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A Comparative Study on the Rights and Protection Provided for the Fixed-Term Contract Employees between Malaysia and the United Kingdom

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Abstract

This research focuses on employment under the fixed-term contract. It is a type of employment which has became a trend among the employers in Malaysia and has displaced the standard form of employment in recent years. It is a type of employment whereby the employees were employed for a specified time or until a particular task is completed. It is also known as temporary employment. The objective of this research is to examine the rights and protection provided for the fixed-term contract employees under the Employment Act 1955 and to set up a legal benchmark by comparing the employment laws in the United Kingdom with the employment law in Malaysia. This research will involve a general overview of the development of the employment laws in Malaysia and the United Kingdom together with the discussion on the problems faced by the fixed-term contract employees in Malaysia. The examination and comparison will enable a solution to prevent exploitation and mistreatment by the employers toward the employees who were employed under the fixed-term contract in Malaysia.

Keywords: *Labour Law; Employment Law; Malaysia; United Kingdom*

INTRODUCTION

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Employment under fixed-term contract or temporary work is a category of employment where the relationship between the employer and the employee would last for a specific time or until a particular task have been completed (Thawley, 2012). According to Saad (2011), it has gained its popularity in Malaysia among employers and has displaced the standard form of employment in recent years. Its popularity might be attributable to the lack of a law regulating this type of employment, causing unscrupulous employer and out-sourcing company to take

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advantage of their employees. The temporary employees are prone to the job and financial insecurity; miss out on employment benefits like training and often the first to lose their jobs in an economic downturn. Nonetheless, employers and employees still choose temporary working arrangements. In European countries like the United Kingdom, the fixed-term contract employment is favoured due to its flexibility. However, the reality in Malaysia is different as the employee is subjected to the exploitation of the employer. Hence, the predicaments of the employees need to be looked into and the lack of law or the existing law that permits such exploitation to must to be reviewed.

METHODOLOGY

To achieve the research objective in examining the rights and protection provided for the fixed-term contract employees under the Malaysian laws and comparing it with the employment laws in the United Kingdom, the researchers choose to carry out the doctrinal qualitative research method, which concerned with the formulation of legal doctrines through the analysis of legal rules. In Malaysia, legal rules can be found within the statute and cases. Since the research purpose is to review the Employment Act 1955 regarding rights and protections provided for the fixed-term contract employees; therefore, relevant data from specified documents have been gathered and compiled. In doing so, the techniques used are content analysis and comparative analysis. The rationale for choosing the United Kingdom as the benchmark is due to the advancement of United Kingdoms' laws and legislation in protecting their fixed-term contract employees. Not only that, Malaysia's Employment Act 1955 has been legislated by the British administration during the pre-independence period, and both countries also applied the common law. The examination and comparison will enable a solution to prevent exploitation and mistreatment by the employers toward the fixed-term contract employees in Malaysia.

FINDINGS

Development of Fixed-term Contract Employment

The fixed-term contract as a term of labour engagement is not a new phenomenon in Malaysia and the United Kingdom. In Malaysia, the contract labours had started to surface since the pre-independence period. However, the terms used are different. Meanwhile, in the United Kingdom, it began with the master-servant relationship which later transformed into the current employer-employee relationship.

Malaysia

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Fixed-term contract employment has once dominated Malaysia's employment landscape in the late nineteenth century due to huge cultivable land and mining industry by the European entrepreneurs. Kaur (2008) claimed that due to these reasons, the foreign employees such as Chinese and Indian labours were needed to work in the plantation and tin mines. Mohamed (2014) agreed with Kaur (2008) and justified the necessary to recruit Chinese and Indian labours were because of the labour shortages. These shortages could not be filled in by the Malays, as they were a self-sustained agrarian society. Therefore, foreigners had been imported in the various form of recruitment system, and since then, Malaysia's employment portrait has been coloured with contractual labour.

During this colonial period, the term of fixed-term contracts employee was not yet existed (Mohamed, 2014). There are four recruitment systems that had lured the importation of the Chinese and Indian labours. First is 'indentured labour'. It is a form of employment under a restrictive contract for a fixed period with a minimum pay in exchange for passage, accommodation and food. Second is 'bonded labour' where it is a practice in which the employer gave loans to his employees, and in return, the whole family will work to pay the debts. The third is 'Kanggani' which is a system where the British administration granted permission for Tamil headman to supervise and recruit labour from India to be sent mainly to the newly developed plantations.

