence of the Employment Act 1955 does not prevent an employer from terminating the service of an employee based on the terms and conditions contained in the employment contract. However, the Industrial Relations Act 1967 gives employees the right to demand justice for the action of termination of service. Lack of termination procedures as well as weaknesses in law enforcement are contributing factors to the injustice that occurs. The termination simpliciter based on the terms and conditions in the employment contract is no longer be considered accepted. Therefore, all elements shall be considered so that justice in the industrial relations system becomes a practice.

Every termination action must be implemented based on the concept of justice (natural justice). Justice must be given to the employee before termination action is taken. The theory of freedom of contract is also seen as still relevant when there is an employment contract. This theory gives freedom to both parties to determine the benefits offered. However, from the point of view of termination of service it is not relevant to use as there are limitations or obstacles in the legal provisions that allow employees to express dissatisfaction with the termination.

A loophole in the rules involving termination procedures creates space for the employer to terminate the services of an employee based on the employment contract. Gaps in the procedures and actions that need to be taken before the termination of an employee’s service need to be refined. Differences of opinion need to be seen in depth to maintain the stability of the country's industry.

Therefore, knowledge of the law is an important matter that should be emphasized by every employer. Every change in the provisions in the prescribed acts and regulations needs to be scrutinized and understood by all employers, especially officers involved in the conduct of human resource management. Deficiencies in the handling of human resource management, especially the management of employee discipline, complicate the situation when the employer has to face legal action taken by the employees. Each country has its own economic policies and views. Changes in each policy implemented also affect the employment status of an employee. The formulation of the country's industrial policy has an impact on economic growth as well as creating employment opportunities for Malaysians.

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