EMPLOYMENT DISCRIMINATION IN MALAYSIA: A LEGAL ANALYSIS

BY

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ABSTRACT

Employment discrimination occurs when there is a differential and less favourable treatment of certain individuals because of characteristics such as sex or race regardless of the ability to perform the job. Discrimination in employment is a worldwide issue. In the West, the problem has been countered with the implementation of various anti-discrimination legislations such as the Sex Discrimination Act and Race Relations Act. While the issue is not considered as uncommon in Malaysia, the absence of clear provisions and insufficient laws to govern the subject matter has caused ambiguity with regards to the right of the private sector employees pertaining to discrimination in employment. The problem is compounded by the decisions of the superior courts of Malaysia which ruled that there is a dichotomy between public and private matters in discrimination issues although the Federal Constitution recognises that non-discrimination is part and parcel of the principle of equality. Contending that there is a loophole to the law on employment discrimination as far as the private sector employees are concerned, the researcher studies the existing provisions of law, viewed from its substantive adequacy and judicial reviews on the subject matter. Hence, the objectives of this study are: to examine the existing legal provisions pertaining to the laws on employment discrimination, particularly the legislations that govern the private sector employees in Malaysia; to determine the constitutional perspective of employment discrimination in Malaysia and whether it protects the private sector employees; to study the practices of the private sector employers towards their employees with regards to equality of treatment and equality of opportunity at the workplace; to examine employment discrimination from the Islamic perspective; and to offer suggestions towards the improvement of the legislation and the protection of the private sector employees from discrimination in employment. The methodology of the study applies both qualitative and quantitative methods. The qualitative method applies the traditional legal approach where comparative, analytical and critical analyses are used. The quantitative method uses the survey technique where a number of the administered questionnaires had been distributed to the sample respondents. The data obtained were analysed using the descriptive and inferential statistics. Consequently, the findings reveal that implicit labour law provisions demand an intervention of a new anti-discrimination legislation in the field of employment. Called as “Employment Equality Act”, this proposed statutory legislation is anticipated to properly address the issues of discrimination in the field of employment.
خلاصة البحث

التميز في العمل يقع فيما إذا حدث تغيير أسلوب التعامل وقوة الاهتمام بالأفراد المعينين لاختلاف شخصيتهم سواء جنسيا أو عرقيا دون اعتبار القدرة الشخصية في أداء وظيفة. فإن التمييز في تعيين الموظفين تعتبر قضية عالمية، ووجه العالم العربي لهذه المشكلة بتأسيس عدة قوانين لها وتطبيقها، ومنها قانون التمييز في الجنس والعلاقة العرقية. لو أن القضية لم تكن غير عادية في ماليزيا، فإن غياب مواد قانونية واضحة أو قانون غير مناسب لها لمواجهتها تحملها مفتوحة لعدة تفسيرات فيما يتعلق بحقوق موظفي القطاع الخاص نحو التمييز في العمل.

وتقدمت هذه المسألة حينما صدرت المحاكم الوساطية في ماليزيا تقريرها الذي يبين أن هناك الاحتمالات في قضية المخالفة بين القطاعي الخاص والعام ولن الدستور الفدرالي اعترف بأن عدم التمييز تعتبر جزءا أساسيا من مبدأ المساواة. خلال التمثيل بالرأي أن هناك النقص في قوانين التمييز في تعيين الموظفين كما شعر الموظفون، لقد قام البحث بدراسة المواد القانونية الموجودة في هذه القضية، دراسة ضبط متغيرة هذه المواد ومرافعة قانونية لها إزاء هذه القضية.

وبالمثل، فإن البحث يهدف إلى تحقيق عدة أهداف، فمنها فحص المواد القانونية الموجودة التي تتعلق المواد التمييز العمل لا سيما المواد التي تحيط مسألة موظفي القطاع الخاص في ماليزيا، ومنها تحديد الرأي القانوني تجاه التمييز في العمل لمعرفة مدى إحاطته لحظر حقوق موظفي القطاع الخاص. ومنها دراسة تعامل القطاع الخاص إزاء موظفيها في مسألة المساواة في التعامل والترقية في مكان العمل، ومنها تحليل الرأي الإسلامي عن التمييز في العمل، ومنها إعطاء اقتراحات تساهم في تحسين المواد القانونية لتدافع عن موظفي القطاع الخاص إزاء أي تمييز في العمل. وقد استخدم البحث منهجي الكيفي والكمي فيه بحيث طبق المنهج الكيفي خلال اعتماده إلى أسلوب تفسير النصوص القانونية في فحصها وتفصيلها، وطبيق المنهج الكمي خلال تطبيق دراسة ميدانية بتوزيع استبيانات لـ"بحث البحث"، وقام بعد ذلك بتحليل إحصائي مناسبة. وتتضح البحث تؤكد على أن هناك مواد قانون العمل تحتاج إلى إدخال مواد جديدة في منع التمييز في قضية تعيين الموظفين. سمي بـ "قانون مساواة العمل"، فإن هذا القانون المقترح يساعد في حل قضايا التمييز في العمل بشكل منظم.
The thesis of Harlida Abdul Wahab has been approved by the following:

Nik Ahmad Kamal Nik Mahmod  
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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Harlida Abdul Wahab

Signature ........................................... Date 8/1/2009
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Signature

Date
To those who have touched my life in significant ways –

my late father and my mother;

To the following persons, for their endurance, generosity and laughter throughout –

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In the name of Allah, the Most Gracious, the Most Merciful.
Peace and blessings of Allah be upon the Prophet Muhammad (S.A.W.)

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LIST OF OTHER INSTRUMENTS

Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)
Discrimination (Employment and Occupation) Convention 1958
Discrimination (Employment and Occupation) Recommendation 1958
Equal Remuneration Convention 1951
International Convention on the Elimination of All Forms of Racial Discrimination 1965
Maternity Protection Convention 1919
Night Work (Women) Convention 1919
OIC Cairo Declaration of Human Rights in Islam
The Charter of the United Nations 1945
The Declaration of Human Rights of 1948
The ILO Constitution
The ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up
Underground Work (Women) Convention 1935
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