Last but not least, 'Kongsi' system. It is a method of labour recruitment practised by the Chinese during the colonial period, to provide labour for the tin mining industry. Although there were only slight differences between these employment systems, their natures were still similar. These migrant employees were viewed as temporary employees who will be deported once their services were no longer needed (Kaur, 2008). Fortunately, the introduction of the Employment Act 1955 has effectively abolished these systems as it was viewed as a form of slavery.

The employment landscape in Malaysia began to change in the early 1990s. In the early 1990s, the contractual employment system had started to resurface in Malaysia when the government implemented labour policies that were pro-business to promote a more competitive and business enabling environment (Lee & Sivananthiran, 1996). As a consequence, the practice which began with the employment of foreign employees in the manufacturing and the plantation sectors is now extended to local employees in many other sectors such as banking and public service (Khoo, 2012).

United Kingdom

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The common law concept of employment in the United Kingdom began with the master-servant relationship. This relationship originated from the feudal system, where landlords owned agricultural lands but it will utilise by the employees. In return for the land to grow crops, payment or tributes would be offered to masters of the land. This concept was replaced when the British Parliament introduced the Contracts of Employment Act 1963 with the current concept of employer-employee relationship (Craig, 2007).

The phenomenon of fixed-term contract employment grew in the United Kingdom as early in the nineteenth century. Koukiadaki (2010) claimed that the fixed-term contract employees or also generally known as the temporary employees had formed a significant part of the workforce in the United Kingdom. The reason was mainly because of the demand for greater flexibility in the labour market. Flexibility here as Conley (2006) claimed was referred to the multi-function of employees in their work. While, Chiripanhura, Evans, and Zhang (2018) defined flexibility to include 'freedom to work when I want to' and 'more flexible hours or convenient'. They further explained by referring to the Labour Force Survey that women especially women with children are more likely to be in temporary employment than men because the condition of temporary work enables them to fit in work around family responsibilities.

Another reason has been identified by Tremlett and Collins (1999) is the lack of an available permanent job due to the economic downturn in the United Kingdom which has pushed up the demand to utilise more temporary employees than permanent employees. Besides that, according to Chiripanhura, Evans, and Collins (2018), even though there were available permanent work but the employees claimed it was not suitable. Therefore, the employees were forced to enter into the temporary employment to earn money and avoid gaps in their curricula vitae. Whereas, some of the employees also have voluntarily entered into the temporary employment because they did not want to leap into permanent work which may not be 'right' for them and just for them to gain some experiences.

The demand for temporary employment with multi-function of employees has led to the job market expansion where the employees were employed in various industries including the public sector. According to Brown and Sessions (2003), 75 per cent from the total the temporary employment consisted of the professional and managerial fixed-term contract employees and this number, according to Conley (2006), increased to 87 per cent in the following year. This number was supported by the United Kingdom labour market headline statistics for November 2018 as it stated that the number of temporary employees increased steadily from 2008 onwards and reached a maximum of 1.70 million in 2014. However, according to the Labour Market Economic

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Commentary: November 2018 by Chiripanhura, Evans, and Zhang (2018), this number has reduced by 55,000 to 1.5 million in July to September 2018 due to the movement of employees into permanent job positions.

The Rights and Protection provided for the Fixed-term Contract Employees

The use of fixed-term contract employees had become a trend and caused many problems such as lack of unequal treatments and unfair dismissal because there was only limited protection provided to them. In the absence of a specific law to regulate the fixed-term contract of employment in Malaysia, a reference can still be made to the Employment Act 1955. Meanwhile, in the United Kingdom, the rights of fixed-term contract employees have been neglected by the employment laws until the enforcement of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010.

Malaysia

In Malaysia, no law directly regulates the fixed-term employment contract. In the absence of a specific law, reference has to be made to the other existing law, which is the Employment Act 1955, mainly when a dispute arises between the employee and the employer. Even though Aminuddin (2006) claimed that the terminology of 'fixed-term contract' is nowhere to be found in the Employment Act 1955, the closest reference can be made to section 11(1). The wordings of that section reflect the definition of a fixed-term employment contract. Thus it provided legal recognition for this type of employment in Malaysia. It stated that;

> *"A contract of service for a specified period of time or for the performance of a specified piece of work shall, unless otherwise terminated in accordance with this Part, terminate when the period of time for which such contract was made has expired or when the piece of work specified in such contract has been completed."*

From the above provision, it gives a clear meaning that the fixed-term contract employment will be ceased at the end of the period stated in the contract automatically, or when the task assigned has been completed. This provision shows that the law in Malaysia will honour the terms and conditions of the contract between the employer and the employee (Mohamed & Baig, 2012).

Section 2 of the Employment Act 1955 defines the term 'employer' as any person who has entered into a contract of service to employ any other person as an

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employee. This definition is wide, however, in the case of Jinsburg Services Sdn Bhd v Rostam [1999] 2 ILR 324, the Industrial Court has further explained that an employer is a person who has the power to hire and fire an employee. He also has the power to control and direct the employee in the performance of his work. While for the term 'employee', the same section defines it as a person who has entered into a contract of service with an employer. Gopal Sri Ram JCA in the case of Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369 held that a workman under the Industrial Relations Act 1967 has the same definition as an employee under the Employment Act 1955. He further explained that an independent contractor who is engaged under a contract for service is not a workman under the Industrial Relations Act 1967. Consequently, an employee will only be considered as an employee if he is employed under a contract of service.

'Contract for labour' or 'contract for service' is a person who contracts with a principal contractor or sub-contractor to supply the labour required for the execution of any work which a contractor or sub-contractor. Hence, the insertion of 'contract for labour' under section 2 of the Employment Act 1955 will eliminate the direct employment relationship between the employer and the employees. It recognises the third party in the employment relationship. This recognition will cause many problems in identifying the liability and the rights of employer and employees. For example, the problem may arise if an employer tries to escape from his liability when the express term of the contract is ambiguous or uncertain.

In the case of Malaysia Wetlands Foundation v Devendiran S.T. Mani (Case No 15/4-864/02), the employer tried to deny that the contract concluded between them is a 'contract of service', which is a contract of employment between an employer and an employee. Upon successfully claiming as such, the employee could no longer rely on the protection provided by the Employment Act 1955. Similarly, in Dee Music Studio v Leng Mei Keen (Award No 739 of 2002) also decided that the court had no jurisdiction to deal with the claim made by the employees who were not employed under the contract of service. Therefore, the employee would not be able to complain to the Labour Department or Industrial Court and the only option available is to bring the case to the court. Tahir et al. (2018) supported this statement by explaining where the law in Malaysia will only protect those employees who have been identified by the statute and leaving those who are not to fend for themselves by relying on the terms and conditions of their contracts. In order to settle the dispute at hand, the court will have to fall back within the four corners of the contract invariably and unfortunately, most of the time, as discovered by Saad (2011), the employment contract terms and conditions are one-sided and will be unfavourable to the employee.

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On the other hand, Mohamed and Baig (2012) argued that the Industrial Court by section 30(5) of Industrial Relations Act 1967 has power as a court of social justice to disregard the express terms and conditions of the employment contract and shall act according to the substantial merits of the case, good conscience and equity. For example, in the case of Innoprise Corp Sdn Bhd, Sabah v Sukumaran Vanugopal Sabah [1993] 1 ILR 373, the employer submitted that the terms and conditions of the fixed-term contract of employment had given them a right to discontinue the employee service. Nevertheless, the Industrial Court in exercising its inherent jurisdiction as a court of social justice rejected the employer's submission. The importance of this case is that, although the terms and conditions of the fixed-term contract of employment were unfavourable to the employee, it might not be the sole criterion taken into consideration by the Industrial Court in settling the industrial dispute.

Despite this, claim by the fixed-term contract employees may not always be successful. As an example, in the case of Jon Paul Dante v Malaysian Philharmonic Orchestra [2012] MLJU 1295, the court held that it was clear the nature of employment is a fixed-term contract. Accordingly, there should not be any legitimate expectation on the part of the plaintiff to continue his service after the stipulated period. Hence, the court may only grant damages, not reinstatement, even though the plaintiff has proved that the employer constructively dismissed him. Likewise in the recent case of Vincent Pillai Leelakanda Pillai v Subang Jaya Hotel Development Sdn Bhd (Award No 487 of 2018), the court decided that the question of being unjust dismissal does not arise due to the contract of employment between the plaintiff and the defendant was genuinely a fixed-term contract. Thus, the relevance of these cases was that, although the fixed-term contract employees had proved that there was unjust labour practice exercised by the employer, there was no chance for them to reinstated to the previous position. In the end, the employee would be left unemployed.

In another case, Dr Hj Sarfuddin bin Othman v Global Carriers Bhd/Maritime Consortium Management Sdn Bhd & Anor [2012] MLJU 581, a director of a company applied to the High Court to quash the decision of the Industrial Court. The defendant employed the plaintiff under a fixed-term contract, and the employer was under no obligation to renew it as it was not permanent in nature. Nevertheless, the court held that the company was obligated to pay the plaintiff's gratuity and bonus as expressed in the contract. This case implies that the court still will honour the terms and conditions of the fixed-term contract. Therefore, it is wiser for the fixed-term contract employees to insist for such terms to be included in the fixed-term contract of employment. Upon termination or expiry of the contract, the employee would not be left empty-handed if the court decided to honour the nature of engagement which was unfavourable to the employee.

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Currently, an issue arises when the employer decided to incorporate a probationary clause in the fixed-term contract. It is unusual for the fixed-term contracts to have a probationary clause as they are often seen as an alternative to permanent contracts with probationary periods. Besides, the remedies available for the probationers in the case of unfair dismissal will be 12 months back wages while the fixed-term employees will only be entitled to back wages up to the unexpired term of their contract (Donovan & Ho, 2017). However, in a recent case of Malayan Banking Berhad v Mahkamah Perusahaan Malaysia & Anor [2017] 2 CLJ 70, it is apparently a trend practised by the employers especially in the banking industry because the probationary period will allow the employers to assess the employees' performance before offering them permanent contracts. Therefore, ambiguity occurred in this case, but the High Court has clarified that, even though there is a probationary period stated in the fixed-term contract, it does not alter the nature of the contract as a fixed-term contract. The court quashed the Industrial Court's decision and held that for the employee who both on the fixed-term contract and probation was only entitled to back wages of the unexpired terms according to the employment contract. This decision is indeed favourable to employers. It reassures employers that their liability for the fixed-term contract employees is limited and gives themselves more flexibility to terminate the employees when the performance is unsatisfactory to their organisations.

Concerning statutory rights and entitlements legislated by the Employment Act 1955, there are two types, which are the pecuniary and non-pecuniary benefits. Examples of the pecuniary benefits are the wages and salaries, while, for the non-pecuniary benefits are public holidays and leave benefits. According to Dunston (1996), these statutory rights and entitlements would have amounted to terms and conditions in the employment contract where every employer was legally bound to comply with it, and every employee was legally entitled to receive it.

Section 7 of the Employment Act 1955, read together with Section 14 of the Industrial Act 1967 stated that these statutory rights and entitlements only established as the minimum rights of the employees. The court has also acknowledged it as in the case of Casuarina Beach Hotel v National Union of Hotel, Bar & Restaurant Workers (Award No 127 of 1981). In this case, the court decided that even the Employment Act 1955 prescribed the minimum rights of the employees in their employment, but under Section 7A of the Employment Act 1955, the parties may agree to the terms which were more favourable to the employees.

The most common statutory rights that are currently available to the fixed-term contract employees under the Employment Act 1955 are the wages, overtime payment,

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contributions to Social Security Organization (SOCSO) insurance and Employment Provident Fund (EPF) schemes, paid sick leaves, maternity leaves, public holidays and many others. However, the Employment Act 1955 has left out and denied most of these fixed-term contract employees' rights and entitlements in the employment when imposed the limitation to the employees. The fixed-term contract employees are only entitled to all benefits provided if their services are within the scope of the Employment Act 1955. For example, Aminuddin (2006) claimed that several entitlements such as paid maternity leave, termination benefits and annual leave required the employees to serve the minimum length of 90 days to 12 months of service to be entitled to the said benefits.

The limitation imposed by the Employment Act 1955 also has restricted the trade unions to protect the fixed-term contract employees' rights. This limitation can be seen in the case of Assunta Hospital v Union of Employees in Private Medical and Health Services (Award No 86 of 1978) where the court held that the fixed-term contract employees by the nature of their employment could not come within the purview of the collective agreement. The same principle held by the court in the latter case of Hotel Continental (Penang) Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers (Award No 217 of 1983). In this case, the court further justified that the collective agreement only provided to the employees who were within its scope. Therefore, it cannot be made available to the fixed-term contract employees who were outside its scope. However, in the case of Food Industry Employees' Union v Walls Fitzpatrick's Sdn Bhd (Award No 87 of 1978), the court explained and reserved the minimum period for the fixed-term contract employees where their employment must be not less than six months for them to be entitled the protection under the collective agreement. This case allowed the fixed-term contract employees to enjoy any benefits from any collective agreement once they served for the minimum period of six months.

In addition to that, Lee and Sivananthiram (1996) claimed that employers tend to cut down the fixed-term contract employees' monthly income for each additional benefit provided for them such as the accommodation. Not only that, but the fixed-term contract employees also were paid at the lower rate of wages due to their employment status even though they did the same work and worked the same hours or longer than the permanent full-time employees. Regalia (2001) supported this by claiming that the fixed-term contract employees not only being deprived or mistreated by the employer with regards to wages, remuneration and benefits but also in promotions and training opportunities. Gericke (2011) agreed on the same thing as all these rights and entitlements were exclusively available to the permanent employees but not to the fixed-term contract employees. Thus, these unfair treatments had created a large gap, especially in the matter of wage disparity as the wages for the permanent employees

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increase with tenure but not in the same case to the fixed-term contract employees. This unfair treatment to the fixed-term employees has impliedly seen as the employers did not value them.

United Kingdom

Before the enforcement of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010, there was only limited protection provided to the fixed-term contract employees in the United Kingdom under common law. According to Simpson (2004), most of the rights and entitlements for the fixed-term contract employees usually expressed in the employment contract as legal terms and obligations or duties. Therefore, these rights are compulsory to comply with by the employers and the parties to the employment contract are prohibited from contracting out of them.

Parallel with the demand for the fixed-term contract employment in the labour market, the United Kingdom's Parliament has developed many laws that directly and indirectly protect the fixed-term contract employees. Among the laws are Contracts of Employment Act 1963 and 1972, the Equal Pay Act 1970, Employment Protection (Consolidation) Act 1968 and many others. Despite all these laws, the fixed-term contract employees still faced unfair treatment and discrimination until the government implemented the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010.

The enforcement of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010 has dramatically transformed the employment scenario in the United Kingdom especially for the temporary employment. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 are designed to protect the employees from being treated less favourably than the permanent employees. The primary significance of the enforcement of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 is it recognised the fixed-term employment as one of the terms of employment and differentiated it with the other employment such as agency employment and part-time employment.

One of the apparent distinctions between Malaysia and the United Kingdom as in Malaysia is the Employment Act 1955 does not provide any express statutory definition on the fixed-term employment. The only reference that reflects fixed-term employment is section 11 of the Employment Act 1955. Hence, with the absence of

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statutory definition to interpret fixed-term employment, the Malaysian law has failed to distinguish between different types of employees.

While in the United Kingdom, regulation 1 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 defined the fixed-term contract employment as the contract of employment which will be terminated either on the expiry of a particular term, on the completion of a specific task or the occurrence of any specific events provided under the employment contract. However, according to Part 4 and 5 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, there are several classes of employees who are excluded and not entitled to the protections under this regulation such as the armed forces (Regulation 14), the trainees under the government training schemes (Regulation 18), the agency employees (Regulation 19), and the apprentices (Regulation 20). This exception is a weakness of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. It should not restrain its application from equally binding upon all type of fixed-term contract employees for the sake of equality, fairness and adequate protection. The reason is that the importance of this legislation is to ensure that the employers will treat the fixed-term contract employees equally like the permanent employees. This protection was emphasised statutorily in regulation 2. However, according to regulation 4 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, the differences in treatment can be justified by the employer.

Differently, in Malaysia, the fixed-term employees suffer a denial of several statutory benefits granted by the Employment Act 1955. For example, they were paid lower wages compared to their permanent colleagues even though they did the same work and worked the same hours. Not only that, the promotion and training opportunities also only made available to the permanent employees but not to the fixed-term employees. In brief, the fixed-term employees in Malaysia were being abused and exploited by the employer.

Furthermore, regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 provided that the fixed-term contract employees have the right not to be subjected to unfair dismissal and any detrimental action by the employer. Therefore, under regulation 8, the employees have the right to bring an action before the employment tribunal against the employer for the unequal treatment they had received. In Andrew Biggart v University of Ulster (Case Ref: 00778/05), the fixed-term contract employee brought an action against his employer, the University, for unfair dismissal when the University made no effort to re-deploy him like his other permanent colleagues during the university's reorganisation. The court decided in favour of the employee that he was unfairly dismissed by the University

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when he was made redundant at the end of his contract. The failure of the employer to discuss and consult with the claimant over his options when his contract came to an end and to allow him a proper right of appeal against his dismissal constituted discrimination as provided under regulation 3(3)(a).

On the contrary, the fixed-term contract employees in Malaysia have to prove that the employers employed them under the contract of service. If they failed to do so, the employees could no longer bring an action against the employer to the Labour Department or Industrial Court. The reason is that the Labour Department and Industrial Court only have jurisdiction to deal with the claim made by the employees who were employed under the contract of service. In addition, even though the employees who were employed under the contract of service are able to prove there was unjust dismissal or any detrimental action done by the employer, the only remedies available for the employees will be damages, not reinstatement.

Meanwhile, the Agency Workers Regulations 2010 was designed to protect the employees who were hired by the employment agency. Regulation 3 defined agency employees as the individuals who were temporarily employed by the agency and the relationship between the employees and the agency would be governed under the contract of employment. Here, the agency acted as the intermediary in supplying the employees to the hirer for the temporary employment under a contract for service. The hirer in this context referred to a person who engaged in economic activity either in the public or private sector and whether he is operating it for profit or not. He would give instructions and supervise the agency employees in their work. This definition provided under regulation 2.

Besides that, under regulation 5 of the Agency Workers Regulations 2010, the employees have the right to the necessary working and employment condition from the first day of the assignment. For example, they should be entitled to the same access to the company gym, canteen, car parking facilities, and the minimum scale of the remuneration. Moreover, regulation 17 of the Agency Workers Regulations 2010 stated that the hirer or the agency should not unfairly dismiss the employees unless it was justified with a reasonable reason. The employees also have the right not to be subjected to any detrimental treatment from the hirer or the agency. Other than that, the employees also have a right to bring an action against the hirer or the agency before the employment tribunal for the breaches of any regulations in the Agency Workers Regulations 2010.

This situation is different in Malaysia because, under the Malaysian's employment laws, there is no distinction made between the fixed-term contract

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employees who were hired by the employer directly or contracted through the agency company. That is because the Employment Act 1955 and the Industrial Act 1967 only recognised the employer-employee relationship that is made on the basis of a contract of service. It only gives protection and benefit to the employees who fall within its scope, whereas, the employees who enter into the contract for service are left out and unable to claim the benefit and protection. Hence, the only option left for these employees to resolve any dispute arises is to rely on their employment contract. However, in the United Kingdom, these issues were dealt and appropriately managed through the enforcement of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010. Thus, the employees in the United Kingdom enjoy better rights, protection and being treated equally like their permanent colleagues.

CONCLUSION AND RECOMMENDATIONS

In conclusion, with regards to the law in Malaysia, we are falling behind as opposed to the development in the United Kingdom. Under the Employment Act 1955, there is no distinction made between the fixed-term contract employees who were hired directly by the employer or contracted through the agency company. From the discussion above, it is apparent that fixed-term contract employees in Malaysia cannot rely on the provisions of the Employment Act 1955 to protect them from the unscrupulous employer. However, the Industrial Relations Act 1967 attempted to remedy this situation when the court can exercise its power as the court of social justice to disregard the express terms of the contract. Without this, the fixed-term contract employees would be at the losing end.

This situation is different in the United Kingdom where the United Kingdom's legislature is very attentive in developing and enacting their employment laws. Not only that they have specific regulations and orders such as the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010, that gave statutory recognition to each type of contractually based employment, the employment laws have also been rapidly revised and amended to give better protections and rights to the employees.

As for the recommendation, the introduction of the statutory definition of 'fixed-term contract employee' into the interpretation section in the Employment Act 1955 is essential in order to recognise the employees statutorily and to put them equally with their permanent employees' counterpart. Therefore, the Malaysian government should consider amending the Employment Act 1955 or enacting a new piece of legislation that

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could enhance the quality of treatment and life of the fixed-term contract employees in Malaysia. Besides, the employers and the government through its institution such as the Ministry of Human Resources should be responsible for creating legal awareness among the fixed-term contract employees. With this, the employees especially the fixed-term contract employees will have a better awareness of their rights and they can prevent themselves from receiving unequal treatment from their employers.

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